(2014) 11 AHC CK 0006

In the Allahabad High Court

Case No : Trade Tax Revision No. 132 of 2014

Balaji Marketing India	APPELLANT
Vs	
Commissioner, Commercial Taxes	RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:
Uttar Pradesh Value Added Tax Act, 2008 — Section 48 48(1)(ii) 48(7)

Citation : (2015) 83 VST 491

Hon'ble Judges : Manoj Kumar Gupta, J

Bench : Single Bench

Advocate : Kunal Srivastava, Advocate for the Appellant; Sanjeev Sankhdhar, Advocate for the Respondent;

Judgement

Manoj Kumar Gupta, J.

1. The revisionist firm is a registered dealer under the Uttar Pradesh Value Added Tax Act, 2008 (hereinafter referred to as "the Act"). It is trading in pan masala and zarda, which are classified in Schedule IV and are non-vatable. The tax is single point, payable at the rate of 30 per cent, on the point of sale by "manufacturer" or "importer" as per Notification No. 869 dated August 30, 2012. On September 11, 2014, the Assistant Commissioner (Special Investigation Branch) conducted a survey of a new godown of the revisionist firm and seized the stock of pan masala and zarda, by passing seizure order dated September 16, 2014. The revisionist applied under section 48(7) of the Act for release of seized goods. The petition filed, in this regard, was rejected by order dated October 1, 2014. The appeal filed against these orders before the Tribunal has been allowed in part by the impugned order dated October 16, 2014. The order of the Joint Commissioner (S.I.B.) Commercial Tax Range II, Lucknow, requiring the applicant-firm to deposit cash security of 40 per cent of the estimated value of the seized goods, was modified and the release has been permitted on deposit of security of 30 per cent of the value of goods in cash. Aggrieved thereby, the present revision has been filed.

2. With the consent of learned counsel for the parties, this writ petition is heard finally at this stage itself.

3. The learned counsel for the revisionist contended that the seizure order is bad in law, as the goods found in the godown, were duly accounted in the accounts of the firm, maintained in ordinary course of business. It is contended that the account books have been wrongly ignored from consideration merely on the ground of suspicion. It is submitted that if the account books are taken into consideration, then all the goods seized stand duly accounted for. It is further submitted that the seized goods were branded items from the manufacturer M/s. Shimla Special Flavour. These were purchased from the manufacturer after paying 30 per cent tax, for which purchase vouchers were duly produced but were wrongly ignored from consideration. It is contended that the only default on part of the applicant-firm was that the addition of new godown could not be intimated in time, primarily because of ignorance of the change in procedure from July 1, 2014, whereunder, only online applications are entertained. The applicant-firm being unaware of the procedure tried to make application along with form 12 in hard copy on August 5, 2014, which was not accepted. Thereafter, it applied for password for uploading its request on the e-service portal on same day. Due to spelling mistake in email I.D. of the revisionist, the password was not communicated to it. The error was corrected on the very next date, i.e., August 6, 2014. The password was intimated by the assessing officer only on September 10, 2014. The applicant intimated about the addition of the new godown on September 11, 2014, on which date inspection was also made. There was no intention on part of the applicant to evade payment of any tax. It is further contended that the transfer of goods from the existing godown of the applicant to the new godown was made for the first time on September 9, 2014 and thus, 30 days time was available with it to intimate such change. Consequently, no case for seizure was made out. In any case, the demand of cash security for the entire amount of tax allegedly payable is onerous, as the goods are not vatable.

4. On the other hand, Sri Sanjeev Sankhdhar, learned counsel for the Revenue contended that admittedly at the time of inspection, the applicant firm failed to produce the account register and other documents relating to the goods found in the godown. It took repeated adjournments and ultimately, filed documents on September 15, 2014 after fabricating the same. It is thus contended that the seizure order as well as the order directing the applicant to deposit security in cash to the extent of 30 per cent of the value of goods is fully justified. It is further contended by him that the question of intention to evade tax is not to be seen at this stage and since there is sufficient material to justify the seizure, no interference is warranted.

5. After hearing learned counsel for the parties, I find that the questions of law, which arise for consideration by this court, are as under:

"(1) Whether the seizure of the goods in the facts and circumstances of the case was justified or not?

