(2010) 06 UK CK 0077

In the Uttarakhand High Court

Commissioner, Commercial Tax — APPELLANT

Vs

Sagar Enterprises — RESPONDENT

Date of Decision : 10-06-2010

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 28A(2)

Citation : (2010) 06 UK CK 0077

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

Bench : Division Bench

Judgement

J.S. Khehar, C.J.—On the proposition of law arising in the instant Trade Tax Revision, the matter has already adjudicated in a connected case (Trade Tax Revision No. 03 of 2009). All the legal issues canvassed herein are exactly the same as were canvassed in Trade Tax Revision No. 03 of 2009, except for one pointed distinction drawn by the Learned Counsel for the respondent.

2. The distinction drawn by the Learned Counsel for the respondent is, that the respondent herein i.e. M/S Sagar Enterprises, Najibabad, District Bijnor, Uttar Pradesh had sold the goods, which were being transported (and which were allegedly impounded at Jasodharpur) to M/s Satyam Traders, Talla Mota Dhak, District Bijnor, Uttar Pradesh from its premises at Najibabad, and as such, no liability could be fastened upon the respondent for violation of Section 28A(2) of the U.P. Trade Tax Act, 1948. It is the submission of the Learned Counsel for the respondent, that the instant factual aspect has been taken into consideration by the appellate authorities as well.

3. Learned Counsel for the revision petitioner, however, disputed the aforesaid factual aspect of the matter. It is submitted by the Learned Counsel for the revision petitioner that the respondent had not tendered any evidence including any documentary evidence before the Trade Tax Authorities so as to establish that the goods had been sold to, and were being transported by M/s Satyam Traders, Talla Mota Dhak. As such, it is contended, that it is not open to the respondent to assert that the goods had been sold to, and were being

transported by the respondent to M/s Satyam Traders, Talla Mota Dhak.

4. We have taken into consideration the solitary contention advanced by the Learned Counsel for the respondent. We are, however, satisfied that no benefit can be claimed by the respondent on the basis of its aforesaid assertion, on account of the fact that the respondent did not produce any evidence including documents depicting the sale of the goods being transported by the respondent to M/s Satyam Traders, Talla Mota Dhak, before the concerned Trade Tax Authorities. Additionally, it does not lie on the mouth of the respondent to raise the instant contention on account of the fact, that if the same had been factually correct, the respondent would not have assailed the penalty order passed by the Assessing Officer under the U.P. Trade Tax Act, 1948 on the basis of grounds raised by it. Having raised the aforesaid grounds, the respondent impliedly accepted the transportation of the goods by itself into the State of Uttarakhand.

5. For the reasons recorded herein above, we are satisfied that the instant revision petition deserves to be disposed of in terms of the order passed by us in Trade Tax Revision No. 03 of 2009 Commissioner, Trade Tax/Commercial Tax, Uttarakhand, Dehradun v. Satyam Traders, Talla Mota Dhak, District Bijnor (U.P.) decided on 10.06.2010.

6. Accordingly, the instant revision petition is also allowed in terms of the order passed by this Court in Commissioner, Trade Tax/Commercial Tax, Uttarakhand, Dehradun v. Satyam Traders, Talla Mota Dhak, District Bijnor (U.P.) (Trade Tax Revision No. 03 of 2009, decided on 10.06.2010).