(2007) 10 AHC CK 0167

In the Allahabad High Court

Commissioner, Trade Tax APPELLANT

Vs

Noor Mohammad RESPONDENT

Date of Decision : 09-10-2007

Acts Referred:

Citation : (2008) 13 VST 421

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Heard Sri K.M. Sahai, learned Standing Counsel and Sri M.M. Rai, learned Counsel for the opposite party. With the consent of both the parties, present revision is being disposed of. Present revision is directed against the order of the Tribunal dated May 20, 2004 for the assessment year 1984-85.

2. The opposite party had obtained a transit pass No. 1004 dated September 27,1984 contemplated u/s 28B read with Rule 87 of the Rules in respect of the vanaspati ghee. On the basis of the information that the said transit pass had not been surrendered at the exit check-post, the proceedings u/s 15A(1)(q) had been initiated by the Sales Tax Officer, Check-post Shree Nagar, Hamirpur. Since no one appeared, an ex parte order was passed by the authority concerned and levied the penalty at Rs. 63,688. The opposite party filed appeal. The appeal was allowed and the matter was remanded back to the assessing officer for the examination of the case afresh and for passing the order after giving the opportunity of hearing. In pursuance thereof notices were issued to the opposite party but opposite party did not appear before the assessing authority which led into another ex parte penalty order dated May 5, 1993.

3. The assessing authority levied the penalty at Rs. 63,688 on the ground that the transit pass obtained at the entry check-post could not be surrendered at the exit check-post. Being aggrieved by the order, the opposite party filed the appeal before the Assistant Commissioner (Judicial) Trade Tax, Jhansi. It appears that

before the appellate authority the opposite party filed form F No. D-372951 and submitted that the goods had gone outside the State of U.P. and had not been sold inside the State of U.P. therefore, penalty is not sustainable. The Assistant Commissioner (Judicial), Trade Tax, Jhansi, vide order dated May 31, 1994 allowed the appeal and set aside the penalty order. Being aggrieved by the order of the Assistant Commissioner (Judicial), Trade Tax, Jhansi, the Commissioner of Trade Tax filed the appeal before the Tribunal. The Tribunal by the impugned order rejected the appeal.

4. The learned Standing Counsel submitted that form F is not a sufficient evidence to establish that the goods had gone outside the State of U.P. and had not been sold inside the State of U.P. He submitted that form F was not produced before the assessing authority and inasmuch as before admitting form F the appellate authority had not given the opportunity to the assessing authority as required u/s 12B of the Act. He further submitted that the genuineness of from F had not been examined and therefore, the order of the first appellate authority as well as the order of the Tribunal are not sustainable.

5. The learned Counsel for the opposite party submitted that form F is sufficient to prove that the goods had gone outside the State of U.P. and on the basis of said form both the appellate authorities have rightly deleted the penalty.

6. Heard learned Counsel for the parties. I have perused the order of the Tribunal and the authorities below. The order of the Tribunal as well as the order of the Assistant Commissioner (Judicial), Trade Tax, Jhansi, are not sustainable. Section 28B of the Act raises presumption that the goods have been sold inside the State of U.P. in case the transit pass obtained in respect of such goods at the entry check-post is not being surrendered at the exit check-post. The presumption u/s 28B is a rebuttable presumption. It is open to the person concerned who had obtained transit pass at the entry check-post to adduce the necessary evidences to rebut the presumption. In my opinion, form F alone is not a sufficient document by which the presumption can be said to have been rebutted. Apart from form F, the party should file such evidences to show that the goods had reached the destination outside the State of U.P. and their further disposal. No such evidences have been filed. The appellate authority has accepted the form F without giving opportunity to the assessing authority as required u/s 12B of the Act. The assessing authority could not get opportunity to examine the genuineness of form F. In this view of the matter, the order of the Tribunal and the first appellate authority are liable to be set aside. The matter is remanded back to the assessing authority to pass fresh order after giving proper opportunity of hearing. It would be open to the opposite party to adduce any evidence to prove that the goods had gone outside the State of U.P. and had not been sold inside the State of U.P. The assessing authority may also consider and examine form F and other evidences.

7. In the result, revision is allowed. The order of the Tribunal is set aside. The matter is remanded back to the assessing officer to decide the case afresh after

giving opportunity of hearing. The opposite party is represented by the counsel. Therefore, the opposite party is directed to appear before the assessing officer along with a certified copy of the order within a period of one month from today. The assessing authority may either hear the matter on the same day or may fix any other day for hearing. It is made clear that no fresh notice be issued to the opposite party. In case, the opposite party fails to appear before the assessing authority, it will be open to the assessing authority to proceed ex parte in accordance to the law.

