(2007) 05 AHC CK 0249

In the Allahabad High Court

Commissioner, Trade Tax — APPELLANT

Vs

J.J. Enterprises — RESPONDENT

Date of Decision : 08-05-2007

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

Citation : (2010) 29 VST 486

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vikram Nath, J.—Even though there is delay of 30 days in filing the revision as reported by the stamp reporter but in view of the fact that the revision has been admitted vide order dated August 29, 2000 the delay stands condoned. The revision is therefore being heard.

2. Heard learned Standing Counsel and Sri S. D. Singh, learned Counsel for the opposite party-dealer.

3. The dispute relates to the penalty proceedings u/s 15A(1)(o) of the U. P. Trade Tax Act, 1948 (in short, referred to as, "the Act"). The question of law sought to be raised is as to whether the Trade Tax Tribunal was legally justified in knocking off the penalty even though provisions of Section 28A of the Act were clearly violated.

4. Truck No. U. P. 07/1686 was inspected by the trade tax authority in which 132 plastic bags along with form XXXI were found. In addition to that 12 bundles of tin plates were also found on the vehicle for which no papers were available with the driver. On the basis of the statement given by the driver, the said goods were seized and notice u/s 28A of the Act Was issued. The dealer appeared and thereafter took up a defence that by mistake relevant papers had been left at the office of the transporter. 12 bundles of tin plates were in fact its own raw material which was being transported to the factory site to be utilised for

manufacturing of tin boxes. The assessing officer found the violation of the provisions of Section 28A of the Act and that there was intention to evade tax and accordingly, imposed penalty equivalent to 40 per cent of the value of the goods. Upon appeal by the dealer, the Assistant Commissioner judicial) by order dated December 27, 1995 held that even though there was violation of the provisions contained in Section 28A of the Act but at the same time recorded a finding that there was no intention on the part of the dealer to evade any tax for the reason that the goods which were seized, i.e., 12 bundles of tin plates were undisputedly raw material to be used by the dealer in manufacturing of tin boxes. It, accordingly, allowed the appeal and deleted the penalty.

5. The Department filed second appeal before the Tribunal, which was dismissed by the order dated November 15, 1997 affirming the findings recorded by the Assistant Commissioner judicial). The Tribunal also held that there was no intention on the part of the dealer to evade any tax even though violation of the provisions of Section 28A of the Act was found. The Tribunal relied upon the Division Bench decision of this Court in the case of Jain Shudh Vanaspati Ltd., Ghaziabad v. State of U. P. reported in [1983] 53 STC 54 : [1983] UPTC 198.

6. Learned Standing Counsel has sought to argue that once there was violation of Section 28A of the Act, the penalty u/s 15A(1)(o) of the Act was to be automatically levied and therefore the order of the assessing officer ought to be maintained.

7. Having considered the submission and having perused the judgments of the appellate authority and the Tribunal, I do not find any infirmity in the same as it was not disputed by the Department that the goods seized were the raw material of the dealer to be used in manufacturing of tin boxes and form XXXI had been left by the driver by mistake at the office of the transporter. Merely absence of form XXXV would not mean that there was any intention to evade tax and therefore, the decision of the Tribunal based on the Division Bench decision of this Court appears to be justified.

8. No question of law arises.

9. Revision is, accordingly, dismissed.