

Submitted to : Shri Shankar Agarwal, I.A.S, Commissioner Trade Tax, U.P. (2b/6738)

The aforesaid Entry Tax Act was declared ultra virus of constitution vide Hon'ble High Court of Allahabad judgment & reported in 2004 NTN-13555. The Hon'ble Court's judgment without (In the matter of I.O.C. Vs State of U.P.) any conditions held that the amount so recovered or deposited under Entry Tax was to be refunded, but the same has not been complied so far at the field level.

The matter subsequently reached Hon'ble Supreme Court, where the crux of the matter was whether the Tax was compensatory in nature or not, and more so whether violated Article 301 of Indian Constitution. The matter was referred back to Hon'ble High Court of Allahabad to determine the "Issue". The Hon'be High Court unequivocally ruled that there is not even an iota of evidence to prove that the Tax was compensatory in nature & as such it clearly violated Article 301 of Indian Constitution. This judgment has been reported in 2007 U.P.T.C-258. The Hon'ble Supreme Court considering the justifiability of Hon'ble High Court Allahabad (Which is binding for U.P.) order, extended the "Stay orders" including I.O.C. which is the highest Entry Tax payer of U.P. & Pays about Rs. 1000 Crore annually. Thus the major Tax flow has been stayed. The Hon'ble High Court in another landmark judgment in the Matter of M/s Bela Cement Ltd Vs State of U.P. & Aur (200 NTN- 214) had already held that the Government for granting any exemption or relaxation in the matter of Tax has constitutionally no power to discriminate between "Dealers" & "Goods".

Thus if the similar benefits are not given to all dealers & Goods like I.O.C & others, both the above quoted judgments would remain uncomplied. The Govt. will have to pay a hefty interest on such illegal holding back of Entry Tax will which be in defiance of Hon'ble Apex Court order.

It is worth mention that the Trade Tax Deptt had to issue a time bound circular consequent to judgment of the Apex Court in the matter reported in 2006 UPTC – 1378 laying down the theory of "unjust Enrichment" for Tax which is held back illegally. This was circulated to save the Deptt from the observation, the Apex Court had made. With all the above material on record & binding judgments it has become imperative for the Deptt to intervene & honour the judgments quoted above by staying Assessment, levy recovery & holding back of Entry Tax and not to enrich itself by an illegal Tax which is not due at present nor likely to be held so. It is therefore requested that a clear order in this behalf may kindly be issued to unveil the uncertainty faced by dealers & field officers. The opinion may very kindly be communicated to us at the earliest so that on the same very ground business community may not become defiant in this particular case & other cases as well. This will also spare time for field officers to engage in constructive work than this illegal work which is not going to enrich the state coffers.

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