

A COMMNR. OF SALES TAX, U.P.

v.

M/S HIND LAMPS LTD.

(Civil Appeal No. 4060 of 2006)

JULY 31, 2008

B **[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]**

C *Uttar Pradesh Trade Tax Act, 1948: s.29, proviso, Explanation I and II – Refund – Adjustment of certain amounts by the dealer, with reference to s.29, from the amounts payable as tax – Held: It is not open to dealer to make any adjustment on his own – Power of adjustment lies with the assessing authority under the Act.*

D **The respondent-Dealer was required to pay tax in respect of returns filed for the months of April, May and August, 1977. In respect of the assessment years i.e. 1969-70 to 1971-72, appellant had filed appeals before the Assistant Commissioner (Judicial) Sales Tax, which were allowed and the matter was remanded for re-consideration of the Assessing Authority.**

E **According to the dealer, Rs.74,833/-; Rs.95,506/-; Rs.1,35,666/-; Rs.2,38,435/- was required to be refunded for 1968-69, 1969-70, 1970-71 and 1971-72. The dealer adjusted aforesaid amounts from the amounts payable as tax in respect of three months i.e. April, May and August, 1977. But, in the final assessment proceedings, the Assessing Officer refused to give credits of the amounts on the ground that there was no provision for such adjustment and the dealer cannot himself adjust the amounts, if any, refundable to him. Consequently, interest for late payment was levied. The order was confirmed by the first Appellate Authority. In appeal, the Tribunal, affirmed the view of the Assessing Officer and first Appellate Authority. On revision, High Court held that it was open to the**

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assessee to make the adjustment with reference to s.29 of the Uttar Pradesh Trade Tax Act, 1948. A

In appeal to this Court, revenue contended that the High Court clearly misconstrued the provisions contained in s.29 of the Act and, therefore, the view of the Assessing Officer as affirmed by the first Appellate Authority and the Tribunal should not have been interfered with. B

Allowing the appeal, the Court

HELD: 1.1 The approach of the High Court is clearly erroneous. A bare reading of the proviso to s.29 of Uttar Pradesh Trade Tax Act, 1948 shows that the amount must have been found to be refundable and due to be refunded. No authority has found any amount to be refundable. Stand of the dealer that since the matter was remanded by the appellate authority any amount paid beyond the admitted tax has to be construed as refundable. This plea is clearly untenable. [Para 7] [599-A,B] C D

1.2. The expression used is "found to be refundable". In other words, it must be as a result of adjudication. In the instant case, there is no such adjudication. Even otherwise, the power of adjustment lies with the authority under the Statute. While granting refund, he has to first find out whether there is any amount which has to be adjusted against tax or other amounts outstanding against the dealer under the Act or the Central Act and the balance has to be refunded. The dealer cannot make any adjustment on his own, and not certainly under the proviso to sub-section (1) of s.29 of the Act as has been held by the High Court. Explanation I makes the position further clear that the date of refund shall be deemed to be the date on which first intimation regarding preparation of the refund voucher is sent to the dealer in the prescribed manner. Obviously, therefore, date of refund is relatable to the intimation regarding the preparation of the refund voucher. Explanation II shows that the expression E F G H

A "refund" includes the adjustment which is permissible under the proviso to sub-section (1). It is to be noted that the manner in which the refund has to be granted is provided in Rules 89 and 90 appearing in Chapter XV. That being so, the High Court was not justified in its view in holding that the dealer could itself make adjustment of amount.[Paras 8,9] [599-B,C,D,E,F]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 4060 of 2006

C From the final Judgment and Order dated 24.7.2003 of the High Court of Judicature at Allahabad in Sales Tax Revision No. 149 of 1991

D Krishnan Venugopal, Aarohi Bhalla, Manoj Kumar Dwivedi, Gunnam Venkateswara Rao and Kamendra Mishra for the Appellant.

C.N. Sree Kumar, Kavin Gulati, Rashmi Singh, Avinash Pandey and T. Mahipal for the Respondent.

The Judgment of the Court was delivered by

E **Dr. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Allahabad High Court allowing the Trade Tax Revision filed by the respondent (hereinafter referred to as the 'assessee/dealer'). The question involved lies within a very narrow compass, i.e. whether a dealer can make adjustment while depositing tax on the basis of tax out, admitted to be payable, of certain amounts which according to him had been deposited in excess for some other assessment periods. The High Court held that it was permissible under the U.P. Trade Tax Act, 1948 (in short the 'Act') and G U.P. Trade Tax Rules, 1948 (in short the 'Rules').

