M/s. Elcome Technologies Pvt. Ltd. Vs Commissioner of Commercial Taxes

Court: ALLAHABAD HIGH COURT

Date of Decision: March 6, 2017

Acts Referred: Uttar Pradesh Value Added Tax Act, 2008 - Section 28

Citation: (2017) 95 UPTC 409

Hon'ble Judges: Ashwani Kumar Mishra, J.

Bench: Single Bench

Advocate: Nishant Mishra, Advocate, for the Applicant; C.S.C, for the Opposite Party

Final Decision: Disposed Off

Judgement

Ashwani Kumar Mishra, J.â€"Following orders were passed in the matter on 27.2.2017:-

Submission is that merely on account of non availability of certificate issued by the custom authorities under section 5, the transaction of export

ought not to have been doubted, specially in view of the law laid down by this Court in Commissioner of Trade Tax v. M/s. Khandelwal

Engineering Works, 2003 UPTC 478. Learned counsel also submits that additional documents filed under section 61 before the first appellate

authority have not been taken note of and other documents, which could substantiate the factum of export, have completely been omitted from

consideration.

Learned Standing Counsel may obtain instructions in that regard.

Let this matter be listed on 6.3.2017 for consideration of question, aforesaid. Prayer for interim relief would be considered on the next date.

2. Learned Standing Counsel has filed a counter affidavit, but it could not be demonstrated on record by the respondents that there is any

consideration of assessee''s case by the authorities, on merits, independent of a certificate issued by the authorities under section 5. The additional

documents filed have also not been adverted to.

3. In such circumstances, it would be appropriate to observe that the assessing authority shall examine the claim of the revisionist in accordance

with the observations laid down by this Court in Commissioner of Trade Tax v. M/s. Khandelwal Engineering Works, 2003 UPTC 478, on the strength of materials brought on record to prove that a valid export had taken place.

4. Subject to the observations aforesaid, this revision stands disposed of.