(2006) 09 AHC CK 0039

In the Allahabad High Court

Accro Sales APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 15-09-2006

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 20 VST 553

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—The present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") is directed against the order of Tribunal dated December 28, 1996 relating to the assessment year 1991-92.

2. Brief facts of the case are that the applicant was carrying on the business of DMO and mentha oil. Applicant had sold DMO and mentha oil against bill No. 36 dated January 12, 1992 for Rs. 2,08,800 to M/s. Essential Oil and Chemical, Nainital Road, Bareilly. When the goods were in transit, they were checked by Trade Tax Officer, Mobile Squad, on January 12, 1992. At the time of checking, bill was produced by the driver of the vehicle. It appears that the goods were detained on the ground that the bill was found doubtful and show-cause notice was issued. In pursuance of the show-cause notice, applicant appeared and produced stock register, purchase vouchers and the bill book. It was explained that the impugned goods, which were sold have been purchased from the local dealers during the period January 4, 1992 to January 9, 1992. The entries of the purchases and sales have been shown in the stock register, copies of which were also submitted before the Trade Tax Officer, Mobile Squad and was duly signed, photocopy of stock register is annexure 6 to the supplementary affidavit. Trade Tax Officer, Mobile Squad, however, seized the goods and demanded security at Rs. 84,000. The seizure order was confirmed by the Assistant Commissioner (Enforcement), Bareilly, vide order dated January 25, 1992. Against the said

order, applicant filed appeal before the Tribunal. The Tribunal by the order dated February 3, 1992 allowed the appeal. The Tribunal held that the seizure of the goods was not justified. Tribunal however, observed that it would be open to the assessing authority to initiate proceedings u/s 13A(4) of the Act. The goods were directed to be released on furnishing of indemnity bond. In pursuance of the seizure of the goods, show-cause notice was issued u/s 13A(3) of the Act. The applicant filed detailed reply and produced the books of account again before the assessing authority and has shown the entries of the impugned goods in the stock register and in the other books of account. The assessing authority, however, levied the penalty u/s 13A(4) of the Act at Rs. 84,000. First appeal filed by the applicant was rejected. The applicant filed second appeal before the Tribunal, which has also been rejected by the impugned order. The Tribunal observed that in the bill, serial number was mentioned by stamping and not issued from the regular bill book and applicant had maintained stock register in the loose form, which was subsequently, bounded. On this basis, it has been inferred that the goods were transported outside the books of account.

3. Heard learned Counsel for the parties.

4. The learned Counsel for the applicant submitted that adverse inference drawn by the Tribunal that the goods were transported outside the books of account, is erroneous and based on no material. He submitted that at the time of checking, goods were found accompanied by the bill. In pursuance of the show-cause notice the applicant appeared before Trade Tax Officer, Mobile Squad and produced the books of account, namely, stock register, bill book, purchase voucher and shown the entries of the goods in the books of account. Copies of the stock register was signed by the Trade Tax Officer, Mobile Squad. He further submitted that in pursuance of the show-cause notice u/s 13A(3) of the Act, books of account were again produced before the assessing authority and the entries were shown. The reason for adverse inference namely, that the bill number was mentioned by stamping and was kept in loose form is no ground for the levy of penalty. Learned Standing Counsel relied upon the order of Tribunal.

5. On the facts and circumstances of the case, in my opinion, penalty is not sustainable.

6. Section 13A(4) of the Act reads as follows:

13A. Power to seize.?(4) If such authority, after taking into consideration the explanation, if any, of the dealer or, as the case may be, the person in-charge and giving to him an opportunity of being heard, is satisfied that the said goods were wilfully omitted from being shown in the accounts, registers and other documents referred to in sub-section (1), it shall pass an order imposing such penalty, not exceeding the sum specified in the notice, as he may deem fit.

7. Penalty u/s 13A(4) of the Act can only be levied when it was found that the goods were omitted to have been shown in the document or register. In the present case, no such case has been made out. When the goods were checked, it

was accompanied by the bill. In pursuance of the show-cause notice, stock register and bill book were produced, in which entries of the goods were duly found. The adverse inference drawn by the authorities below on the ground that in the bill, serial number was mentioned by stamping and it was kept in loose form, which was subsequently bounded, is no ground to infer that the goods were not shown in the books of account. The adverse inference drawn by the Tribunal is erroneous and based on no material and merely on surmises and conjectures.

8. In the result, revision is allowed. Order of the Tribunal is set aside and the penalty is hereby quashed.