

@ITEM NO. 101
(Part Heard)

COURT NO.7

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 5276 OF 2006

STATE OF U.P. & ORS.

Appellant (s)

VERSUS

M/S. ELLORA MECHANICAL PRODUCTS PVT. LTD Respondent(s)
(With office report) WITH
CIVIL APPEAL NO. 5230 of 2006
(With appln. For exemption from filing O.T. And with office
report)
CIVIL APPEAL NO. 2902 of 2008
CIVIL APPEAL NOS. 5104-5106 of 2007
(With office report)

Date: 08/09/2009 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.K. JAIN
HON'BLE MR. JUSTICE H.L. DATTU

For Appellant(s) Mr. Arvind Verma, Sr. Adv.
Mr. Shail Kumar Dwivedi, Addl. Adv. Gen.
Mr. Aarohi Bhalla, Adv.
Mr. Manoj K. Dwivedi, Adv.
Mr. G.V. Rao, Adv.
Mr. Kamalendra Mishra, Adv. (NP)

For Respondent(s)
in CA 2902/08: Mr. Kavin Gulati, Adv.
Ms. Rashmi Singh, Adv.
Mr. T Mahipal, Adv.

In CA 5276/06: Mr. Manoj Goel, Adv.
Mr. Shuvodeep Roy, Adv.
Mr. Wajeesh Shafiq, Adv.
Mr. M. Gopal, Adv.

UPON hearing counsel the Court made the following
O R D E R

In C.A.No.5276/06:

The Appeal is disposed of as having been
rendered infructuous, in terms of the signed order.

..2/-

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In C.A.No.5230/2006:

As per the Office Report, the sole respondent
remains unserved. Let fresh notice issue.

In the meanwhile, learned counsel for the
appellant shall seek instructions about the status of
the refund in terms of the order passed by the Trade
Tax Tribunal.

Notice shall be taken out dasti, returnable in
two weeks.

In C.A.Nos.5104-5106/2007:

As per the Office Report, though service is
complete, but so far no one has entered appearance on

behalf of the sole respondent.

List along with C.A.No.5230/2006.

In C.A.No.2902/2008:

The appeal is dismissed in terms of the signed order.

[N.Annapurna] [Charanjeet Kaur] [Pushap Lata Bhardwaj]
Court Master Court Master Court Master

[Two Signed orders in appeal Nos.5276/2006 &
2902/2008 are placed on the file]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.5276 OF 2006

State of U.P. & Ors. ...Appellant(s)

Versus

M/s Ellora Mechanical Products Pvt. Ltd. ...Respondent(s)

O R D E R

During the course of hearing, learned counsel appearing for the respondent states, on instructions, that the refund due in terms of the orders passed by the Trade Tax Tribunal (for short the Tribunal), Bench NOIDA, Camp Ghaziabad, in Appeals No.09/05(2000-01) and 10/05(2001-02), was, in fact, granted to the dealer within about two weeks of the passing of the order.

In view of the statement, we feel that having refunded the amount due to the dealer in terms of the said orders, no cause of action would survive for the revenue to pursue this Appeal.

Accordingly, we dispose of the Appeal as having been rendered infructuous.

Since this order is being passed on the basis of the statement made by learned counsel for the dealer, we grant

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liberty to the appellant to move for appropriate orders in case the said statement is found to be not correct.

.....J.
(D.K. JAIN)

.....J.
(H.L. DATTU)

New Delhi,
September 08, 2009.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2902 OF 2008

State of U.P. & Anr. .. Appellant(s)

Versus

M/s Rewa Enviro Systems Pvt. Ltd. .. Respondent(s)

O R D E R

This appeal, by special leave is directed against order dated 19th January, 2006, passed by the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No. 1615 of 2002. By the impugned order, the High Court has directed the Assessing Authority to refund the amounts of Rs.3,37,500/- and Rs.19,700/- deposited by and/or on behalf of the dealer for the assessment years 1990-91 and 1991-92 respectively along with interest @ 18% per annum. The High Court has further directed that if the said amount is not refunded to the dealer within a period of one month from the date of production of certified copy of the said order, the tax authorities shall also be liable to pay interest as ordered by it in the case of M/s. Assam Roadways (Delhi).

The main ground of challenge to the impugned order is that since the dealer had not filed an application for

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refund of the excess amount, which became refundable to them by virtue of the orders passed by the Trade Tax

Tribunal (for short, "the Tribunal") and had in fact, deposited the excess amount in respect of some assessment year, the High Court was not justified in granting interest to the dealer.

Having heard learned counsel for the parties, we are of the considered opinion that the appeal is devoid of any merit. Admittedly, the orders passed by the Tribunal in the appeals preferred by the dealer, (Appeal Nos. 231, 232, 233, 234 and 235 of 1994 in respect of assessment years 1990-91 and 1991-92) which resulted in the refund of the excess amount of tax paid by the dealer had not been challenged by the Revenue. As noted earlier, the only ground on which the refund was sought to be withheld was that the dealer had not filed an application for refund of the excess amount of tax paid by it.

A bare reading of Section 29(2) of the U.P. Trade Tax Act, 1948 (for short, "the Act") makes it clear that if the amount which is found refundable to the dealer is not refunded to him within three months from the date of receipt of the order passed by a competent authority or Court, the dealer becomes entitled to interest. The said

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provision does not stipulate filing of an application by the dealer for the refund due pursuant to an order passed by a Competent Authority. On the contrary, the provision casts an obligation on the assessing authority to issue the order of refund on receipt of a copy of the order passed by a Competent Authority, which, in the present case, happens to be the Tribunal.

In the light of the said provision in the Act, we do not find any infirmity in the afore-mentioned directions issued by the High Court in the impugned order.

Accordingly, the appeal is dismissed.

.....J.
[D.K. JAIN]

.....J.
[H.L. DATTU]

NEW DELHI,
SEPTEMBER 08, 2009.