(2007) 02 AHC CK 0255

In the Allahabad High Court

Commissioner, Trade Tax — APPELLANT

Vs

Arihant Traders — RESPONDENT

Date of Decision : 21-02-2007

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 21 VST 391

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Judgement

Rajesh 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 February 6, 1999 relating to the assessment year, 1996-97, by which the Tribunal has confirmed the order of the first appellate authority deleting the penalty u/s 13A(4) of the Act.

2. Brief facts of the case are that on the inspection of the vehicle loaded with 211 bags supari by the Trade Tax Officer (SIB), Jhansi on March 14, 1997 bill No. 26, dated March 12, 1997, builty No. 142, dated March 12, 1997 of Shriram Transport Corporation, Lalitpur and letter dated March 12, 1997 was available. Detention notice No. 275 dated March 13, 1997 was issued. Dealer was asked to appear along with the books of account. It appears that adjournments were sought and books of account were not produced, as a result of which goods were seized and the security was demanded. Goods were subsequently released. In pursuance of the seizure order, penalty notice under 13A(3) of the Act was issued. Dealer appeared along with the books of account and had shown the entry of bill No. 26, dated March 12, 1997 in its books of account. The assessing authority, however, levied the penalty on the ground that prior to bill No. 26, dated March 12, 1997, dealer had issued bill Nos. 32, 83, 34 and 164, dated February 8, 1997. The assessing authority was of the view that the dealer had issued the bills with irregular serial numbers. Being aggrieved by the penalty order, dealer filed an appeal before the Deputy Commissioner (Appeals), Jhansi.

The Deputy Commissioner (Appeals), Jhansi, allowed the appeal and set aside the penalty order on the ground that the entry of the bill was duly found entered in the books of account. Order of the first appellate authority has been upheld by the Tribunal.

3. Heard learned Counsel for the parties.

4. Learned Standing Counsel submitted that the dealer could not produce the books of account before the Trade Tax Officer (SIB) and its bills were found issued with irregular serial numbers and, therefore, penalty has rightly been levied.

5. I do not find any substance in the argument of learned Standing Counsel.

6. Section 13A(4) of the Act read as follows:

13A. Power to seize.--...

(4) If such authority, after taking into consideration the explanation, if any, of the dealer, or as the case may be, the person in-charge and giving to him an opportunity of being heard, is satisfied that the said goods were omitted from being shown in the accounts registers and other documents referred to in Sub-section (1), it shall pass an order imposing a penalty not exceeding forty per cent of the value of such goods as he deems fit.

Penalty u/s 13A(4) of the Act can be levied only in a case where goods are omitted to have been shown in the books of account, document or register. In the present case, it is true that the dealer had not produced the books of account before the Trade Tax Officer (SIB) for verification and that raises the doubt but on this basis alone penalty u/s 13A(4) of the Act cannot be levied. It was open to the Trade Tax Officer (SIB) that after the inspection of the vehicle, he should have immediately made the survey of the dealer premises and should have checked the books of account or should have summoned the books of account.

7. So far as irregular serial number of the bill is concerned, it appears that no query has been made by the assessing authority in this regard. In view of the fact that the entry of bill No. 26, dated March 12, 1997 was duly found entered in the books of account, levy of penalty was not justified and has rightly been deleted by both the appellate authorities.

8. In the result, revision fails and is accordingly, dismissed.

