(2011) 04 AHC CK 0510

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No''s. 274 and 275 of 2011

Commissioner, Commercial Tax APPELLANT

Vs

Jeewan Maya Road Lines RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Uttar Pradesh Value Added Tax Act, 2008 — Section 48, 48(7), 50, 51, 54

Citation : (2012) 50 VST 482

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Piyush Agrawal, for the Respondent

Judgement

Pankaj Mithal, J.—The Revenue has preferred these revisions against the common order of the Tribunal dated March 30, 2011, whereby the seized goods have been permitted to be released on payment of twice the tax admissible on the estimated value of the goods. Sri Piyush Agrawal has put in appearance on behalf of respondent in both the revisions.

2. The learned counsel for both the parties consent for final disposal of the revisions on the merits at the stage of admission itself.

3. I have heard learned standing counsel and Sri Piyush Agrawal, learned counsel for the respondent.

4. The only question of law which has been raised in these revisions is whether the Tribunal is legally justified in reducing the security of 40 per cent of the estimated value of the goods to twice the amount of tax imposable on the value of the goods so estimated.

5. Chapter VIII of the U. P. Value Added Tax Act provides for the penalty. In section 54 it has been provided that where the assessing authority is satisfied that any dealer or person has committed some wrong described in column 2 of the table it shall direct such dealer or person to pay by way of penalty a sum as

provided in column 3 of the table in addition to the tax.

6. The aforesaid table contained in section 54 of the Act at item No. 14 provides for penalty which may be imposed where the dealer or any person imports or attempts to import or abates to import any goods in contravention of the provisions of sections 50 and 51 of the Act with the object to evade payment of tax on sale of such goods. In column 3 of the said table, the amount of penalty has been specified as 40 per cent of the value of the goods.

7. Section 48 of the Act which contains the power to seize goods in sub-section (5) provides that an officer authorized on being satisfied that the goods are not duly accounted for in the documents or are undervalued to the extent of 50 per cent of the value prevalent at the relevant time in the local area and there is intention to evade payment of tax, it shall pass an order of penalty not exceeding 40 per cent of the value of the goods, as he deems fit.

8. In view of the above, the order of penalty cannot be more than 40 per cent of the value of the goods and it is for this reason the authority has been vested with the power to demand security not exceeding the amount as would be sufficient to cover the penalty likely to be imposed for the purposes of releasing the goods.

9. In other words, the authority authorized to seize goods in directing seizure of the goods cannot demand more than 40 per cent of the estimated value of the goods as security for release of the same.

10. However, proviso 1 to sub-section (7) of section 48 authorizes the Commissioner or such other officer not below the rank of Deputy Commissioner for sufficient reasons to be recorded in writing to direct the release of the goods without any deposit or on depositing such lesser amount or furnishing security in such form other than cash or indemnity bond as may be deemed fit. Against such an order passed by the Commissioner or the officer not below of the rank of Deputy Commissioner in exercise of powers u/s 48(7) of the Act, appeal has been provided before the Tribunal u/s 57(4) of the Act.

11. By virtue of sub-section (8) of section 57 of the Act the Tribunal in exercise of its appellate power is vested with the authority to confirm, cancel or vary such orders or to set aside the order and direct the assessing or appellate or revising authority or the Commissioner as the case may be, to pass a fresh order on such further enquiry as may be specified.

12. Section 57(8) of the Act reads as under :

The Tribunal may, if it has not already dismissed the appeal under sub-section (7), after calling for and examining the relevant records, and after giving the parties a reasonable opportunity of being heard or, as the case may be, after following the procedure prescribed under sub-section (5);

(a) confirm, cancel or vary such order; or

(b) set aside the order and direct the assessing or appellate or revising authority or the Commissioner as the case may be, to pass a fresh order after such further enquiry, if any, as may be specified; or

(c) Order such amount of tax, fee or penalty or other money as may have been realized in excess of the due amount to be refunded according to the provisions of this Act.

13. A plain reading of the aforesaid provision makes it clear that the Tribunal has ample power in exercise of its appellate jurisdiction to confirm, cancel or vary or set aside the order appealed against and to remand the matter. Thus, the order of release passed by the officer authorized or the Commissioner or the officer not below the rank of Deputy Commissioner in exercise of powers u/s 48(7) directing for release of the seized goods on deposit/furnishing of security in cash or otherwise to the extent of 40 per cent of the estimated value or of the lesser amount is clearly subject to confirmation, cancellation or variance by the Tribunal.

14. The learned standing counsel has placed reliance upon [2001] 124 STC 611 (SC); [2001] 19 NTN 627 (State of Rajasthan v. D. P. Metals) in submitting that where the Legislature prescribes a fixed rate of penalty, the authorities cannot deviate from the same and demand a lesser amount. The above was a case under the Rajasthan Sales Tax Act, 1994 wherein a fixed penalty was provided and as such it was held that quantum of penalty so fixed is not illegal and liable to be reduced.

15. Here in the present case, dispute is not with regard to penalty or the quantum of penalty. It is with regard to security to be furnished for the purposes of release of the seized goods. The Act only provides for a maximum of amount of security to be demanded and does not specifies any fixed amount of security. The maximum amount of security demanded is also relaxable at the discretion of the Commissioner/Deputy Commissioner for sufficient reasons to be recorded in writing. Such a decision is even appealable before the Tribunal having power to confirm, cancel or vary the order appealed against which, certainly leads to a conclusion that the Tribunal is vested with the power to demand lesser amount of security and not to stick at the security of 40 per cent of the estimated value of the goods in directing for release of the same. In view of the aforesaid facts and circumstances, the question of law raised above is answered against the Revenue and it is held that the Tribunal has the authority in exercise of its appellate power to direct for release of the goods on a lesser amount of security than 40 per cent of the estimated value of goods seized. Accordingly, the revisions lack merit and are hereby dismissed with no orders as to costs.