(2008) 01 AHC CK 0237

In the Allahabad High Court

Commissioner, Trade Tax APPELLANT

Vs

Shakti Cement Agency RESPONDENT

Date of Decision : 02-01-2008

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11(1)

Citation : (2008) 17 VST 266

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vikram Nath, J.—Heard learned Standing Counsel on behalf of the Commissioner, Trade Tax, U.P. (applicant) and Sri Krishna Agrawal, learned Counsel on behalf of the opposite party-dealer.

2. This trade tax revision has been filed by the Commissioner, Trade Tax, U.P., u/s 11(1) of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act") against the judgment and order dated August 28, 1999 passed by the Trade Tax Tribunal, Gorakhpur Bench-I, Gorakhpur, in Second Appeal No. 549 of 1999, arising out of penalty proceedings u/s 13A(4) of the Act relating to the assessment year 1995-96. The questions of law sought to be raised are as follows:

Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal was legally justified to concede the contention of the impugned assessee, thereby to annul the penal processes adopted by the taxation authorities below despite the existence of incriminatory and adverse materials on the relevant records?

3. On September 18, 1995, a truck carrying 267 bags of white cement was checked at the Mehrauna check-post in the district Deoria. The driver produced the bill. According to the bill the goods had been booked by the dealer-firm, Shakti Cement Agency, Deljakpur, Gorakhpur and were to be delivered to Sri

Vijay Kumar Gupta, Mahrajganj. On inspection a letter was recovered from the driver addressed to Vijay Kumar Gupta, Mahrajganj, Siwan, Bihar, mentioning about the delivery and payment of goods. On enquiry, it was found that the bill did not contain any Central registration of the dealer. On these facts a show-cause notice was given to the dealer. The dealer took a stand that the goods were actually being transported from Gorakhpur to Mahrajganj within the State of U.P. and not outside the State of U. P. In any case, the dealer had accepted that the goods had been booked by it and sale had been made. There was no issue that the goods loaded in the truck did not relate to the dealer. The assessing authority did not accept the explanation given by the dealer and imposed penalty amounting to 40 per cent of the value of the goods, vide order dated March 31, 1998. The appeal filed by the dealer was dismissed by the Deputy Commissioner (Appeals), vide order dated September 22, 1998. The dealer filed second appeal before the Tribunal. The Tribunal recorded the finding, based upon consideration of material evidence on record that the goods were being transported from Gorakhpur to Mahrajganj within the State of U.P. and accordingly the finding recorded by the assessing officer and the appellate authority that the goods were being sold to a party outside the State of U.P. in Bihar were set aside and based upon such finding the Tribunal deleted the penalty.

Learned Standing Counsel has sought to assail the judgment of the Tribunal on the ground that the finding recorded by the assessing officer and the appellate authority based upon consideration of the material on record was sufficient to show that the goods were not accompanied with the complete papers and in fact they were being sent to a party outside the State of U.P.

4. On the other hand, Sri Krishna Agrawal, leaned counsel for the dealer, has submitted that for imposing penalty u/s 13A(4) of the Act, it was necessary for the authorities to record a finding that the goods did not relate to the dealer or to any registered dealer as otherwise they could always be included in the turnover of the dealer or such other dealer. According to him, Shakti Cement Agency, Gorakhpur dealer in the present case, had accepted that it had booked the goods for sale to Sri Vijay Kumar Gupta at Mahrajganj.

5. Whether the goods were sold within the State of U.P. or outside the State of U.P. is a question, which could only be of the liability of tax either under the State Act or under the Central Act but could not be a case for penalty. This is also the spirit of Section 13A(4) of the Act. Where the goods did not relate to a registered dealer, or such goods were not recorded in the account books of such dealer only then penalty could be imposed. In the present case the goods related to the dealer and further there is no finding that they were not recorded in the account books of the dealer.

In this view of the matter the Tribunal has rightly deleted the penalty.

6. I do not find any infirmity in the same. No question of law arises. Revision is

accordingly dismissed.