(2007) 01 AHC CK 0010

In the Allahabad High Court

Commissioner of Trade Tax APPELLANT

Vs

Packaging Innovators RESPONDENT

Date of Decision : 09-01-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 13A(3)

Citation : (2009) 22 VST 226

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U. P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act") is directed against the order of the Tribunal dated July 14, 2004 relating to the assessment year 2003-2004.

2. Dealer/opposite party (hereinafter referred to as, "the Dealer") was carrying on the business of ink. One of the consignment loaded in vehicle No. U. P. 78-N/6152 was checked by the Assistant Commissioner (Mobile Squad), Kanpur on January 1, 2003. On checking, two challan Nos. 1145 and 1444 dated January 1, 2003 were produced. On verification it was found that in the challans, registration number was printed in six digits. The serial number was stamped and there was a difference in the number. On these facts, the genuineness of the challans was doubted. A show-cause notice was issued asking the dealer to produce the books of account for verification. Dealer could not produce the challan book for verification and submitted that it was lost. The Assistant Commissioner (Mobile Squad), Kanpur seized the goods and subsequently released on furnishing of security at Rs. 13,280. In pursuance of the seizure of the goods, a penalty proceeding u/s 13A(3) of the Act was initiated. Before the assessing authority, again the books of account were not produced for verification. It was told that the challan book was lost and other documents have also not been produced. In the circumstances, the assessing authority levied the penalty at Rs. 33,200. First appeal filed by the dealer was rejected. It appears that before the first appellate authority, dealer has produced the challan book.

From the perusal of challan book and the challans which were seized at the time of inspection, the first appellate authority found that there was a difference, therefore, penalty order has been confirmed. Being aggrieved by the order of the appellate authority, dealer filed second appeal before the Tribunal. The Tribunal allowed the appeal and set aside the penalty by the impugned order. The Tribunal held that the difference was minor.

3. Heard learned Counsel for the parties.

4. Learned Standing Counsel submitted that the dealer admitted that by printing mistake, registration number was wrongly printed and when the challans were doubted, challan book was not produced for verification. Even, before the assessing authority, challan book and other books of account were not produced for verification. The challan book was produced for the first time before the appellate authority and the appellate authority held that there was a difference in the seized challans and the carbon copies of the challan book. He submitted that though, the Tribunal observed that the copies of the challans and the challan book were not available before it, still the Tribunal held that the difference was minor. Learned Counsel for the dealer submitted that the difference stated by the first appellate authority, has been held minor and the findings of the Tribunal is the finding of fact, therefore, the present revision is liable to be dismissed.

5. In my view, order of the Tribunal is not sustainable. The penalty u/s 13A(4) of the Act is leviable in case, if the goods found omitted to have been entered in the copy, documents and register. What is to be seen is whether the goods were found entered in the books of account at the time of inspection of the goods. Admittedly, when the goods were inspected, bill was not available and only two challans were available, which were doubted by the Assistant Commissioner (Mobile Squad), Kanpur, for the reasons that the registration number was printed in six digits and the challan numbers were also wrongly printed. Dealer admitted that due to the printing mistake, numbers were wrongly printed. The Assistant Commissioner (Mobile Squad), Kanpur asked the dealer to produce the books of account and the challan book for verification, but the challan books and books of account were not produced for verification. Even, in penalty proceedings, bill book and other books of account were not produced for verification of the entries of the goods in the books of account, therefore, it has been rightly inferred that the goods were not entered in the books of account. When the challan book was produced before the first appellate authority for the first time, the appellate authority pointed out that there were differences in the challans, found at the time of inspection and the carbon copies of challans of challan book. The Tribunal without looking to the entries in the challans and the challan book has held that such differences were minor and accordingly, deleted the penalty. The view of the Tribunal is wholly unjustified. Without looking to the challans and the challan book, how it can be concluded that the differences were minor. Perusal of order of the appellate authority reveals that at no stage, dealer had explained that why the books of account were not produced before the Assistant Commissioner

(Mobile Squad) and before the assessing authority for verification of the entries of seized goods in the books of account.

6. On these facts, the assessing authority has rightly drawn the inference that the goods were not entered in the books of account. The levy of penalty is justified. The goods were released on furnishing of security at Rs. 13,280. The assessing authority had not given any reason for the levy of penalty at Rs. 33,200. The Tribunal has also not adjudicated the issue relating to the quantum of penalty. In this view of the matter, the case is remanded back to the Tribunal to decide the quantum of penalty.

7. In the result, revision is allowed. Order of the Tribunal is set aside and the matter is remanded back to the Tribunal to decide the quantum of penalty afresh in the light of observations made above.