(2014) 07 AHC CK 0150

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 403 of 2014

Akshat Roadways APPELLANT

Vs

The Commissioner,Commercial Taxes RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Citation : (2014) 07 AHC CK 0150

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : Rahul Agarwal, Advocate for the Appellant

Judgement

Surya Prakash Kesarwani, J.—Heard Sri. Rahul Agarwal, learned counsel for the revisionist and Sri. B.K. Pandey, learned Standing Counsel for the respondent.

2. Revisionist claims himself to be a transporter. On 8.10.2013 a survey of his godown at Kanpur was conducted by a joint team of Assistant Commissioner, Mobile Squad-II, Kanpur and S.I.B. Unit. During the course of inspection, 350 bags of betel nut weighing 70 Kg. each and certain other goods were found. No documents, bill or bilty etc. pertaining to these goods were produced. A show cause dated 8th October, 2013 was issued. Another notice was issued on 24th October, 2013 fixing the date for 2nd November, 2013. Thereafter order of seizure was passed on 14th December, 2013 seizing the goods in question and cash security to the tune of 40% of the value of goods for release was demanded.

3. Aggrieved with the seizure order the revisionist preferred an application before the Joint Commissioner (SIB), Commercial Tax, Kanpur which was rejected by an order dated 12th March, 2014. It was observed in the order that the bill and bilty were produced much belatedly and on an enquiry the consigner and the transporter at Nagpur were found nonexistent. The conclusion was drawn that the goods in question have been imported on forged documents with intent to evade payment of tax.

4. Aggrieved with the aforesaid order, revisionist preferred an Appeal No. 185 of

2014 before the Commercial Tax Tribunal, Kanpur Bench-IV, Kanpur which was rejected by the impugned order dated 28th March, 2014.

5. Aggrieved with the order of Tribunal, the revisionist has preferred this revision on the following question:

(a) Whether the order of the Tribunal below sustaining the seizure order only on the ground of non-genuineness/non-registration of the consignor/transporter is contrary to the law laid down in M/s. Saiya Transport Pvt. Ltd. Vs. State of U.P. and others 2006 UPTC 967, New Indore Delhi Roadlines Vs. C.C.T. (2012) NTN (Vol. 49) 90, T.T.R. No. 777 of 2013 (Om Enterprises and another Vs. C.T.T. Lucknow) and Devnandi Trading Co. Vs. C.C.T.(2013) NTN (Vol. 53) 232?

(b) Whether the order of the Tribunal below in affirming the seizure order by placing reliance on the enquiry report submitted by the Maharashtra Tax authorities without supplying a copy thereof to the revisionist and enabling the revisionist to rebut its contents is legally sustainable?

(c) Whether in view of the decision of this Hon''ble Court in M/s. Shivam Roadways Transport Vs. C.C.T. 2002 UPTC 28, subsequent cancellation of the registration of the seller firm on 24.12.2013 cannot be a ground for upholding the order of seizure?

6. Sri. Rahul Agarwal submits that the goods in question have been validly imported accompanied with proper and genuine documents. He submits that the enquiry report which has been relied against revisionist and which is only basis to draw adverse inference, has not been confronted and copy thereof has not been provided to the revisionist before passing the seizure order. The Joint Commissioner as well as the Tribunal have also not properly considered this aspect of the matter. Under the circumstances the impugned seizure order being violative of principles of natural justice, deserves to be set aside.

7. Sri. B.K. Pandey submits that it is undisputed that at the time of survey of godown of transport company the goods in question were found and no documents relating thereto could be produced. It is only after about more than one month that the revisionist came out with the stand that the goods in question were imported from the M/s. Radhey Enterprises, Nagpur covered by bilty of M/s. Akshat Roadways, Nagpur and Form-38. He submits that the alleged firm M/s. Radhey Enterprises, on enquiry, was found to be nonexistent.

8. I have carefully considered the submission of learned counsel for the parties.

9. It is undisputed that at the time when the survey of the godown was conducted by the authorities of the commercial tax department, no documents were produced. At a very later stage the bills and bilty in question were produced taking the stands that it pertains to the goods in question. The respondent authorities inquired from the authorities of Commercial Tax Department, Nagpur with regard to the genuineness of the cosigner firm and it was reported that the firm is nonexistent. However, copy of the report was not provided to him to

enable to submit appropriate reply.

11. Considering the entirety of the facts and circumstances of the case the demand of security and its quantum appears to be justified. However, the mode of security as demanded under the impugned order needs to be modified to some existent for reasons that the maximum security which can be demanded is 40% to cover penalty likely to be imposed under the U.P. VAT Act, 2008. Rate of tax on sale of goods in question is 5%. Thus it would mean security demanded is about eight times of the tax.

12. Looking into the entire facts, I find it appropriate that cash security to the tune of 25% and balance, 15% security in the form other than cash or bank guarantee may be submitted by the petitioner for release of the goods in question.

13. In view of the above discussions, the revision is disposed of modifying the impugned order of the Tribunal to the extent that on deposit of cash security of 25% of the value of the goods in question and also on furnishing security in the form other than cash or bank guarantee for the balance 15% to the satisfaction of the assessing authority concerned, the goods in question relating to the revisionist shall be released forthwith. It is clarified that any of the observations made in the body of this order shall not influence the penalty proceedings, if any, likely to be initiated against the petitioner.