(2002) 04 AHC CK 0017

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 118 and 119 of 2002

Commissioner, Trade Tax — APPELLANT

Vs

Bala Ji Traders — RESPONDENT

Date of Decision : 01-04-2002

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 10, 11, 13A(6)

Citation : (2003) 130 STC 89

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : B.K. Pandey, for the Appellant; Piyush Agrawal, for the Respondent

Final Decision : Allowed

Judgement

R.B. Misra, J.—These two trade tax revisions (1) T.T.R. No. 118 of 2002 and (2) T.T.R. No. 119 of 2002 have been preferred u/s 11 of the U.P. Trade Tax Act, 1948, called ("the Act"), by the Commissioner, Trade Tax, U.P., the applicant/ revisionist against the order dated December 26, 2001, passed by the Trade Tax Tribunal in Appeal No. 163 of 2001.

2. Heard Sri B.K. Pandey, learned Standing Counsel for the applicant/revisionist and Sri Piyush Agrawal for the opposite party.

3. The brief facts necessary for adjudication of the revisions are that on information the Trade Tax Officer, Mobile Squad, Bijnor, examined vehicle No. U.P.-21 G/9761 carrying "menthol". On an apprehension that the goods are not carried on the proper and genuine documents, hence the same were detained and notice dated August 4, 2001 (annexure 1) was issued. The authorities were not satisfied with the reply filed by the dealer, therefore, the entire consignment was seized and a security of Rs. 4,08,240 was demanded from the dealer for release of the goods and to secure amounts of penalty (annexure 2). In pursuance to the seizure order passed on August 6, 2001 an amount as indicated above was deposited on behalf of the opposite party on August 10, 2001 and the

goods were released to the dealer (annexure 3). After release of the goods, the opposite party submitted a representation u/s 13-A(6) of "the Act" before the Deputy Commissioner (Executive), Trade Tax, Bijnor (annexure 4) which was dismissed by order dated September 12, 2001, against which an Appeal No. 163 of 2001 was preferred before the Tribunal. The learned Tribunal partly allowed the appeal directing to release the goods without any security covered on the bill No. 11 dated August 3, 2001 and to release the goods covered on bill No. 10 dated August 3, 2001 on the demand of security (annexure 1).

4. The goods were seized u/s 13-A(6) of the Act on August 4, 2001 and the petitioner deposited the amount of security demanded and got the goods released. Thereafter he filed an application under the proviso to Section 13-A(6) of "the Act" before the Deputy Commissioner, which was rejected and it was thereafter that the appeal was preferred before the learned Tribunal in which the impugned order has been passed. "A question now arises whether after the goods had been released on furnishing security, any representation under the proviso to Section 13-A(6) of Act was maintainable?" Under the said proviso the Commissioner/Deputy Commissioner/Assistant Commissioner may for sufficient reason to be recorded in writing, direct that the goods be released without any deposit or on depositing such lesser amount, or furnishing security in such nature other than cash, as he may deem fit. This proviso can be invoked only if the goods are under seizure and the seizing officer has required the dealer to furnish the security for their release. If the dealer without filing any representation under the said proviso, complies with the order by depositing the security and the goods are released, there remains nothing for him to agitate under the terms of the said proviso.

5. In my view, the dealer having got the goods released by furnishing security, could not agitate the matter under the proviso to Section 13-A(6) of "the Act".

6. It has been contended on behalf of the revisionist that the goods were already released on August 10, 2001. Therefore, in view of the order of this Court passed in Trade Tax Revision No. 309 of 1999 (Vijay Ispat, Ghaziabad v. Commissioner, Trade Tax, U.P. Lucknow) further appeal is not maintainable.

7. Learned counsel for the revisionist has also placed reliance on 2001 UPTC 291 (Brajraj Dori Niwar Co. v. Commissioner of Trade Tax) where it was held by this Court : admittedly the Second Appeal No. 22 of 1998 had been filed by the applicant after he had deposited amount of security of Rs. 7,500 and whereafter the seized goods had been released, hence the second appeal was not maintainable. The finding recorded by the Tribunal, therefore, cannot be taken to be binding as second appeal has been held to be not maintainable. This revision is also misconceived."

8. I find force in the contention of the learned counsel for the petitioner ; accordingly the order dated December 26, 2001 passed by learned Tribunal is liable to be set aside and the same is hereby set aside however it is observed

that the propriety and validity of the seizure has to be looked into the penalty proceedings and any observations made by the authorities below are not binding. The proceedings for the levy of penalty are independent proceedings and both the sides have fresh opportunity of proving their respective cases. Therefore, the orders passed in the seizure proceedings can not be conclusive.

9. The revisions are allowed and the questions are answered affirmatively.

