(2010) 06 UK CK 0078

In the Uttarakhand High Court

Commissioner, Commercial Tax APPELLANT

Vs

Gurmeet Singh RESPONDENT

Date of Decision : 14-06-2010

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 15(A)(1)(q), 28B

Citation : (2011) 39 VST 277

Hon'ble Judges : J.S. Khehar, C.J;Sudhanshu Dhulia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.S. Khehar, C.J.—Forty-five generators of Birla Ymaha Ltd. were transported from Paonta Sahib in the State of Himachal Pradesh allegedly to Bangalore in the State of Karnataka through a vehicle, bearing Registration No. HP-N 2098 on 16.07.2000. On its journey commencing from Paonta Sahib, the truck carrying the generators to Bangalore had to pass over the territory of the State of Uttar Pradesh. It is, therefore, that the aforesaid truck obtained a transit pass from the entry check-post at Kulhal, Dehradun for exit check-post at T.P. Nagar (Ghaziabad). At the entry check-post Form No. 34 was handed over to the driver of the aforesaid truck, which he ought to have got vacated at the exit point.

2. Since Form No. 34 delivered to the driver of the aforesaid vehicle, was not got vacated at the exit point, a notice u/s 15(A)(1)(q) of the Uttar Pradesh Trade Tax Act, 1948 (hereinafter referred to as the ?1948 Act'') was issued by the Assessing Officer to the respondent. The Assessing Officer assessed the value of the goods at Rs. 8 laks and since the factual position depicted in the notice was not controverted, he imposed a fine of Rs. 3,20,000/- by an order dated 13.10.2000

3. The respondent assailed the order passed by the Assessing Officer dated 13.10.2000 before the Appellate Authority. The respondent produced evidence, depicting that the generators brought into the State of Uttar Pradesh through the

vehicle, bearing Registration No. HP-N 2098, had exited from the State of Uttar Pradesh and had factually been sold in the State of Delhi. Accepting the aforesaid evidence produced by the respondent before the Deputy Commissioner (Appeals), the Appellate Authority accepted the appeal preferred by the respondent vide an order dated 09.05.2002.

4. The revision-petitioner herein assailed the order passed by the Deputy Commissioner (Appeals) dated 09.05.2002 by preferring an appeal before the Commercial Tax Tribunal, Uttarakhand, Dehradun. The said appeal was dismissed by the Tribunal vide an order dated 07.09.2009. The revision-petitioner has assailed the aforesaid two appellate orders dated 09.05.2002 and 07.09.2009 through the instant revision petition.

5. The Deputy Commissioner (Appeals), as also the Commercial Tax Tribunal, Uttarakhand, Dehradun had taken into consideration material produced by the respondent so as to arrive at the conclusion, that 45 generators which were transported on truck, bearing Registration No. HP-N 2098, from Paonta Sahib had entered into the State of Uttar Pradesh. The truck carrying the aforesaid goods, having broken down at Dehradun, the goods being transported were transferred to another truck, bearing Registration No. HR 29 B 5102. Thereafter, the goods were dispatched for Ghaziabad border, where there is a dealer of Birla Yamaha Ltd. Finally, the generators transported from Paonta Sahib were transported to the State of Delhi, where they were actually said to have been sold. In the sales certificate produced by the respondent, the engine numbers of the generators, which were transported from Paonta Sahib in the State of Himachal Pradesh, were produced. Based on the aforesaid factual position, the two Appellate Authorities, namely, the Deputy Commissioner (Appeals) and the Commercial Tax Tribunal, Uttarakhand had recorded a finding, that the goods, which were brought into the State of Uttar Pradesh, had actually left the State.

6. The solitary contention advance by the Learned Counsel for the revision-petitioner is that the Assessing Authority has no occasion to repudiate the factual position depicted by the respondent before the Appellate Authorities. It is the submission of the Learned Counsel for the revision-petitioner, that the entire matter should have been remanded back to the Assessing Officer, so as to enable the Assessing Officer to re-determine the entire factual position.

7. First and foremost, it is necessary to make a reference to Section 28-B of the 1948 Act. The aforesaid provision is being extracted hereunder:

28-B. Transit of goods by road through the State and issue of authorization for transit of goods: - When a vehicle coming from any place outside the State and bound for any other place outside the State, and carrying goods referred to in Sub-section (1) of Section 28-A, passes through the State, the driver or other person-in-charge of such vehicle shall obtain in the prescribed manner an authorization for transit of goods from the officer-in-charge of the first check-post or barrier after his entry into the State and deliver it to the officer-in-charge of the last check-post or barrier before his exit from the State, failing which it shall be presumed that the goods carried thereby have been sold within the State by the owner or person-in-charge of the vehicle:

Provided that where the goods carried by such vehicle are, after their entry into the State, transported outside the State by any other vehicle or conveyance, the onus of proving that goods have actually moved out of the State shall be on the owner or person-in-charge of the vehicle.

A perusal of the proviso to Section 28-B reveals, that where goods carried by a vehicle after entry into the State of Uttar Pradesh are transported outside the State through another vehicle/conveyance, the onus of establishing the aforesaid fact would be on the owner or the person-in-charge of the vehicle. The facts, narrated in the foregoing paragraphs, were brought to the notice of the Appellate Authorities, who accepted the version of the respondent, namely, that 45 generator sets of Birla Yamaha make, which had been transported from Paonta Sahib and had entered the State of Uttar Pradesh at entry check-post Kulhal, had actually exited the State of Uttar Pradesh from Ghaziabad border, and had factually been sold in the State of Delhi. The facts and the documents brought on the record by the respondent before the Deputy Commissioner (Appeals), as also, before the Commercial Tax Tribunal, Uttarakhand, Dehradun were to the knowledge and notice of the revision-petitioner. It was open to the assessing authority to verify the same and to repudiate the factual position sought to be established by the respondent, firstly, before the Commercial Tax Tribunal, Uttarakhand, Dehradun, and thereafter, before this Court. Neither before the Tribunal nor before this Court any effort been made by the revision-petitioner to controvert the factual position projected by the respondent (on the basis of which the appeal preferred by the respondent was accepted). It is too late in the day for the revision-petitioner now, and that, too without any material or cause to assail the findings recorded by the Deputy Commissioner (Appeals), as also by the Commercial Tax Tribunal, Uttarakhand, Dehradun.

8. For the reasons recorded hereinabove, we are satisfied that the factual conclusions drawn by the Deputy Commissioner (Appeals) have remained un-assailed. The respondent, having established that the goods which had entered the State of Uttar Pradesh from the entry check-post at Kulhal, had actually exited from the State of Uttar Pradesh from exit check-post of Ghaziabad, and had factually been sold in the State of Delhi. Thus viewed, the respondent fully established the onus placed on him in terms of the proviso u/s 28-B of the 1948 Act.

9. For the reasons recorded hereinabove, we find no merit in this revision petition and the same is accordingly hereby dismissed.