(2006) 07 UK CK 0015

In the Uttarakhand High Court

Commissioner, Sales Tax — APPELLANT

Vs

Prakash Tubes Ltd. — RESPONDENT

Date of Decision : 07-07-2006

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 15(1)(o)

Citation : (2007) 8 VST 151

Hon'ble Judges : J.C.S.Rawat, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—This revision has been directed against the judgment and order dated March 3, 1992 passed by the Sales Tax Tribunal, Bench 2, Bareilly, Camp Haldwani.

2. The brief facts for disposal of this case are that the assessee was carrying the goods from Indore to Delhi with a form No. 34 on July 21, 1989. When the vehicle of the goods reached Saiya Check-post at Agra, the assessing authority inspected the document and seized the goods. It was pointed out by the assessee that he was carrying the goods from Indore to Delhi which are being carried to Indore to Kashipur via Delhi. The assessing authority observed that there was a cutting in the invoice and the place of destination had been shown as New Delhi in place of Kashipur. It is also admitted to the department that the assessee was having a form No. 34 along with the goods. The assessing authority did not accept the version of the assessee and the assessing authority imposed a penalty u/s 15(1)(o) of the U.P. Trade Tax Act, 1948 holding that the assessee had violated Section 28-A. Feeling aggrieved by the said order, the assessee preferred the second appeal u/s 9 of the Sales Tax Act, which was allowed vide order dated February 27, 1991 by which the penalty imposed upon the assessee was quashed. The department feeling aggrieved by this preferred second appeal u/s 10 of the Sales Tax Act and the Tribunal also dismissed the said appeal vide its order dated March 3, 1992 on the ground that no attempt to

evade the tax was made by the assessee in the matter and the assessee was entering into Delhi along with the goods in a vehicle having a valid form No. 34 under rule 87. It was further held that the provisions of the Sales Tax Act clearly provides that if the goods are being carried from outside of U.P. and also being taken to other State, i.e., outside the U.P. and the State of U.P. was intervening between the two States then form No. 34 is required for the transportation of the goods. It was further held by the first appellate authority that in case any goods was to carry from outside the U.P. to the U.P. in that case the form No. 31 is required and the assessee was also having a form No. 31 and form No. 34 at the time of inspection.

3. The department feeling aggrieved by the order of the learned Tribunal preferred revision before this Court.

4. Learned Additional Advocate-General contended that the findings recorded by the Sales Tax Tribunal are self-contradictory and the order of the assessing authority was against the provisions of law. He further contended that there were manipulations and cuttings in the invoice which leads one to take an inference that there was an intention of the assessee to evade the sales tax. Learned Counsel for the respondent refuted the contention. Perusal of the provisions of Section 15(1)(o), Section 28-A, rule 87 and rule 83, Sub-clause (4) clearly reveals that if the goods are to be taken from outside the State of U.P. to some other State through the State of U.P. the assessee is required to produce form No. 34 at the time of inspection in U.P. It is also evident from the provisions of the above sections that if there is any violation of Section 28-A, i.e., if he is not having form No. 34, the assessing authority in U.P. can impose the penalty u/s 15A(1)(o) under the U.P. Trade Tax Act, 1948. This being the legal proposition the assessee had a valid form No. 34 at the time of inspection and the assessee had submitted an explanation before the assessing authority that the head office of the assessee was at Delhi. It is not disputed that the assessee had not the head office at Delhi. It was further submitted that the assessee had not sufficient goods from Indore to Kashipur. The assessee had some goods of Delhi headquarter so the assessee loaded both the goods in the truck and he also obtained form No. 34 from sales tax department for exporting the goods from Indore to Delhi through U.P. The assessee thought it proper that as Kashipur is near to Delhi, it was convenient to the assessee to bring the goods to Kashipur via Delhi. It is also provided under the Sales Tax Act that if any goods is being carried from outside the U.P. to the State of U.P., the assessee is required to obtain form 31 from the Sales Tax Department. When the inspection was made by the assessing authority the truck of the assessee produced form No. 34 and the assessee also produced form No. 31. In this case, the assessee had obtained form No. 34 at the time of taking the goods to Delhi from Indore through U.P. He had also obtained form No. 31 for importing the goods from Delhi to Kashipur. I feel that there is no violation of any rule or Section 28-A. As such, the findings recorded by both the courts below are correct. The first appellate authority as well as the Tribunal were justified in holding that the assessee had the valid

documents and there was no violation of Section 28-A and the assessee was not liable to pay the penalty as imposed. The honourable Supreme Court has held in Commissioner of Sales Tax, U.P. v. Oriental Carbon Ltd. [1997] 10 NTN 105 that the findings of fact reached by the Tribunal that there had been no intention to cause any loss to the Revenue or to evade tax in importing into State certain consignment without form No. 31, the imposition of penalty on the ground of breach of provision of Section 28-A was not good. The Uttaranchal High Court in Polyplex Corporation Limited v. Commissioner of Trade Tax [2004] 136 STC 389 : [2003] UPTC 1097 has also taken the same view.

5. In view of the foregoing discussion, I do not find any substantial question of law involved in this revision. As such, the revision is devoid of merit and is dismissed accordingly.