(2) Whether the Commercial Tax Tribunal was justified in demanding cash security to the extent of 30 per cent of the value of goods without considering the fact that the applicant is neither manufacturer, nor importer and the goods are non-vatable?"

6. The first question thus to be considered is whether the order of seizure is justified or not? It is not disputed that seized commodities, viz., pan masala and zarda were branded items from the manufacturer M/s. Shimla Special Flavour. These goods attract 30 per cent tax on the point of sale by the manufacturer in view of Notification No. 869, dated August 30, 2012, with no further tax on resale. The applicant firm has produced purchase vouchers from M/s. Shimla Special Flavour evidencing payment of 30 per cent tax. The stock books maintained in ordinary course of business and dispatch challans evidencing shifting of stock from registered godown to the new one, were also produced along with explanation to the show-cause notice. The documents have been discarded on the sole ground that there has been delay of three days in producing the documents since the date of seizure of the goods.

7. It is not in dispute that at the time of inspection, no records were produced. The documents produced on September 15, 2014 were discarded on the ground of delay in filing the same. The applicant admits that its head office is located only at a distance of one kilometer from the place of seizure. In these circumstances, the view of the authorities seizing the goods, for discarding the documents, cannot be said to be illegal or irrational to warrant interference by this court. Since, at the time of inspection, the applicant-firm failed to produce relevant records and as such, the officer making inspection, was justified in exercising the power vested in it under section 48(1)(ii) of the Act. In the penalty proceedings, the applicant will get full opportunity to establish its bona fides and to correlate the seized goods with those mentioned in the purchase vouchers and dispatch challans. Thus, question No. (1) stands answered against the applicant and in favour of the Revenue.

8. As regards question No. 2, it is to be noted that under first proviso to sub-section (7) of section 48 of the Act, ample power is vested in the Commissioner or such other officer not below the rank of Deputy Commissioner, to direct release of goods for sufficient reasons to be recorded in writing without any deposit or on depositing such lesser amount, or furnishing security in such form other than cash or indemnity bond, as he may deem fit.

9. The case of the applicant that whether the goods seized are from the stocks maintained at the registered head office and the godown and are referable to purchase invoices, is still to be gone into in the penalty proceedings, as findings in the seizure order are only of prima facie nature. In case, the explanation of the applicant is ultimately accepted in penalty proceedings, the goods seized would not attract any further tax. The explanation of the applicant regarding

delay in getting new godown registered, viz., coming into force of new procedure of online registration with which the applicant was not conversant, cannot be disbelieved altogether. It has not been disputed that prior to inspection on September 11, 2014, the applicant had already applied for password on August 6, 2014, which application, according to the Revenue, was disposed of on August 12, 2014, while, according to the applicant, it remained pending as the password was communicated to it in the evening of September 10, 2014. Even if the version of the Revenue, in this regard, is accepted, being a finding of fact, but still it is evident therefrom that the applicant had already taken steps for getting the new godown registered. There appears to be some force in the argument of the revisionist that there was no mens rea on part of the applicant and the delay caused in getting the new godown registered, was for reasons beyond its control. However, these questions are still to be examined in the penalty proceedings and as such, no final opinion is expressed at this stage, lest it may prejudice the parties. However, I am of the firm opinion that it is a fit case warranting exercise of power under the first proviso to sub-section (7) of section 48 of the Act.

10. The court suggested that in the circumstances of the case, it is of the opinion that the applicant should deposit 50 per cent of the amount required to be deposited by order of the Tribunal in cash and the remaining half in the form of security other than bank guarantee. Counsel for the applicant Sri Kunal Srivastava agreed to the proposal and Sri Sanjeev Sankhdhar appearing on behalf of the Revenue stated at the Bar that he has no objection to such condition being imposed on the revisionist for release of the goods.

11. Accordingly, this revision is allowed in part. The order of the Tribunal dated October 16, 2014 is modified to the extent that 50 per cent of the amount required to be deposited under the said order, shall be in cash and the remaining half by way of security to the satisfaction of the seizing officer, but other than bank guarantee. As soon as the applicant complies with these conditions, the goods shall be released in its favour without any further delay. No order as to costs.

