(2011) 04 AHC CK 0513

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 93 of 2011

Commissioner, Commercial Tax APPELLANT

Vs

Sharad Sahu RESPONDENT

Date of Decision : 07-04-2011

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

Citation : (2011) 46 VST 531

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : B.K. Pandey, for the Appellant; Manish Jain, for the Respondent

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—This revision by the Revenue is directed against the order of the Commercial Tax Tribunal dated February 3, 2011 whereby the Tribunal has allowed the appeal filed by the dealer and has directed for release of the goods (three wheeler vehicle) without any security. A three wheeler vehicle was detained on December 19, 2010 while coming inside State of U.P., from Madhya Pradesh. A show-cause notice was issued to the dealer and a seizure order was passed on December 26, 2010. The representation of the dealer u/s 48(7) of the U.P. Value Added Tax Act (in short, "the Act") was rejected vide order dated January 1, 2011 which has been set aside in second appeal by the Tribunal.

2. In filing the present revision the Revenue has raised the following question of law for consideration:

(i) Whether, under the facts and circumstances of the case, the Commercial Tax Tribunal was legally justified in releasing the goods without depositing any amount of security overlooking the relevant dates of Madhya Pradesh Transport Department in form 6 as well as the other material available on record, i.e., challan accompanying with the goods?

3. I have heard Sri B.K. Pandey, learned counsel for the Revenue and Sri Manish

Jain, learned counsel for the respondent-dealer. Counter-affidavit and the documents brought on record along with it have also been perused by me.

4. The seizure order was passed as the vehicle was not accompanied by any document except for challan No. 60 and the authority was of the opinion that it was being brought inside U.P., for the purposes of sale. The statement of the dealer (driver of the vehicle) was recorded and he accepted that he was bringing the vehicle from M/s. Kabra Motors, Gadarwara, Madhya Pradesh, for delivery to M/s. Shekhawat Motors as per the delivery challan No. 60 dated December 18, 2010. The aforesaid delivery challan is of the Kabra Motors, Gadarwara, Madhya Pradesh, and it mentions the name of the customer as M/s. Shekhawat Motors along with the particulars of the vehicle. No other document was accompanying the vehicle. In passing the seizure order, in absence of form 38 and in view of the statement of the driver, the authority held that the vehicle was being imported with the object of sale in U.P., and their appears to be clear intention to evade tax. The value of the vehicle was estimated to be Rs. 1,50,000 and it was directed to be released on furnishing security to the extent of 40 percent of the aforesaid estimated value.

5. The Joint Commissioner, Commercial Tax, Jhansi Division, Jhansi in rejecting the representation of the dealer noted submissions and in respect of photostat copies of some of the documents including invoice, form 21, insurance cover and temporary registration certificate of the vehicle, produced subsequently held that they are of no significance as all of them happened to be of December 20, 2010 and were not in existence either on December 18, 2010 or December 19, 2010 when the vehicle was seized.

6. The Tribunal relying upon the photostat copies of the aforesaid documents which were produced at the time of consideration of representation u/s 48(7) of the Act, came to the conclusion that the vehicle was having a temporary registration in the name of Arvind Kumar of Lalitpur and his name also appears in the invoice No. 157 issued by the Kabra Motors on December 18, 2010 and, as such, the vehicle was not being brought inside U.P., for any further sale.

7. A perusal of the challan No. 60 and the statement of the driver recorded at the time of seizure of the vehicle clearly reveals that the vehicle was lifted from Kabra Motors, Gadarwara, Madhya Pradesh, and was going to Shekhawat Motors, Lalitpur. The vehicle was meant for sale in respect of which necessary documents were to be prepared at Gadarwara and were to be despatched to Lalitpur on some later stage.

8. From the above, it can safely be inferred that the vehicle was brought inside U.P., for the purposes of sale but without proper documents.

9. Apart from the above documents, no other document was produced till the time of seizure. It was only when the representation was being considered that photostat copies of the invoice, insurance cover and temporary registration certificate of the vehicle were produced to indicate that the owner of the vehicle

is Arvind Kumar in whose name temporary registration exists and insurance policy has been issued. The said documents are of a subsequent date, i.e., December 20, 2010 which probably have been obtained to get the vehicle released. It appears that as soon as the information with regard to the seizure of the vehicle was received, temporary permit in the name of one Arvind Kumar was obtained on December 19, 2010 in respect whereof necessary fee, etc., was deposited only on December 20, 2010.

10. The insurance cover was also obtained on December 19, 2010.

11. The invoice is also an afterthought as it was not produced at the time of seizure. It is in conflict with the original challan produced at the time of seizure and accepted.

12. It may be pertinent to note that the owner of the vehicle, alleged Arvind Kumar son of Gauri Shanker of Lalitpur, has not come forward so far to claim ownership of the aforesaid vehicle. This itself is an indication that the defence that the vehicle was already sold in Madhya Pradesh is false.

13. In this view of the matter, I am of the opinion that the Tribunal has manifestly erred in law in placing reliance on the documents which were not even in existence at the time of seizure, in holding Arvind Kumar to be the owner of the vehicle; the vehicle was not being brought in U.P., for sale; and accordingly directing its release without security. The question of law raised above, as such, is answered in favour of Revenue and against the dealer. The revision is allowed and the order of the Tribunal dated February 3, 2011 is set aside.