
(2017) 01 AHC CK 0301

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 17 of 2017

Commissioner, Commercial Tax

APPELLANT

Vs

S/S Bihar Foundary And Casting Ltd.

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

Citation : (2017) 95 UPTC 193

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Bipin Kumar Pandey, Standing Counsel, for the Applicant; Sri. M.M. Rai, Advocate, for the Opposite Party

Final Decision : Disposed Off

Judgement

Ashwani Kumar Mishra, J.—The Tribunal by the order impugned has allowed the appeal of the assessee against the seizure order, holding that the goods were being transported with valid documents. The order records that the goods were being transported from Jharkhand to Punjab, and it entered the State of U.P. on 24th November, 2016, and was supposed to exit the limits of State by 28.11.2016 as per transit declaration form. The vehicle was inspected on 29.11.2016 at Shahjahanpur, and it was found that the vehicle had not left the State by then. The authorities formed an opinion that the goods were likely to be downloaded somewhere in the State of U.P. itself with an intent to evade tax, and consequently an order of seizure was passed. Under the orders, goods could be released upon payment of security assessed at 40% of the value of goods itself.

2. The assessee contested the proceedings on the ground that extreme weather conditions prevailed in the last week of November, 2016 in the State, due to fog etc., restricting movement of vehicle. It was stated that all required documents were available with the transporter at the time when the goods were seized. It was therefore, contended that the action of seizure is wholly unjustified, and is otherwise contrary to law. The Tribunal by the order under challenge has

accepted the plea set up by the assessee, noticing the fact that extreme weather conditions prevailed in the State. It has been observed that the assessee was able to demonstrate a plausible explanation for the delayed departure of the vehicle, and therefore the seizure was uncalled for, and has been set aside.

3. Sri B.K. Pandey, learned Standing Counsel appearing for the revenue states that the transit declaration form clearly contained a note that if the vehicle does not exit State of U.P. within four days of its entry, validity of declaration forms would be treated to have expired, and vehicle would be treated to be moving in the State without due authorization. Learned counsel has further invited attention of the Court to a circular of the State, according to which, in case the vehicle faces difficulty during the course of its transit, and it cannot pass within four days, it is always open for the transporter to intimate such difficulty to the nearest officer of the department, and the vehicle can thereafter proceed without any further difficulty. Learned counsel submits that this provision has been brought in with the object of ensuring evasion of tax, and it was not open for the Tribunal to have interfered with the order of seizure.

4. Sri M.M. Rai has appeared for the assessee. He contends that in the facts and circumstances of the case, no interference is called for. Learned counsel submits that the circular relied upon by the Standing Counsel dated 4.12.2013, has not been widely circulated, and was not within the notice and knowledge of the assessee. Learned Counsel further submits that even otherwise, the goods being transported could be taxed @ 4% and demand of security @ 40 %, is wholly unjustified and uncalled for.

5. Learned Standing Counsel, in reply, submits that circular has been widely published in the State. It is contended that since penalty proceedings are liable to be drawn, as such the amount of security demanded, is justified.

6. I have heard learned counsel for the parties and have perused the records.

7. From the materials placed, it is apparent that the vehicle had entered the State on 24th November, 2016, and was supposed to have exited the State on 28.11.2016. It is admitted case of the applicant that the vehicle had not exited the State within the period allowed by it. Vehicle could reach from Chandauli to Shahjahanpur in six days.

8. The transit declaration forms clearly contemplates that it is ineffective after expiry of 4 days. Admittedly the period of four days had expired. In such circumstances, this Court finds substance in the argument advanced by learned Standing Counsel that the observation of the Tribunal that goods were being transported with all requisite documents on the date of seizure, is contrary to records. There was no valid transit declaration form in existence on the date of seizure of vehicle. So far as difficulties set up by the assessee due to poor weather condition is concerned, it was open for the revisionist to intimate such fact to the nearest officer concerned in terms of the circular dated 4.12.2013. The arguments regarding lack of knowledge of circular does not appear to have

much substance, inasmuch as the circular issued on 4.12.2013 has been widely circulated, and its copy has been marked to 76 relevant persons including the transporters association etc. Once the law requires that the vehicle must pass within a period of four days, and admittedly six days had passed on the date of inspection, the authorities cannot be said to be unjustified in coming to an opinion that vehicle was being transported without a valid transit declaration form. The order of the Tribunal, therefore in so far it holds that the vehicle was being transported with proper supporting documents, cannot be sustained.

9. Turning to the next issue, with regard to quantum of security, it is not in dispute between the parties that the goods being transported, was liable to be taxed @ 4 %. Even if the possible aspects of penalty are factored in, still a demand of security of 40 % seems to be disproportionate, and wholly uncalled for. The interest of revenue could have been duly protected by requiring the assessee to protect the interest of revenue by either accepting deposit of money or security of a proportionate amount.

10. Law is settled that since the object of security is to protect interest of the State viz-a-viz quantum of tax is concerned, as such, there has to be appropriate correlation between the quantum of tax and penalty which may be imposed and the amount of security claimed. In the facts of present case, the goods ought to have been released after requiring the assessee to deposit security @ 10 %. Since the goods had not been downloaded anywhere in the State, and other supporting documents were available, it would be appropriate to provide that in case the assessee furnishes bank guarantee to the extent of 10% of the value of goods seized, the authorities shall release the seized goods, subject to appropriate orders to be passed in penalty proceedings, in accordance with law.

11. With the aforesaid observation, revision stands disposed off.