2. Background facts in a nutshell are as follows:

H Dealer-respondent was required to pay tax in respect of returns filed for the months of April, May and August, 1977. In respect of the assessment years i.e. 1969-70 to 1971-72, ap-

pellant had filed appeals before the Assistant Commissioner (Judicial) Sales Tax, which were allowed and the matter was remanded for re-consideration of the Assessing Authority.

According to the dealer, the following amounts were to be refunded:

1968-69 Rs.74,833/-

1969-70Rs.95,506/-

1970-71Rs.1,35,666/-

1971-72Rs.2,38,435/-

The dealer adjusted aforesaid amounts from the amounts payable as tax in respect of three months i.e. April, May and August, 1977. But, in the final assessment proceedings, the Assessing Officer refused to give credits of the amounts in his order dated 27.2.1982 on the ground that there was no provision for such adjustment and the dealer cannot itself adjust the amounts, if any, refundable to him. Consequently, interest for late payment was levied. The order was confirmed by the first Appellate Authority i.e. Deputy Commissioner (Appeals) Sales Tax, Agra. In appeal, the Sales Tax Tribunal, Agra, Bench (3) (hereinafter referred to as the 'Tribunal') affirmed the view of the Assessing Officer and first Appellate Authority.

The dealer carried the matter further by filing a Trade Tax Revision and as noted above, learned Single Judge held that it is open to the assessee to make the adjustment with reference to Section 29 of the Act.

3. Learned counsel for the Revenue submitted that the High Court clearly misconstrued the provisions contained in Section 29 of the Act and, therefore, the view of the Assessing Officer as affirmed by the first Appellate Authority and the Tribunal should not have been interfered with.

4. Learned counsel for the respondent on the other hand submitted that the assessee is entitled to refund and there is no reason as to why he cannot make adjustment.

A 5. Section 29 of the Act reads as follows:

“(1) The assessing authority shall, in the manner prescribed, refund to a dealer any amount of tax, fees or other dues paid in excess of the amount due from him under this Act.

B Provided that the amount found to be refundable shall first be adjusted towards the tax or any other amount outstanding against the dealer under this Act or under the Central Sales Tax Act, 1956 and only the balance, if any, shall be refunded:

C (2) If the amount found to be refundable in accordance with sub-section (1) is not refunded as aforesaid within three months from the date of order of refund passed by the Assessing authority or, as the case may be, from the date of receipt by him of the order of refund, if such order is passed by any other competent authority or court, the dealer shall be entitled to simple interest on such amount at the rate of eighteen percent per annum from the date of such order or, as the case may be, the date of receipt of such order of refund passed by the assessing authority to the date of refund.

E *Explanation-I*

The date of refund shall be deemed to be the date on which intimation regarding preparation of the refund voucher is sent to the dealer in manner prescribed.

F *Explanation -II*

The expression “refund” includes any adjustment under the proviso to sub-Section (1).”

G 6. The High Court referred to the proviso to sub-section (1) of Section 29 to hold that the amount found to be refundable shall be first adjusted against the tax or any other amount outstanding against the dealer under the Act or the Central Sales Tax Act, 1956 (in short the ‘Central Act’).

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7. The approach of the High Court is clearly erroneous. A bare reading of the proviso referred to shows that the amount must have been found to be refundable and due to be refunded. No authority has found any amount to be refundable. Stand of the dealer that since the matter was remanded by the appellate authority any amount paid beyond the admitted tax has to be construed as refundable. This plea is clearly untenable.

8. The expression used is "found to be refundable". In other words, it must be as a result of adjudication. The amount has to be found to be refundable. In the instant case, there is no such adjudication. Even otherwise, the power of adjustment lies with the authority under the Statute. While granting refund, he has to first find out whether there is any amount which has to be adjusted against tax or other amounts outstanding against the dealer under the Act or the Central Act and the balance has to be refunded. This power of adjustment lies only with the authority under the Statute. The dealer cannot make any adjustment on his own, and not certainly under the proviso to sub-section (1) of Section 29 of the Act as has been held by the High Court. The Explanation I makes the position further clear that the date of refund shall be deemed to be the date on which first intimation regarding preparation of the refund voucher is sent to the dealer in the prescribed manner. Obviously, therefore, date of refund is relatable to the intimation regarding the preparation of the refund voucher. Explanation II shows that the expression "refund" includes the adjustment which is permissible under the proviso to sub-section (1). It is to be noted that the manner in which the refund has to be granted is provided in Rules 89 and 90 appearing in Chapter XV.

9. That being so, the High Court was not justified in its view in holding that the dealer could itself make adjustment of amount.

10. The appeal filed by the appellant deserves to be allowed which we direct. However, there shall be no order as to costs.