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**(2012) 01 AHC CK 0106**

**In the Allahabad High Court**

**Case No : Sales/Trade Tax Revision No. 315 of 2004**

Dharmpal Satyapal Ltd.

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

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**Date of Decision : 05-01-2012**

**Acts Referred:**

**Citation : (2012) 50 VST 387**

**Hon'ble Judges : Bharati Sapru, J**

**Bench : Single Bench**

**Advocate : Kunwar Saksena, for the Appellant; V. K. Pandey, for the Respondent**

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## **Judgement**

Bharati Sapru, J.—Heard learned counsel for the revisionist Shri Kunwar Saksena and Shri V. K. Pandey, learned standing counsel for the State. The present revision has been filed by the assessee against an order of the Tribunal dated November 17, 2003, by which the Tribunal has imposed a penalty of Rs. 1,00,000 on the assessee under the provisions of section 15A(1)(o) of the U. P. Trade Tax Act, 1948 for the transactions made in the year 1994-95.

2. The facts of the case are that the assessee carries on the business of manufacture and sale of Tulsi Brand of perfumed tobacco, which is commonly known as "gutka". The assessee had established its unit in the year 1990 and had been granted an eligibility certificate for a period of six years, starting with effect from March 6, 1990.

3. According to the facts stated by the assessee, the assessee was importing 9 cartons of perfumery compound from Bombay along with a bill dated December 3, 1994 and the same was being transported from Bombay to Noida. This item was used as a raw material. The said consignment of perfumery was intercepted by the Trade Tax Officer, Mobile Squad on March 7, 1995 and a notice was issued to the assessee u/s 28A of the U. P. Trade Tax Act directing the assessee to appear and show cause as to why the consignment should not be seized on the ground that the form XXXI, which was sent along with goods was blank.

4. The assessee replied to the show-cause taking a plea that the supplier had not filled in the form by which the raw material was being imported and further explained that the goods were nothing but raw materials and also that the assessee had not intended to evade any tax liability. The reply of the assessee was not accepted. The goods were seized. Consequently, the proceedings for levy of penalty u/s 15A(1)(o) of the U. P. Trade Tax Act were initiated and the assessing authority did not accept the contentions as raised by the assessee and imposed penalty upon the assessee.

5. Against the order passed by the assessing authority dated November 29, 1995, the applicant-assessee preferred an appeal before the Deputy Commissioner (Appeals) claiming that it was a new unit, which has been granted exemption on the basis of eligibility certificate u/s 4A of the Act and, therefore, this itself was nothing to show that there was intention on the part of the assessee to evade any tax. When the final product was not taxable, then the raw material could not have been taxed also. This contention of the assessee was accepted by the first appellate authority and the penalty imposed upon the assessee was set aside.

6. Being aggrieved by this order dated March 13, 1996, the Department went in appeal and the appeal of the Department has been allowed ultimately by the Tribunal, which has come to the conclusion that it is not necessary to establish a case of mens rea in order that a penalty may be imposed upon the assessee u/s 15A(1)(o) for violation of the provisions of section 28A of the U. P. Trade Tax Act.

7. The learned counsel for the assessee has made a threefold argument.

8. First argument of the learned counsel for the assessee is that the record of the case and the contentions of the assessee do not indicate in any manner that there was any intention on the part of the assessee to escape any tax for reasons that the goods which were being brought by the assessee were raw materials, which were used in the production of the final product, which was itself exempted. The goods also reached the assessee for its use and it has nowhere been stated by the Department at any stage that they were used for any other purpose or diverted for any other purposes.

9. The second argument is linked to the first argument and learned counsel has argued that the consignment, which was seized was of a raw material and since the final product was exempted, this itself stands to reason that the raw material also included as part of the final product.

10. The third limb of the argument is that there was no liability to pay any tax on the final product in view of the exemption granted u/s 4A and, therefore, it cannot be said that there was any intention to evade tax.

11. Lastly, learned counsel has also argued that, in fact, the books of accounts of the assessee were accepted for the year. In order to establish this, he has filed the assessment order of the year in question before this court, which indeed

shows that the books of accounts of the assessee were accepted.

12. In support of his argument, learned counsel for the assessee has relied on various decisions of this court and of the apex court wherein a view has been taken that mere breach of the provisions of section 28A are not sufficient for imposition of penalty unless it is well established by way of findings that there was deliberate intention to cause any loss to the Revenue or to evade any tax by the assessee while importing goods.

13. The learned counsel for the assessee has relied on the decision of the honourable apex court in the case of Commissioner of Sales Tax, U.P., Lucknow v. Oriental Carbon Ltd., Ghaziabad as reported in [1997] 10 NTN 105 (SC) and a Division Bench decision of this court in the case of Rama Pulses v. State of U.P. as reported in [2009] 41 NTN 189, wherein this court has held that the intention to evade payment of tax is sine qua non for levy of penalty and has held that the law laid down in Jain Shudh Vanaspati Ltd. [1983] 53 STC 54 (All), is still good law to the extent that before the imposition of penalty the authority must give to the assessee a notice under the provisions of the Act to record a finding that there was an intention to evade the payment of tax.

14. In reply to these submissions made by learned counsel for the assessee, learned standing counsel has very strenuously argued that in this case it has come on record that form XXXI, which was accompanying the consignment of perfumery tobacco was blank. His argument is that this in itself is good enough to establish that there was intention to evade tax and this has caused sufficient ground for the imposition of penalty. 15. Having heard learned counsel for both the sides and having perused the judgment cited by the learned counsels, I am of the opinion that in order to establish that there is a violation of all the provisions of section 28A of the Act and in order to impose a penalty u/s 15A(1) (o) of the Act it is necessary that the Tribunal must return a clear finding that there was intention to evade the tax.

16. In this particular case, the Tribunal has not returned the findings. On the other hand, the Tribunal has held that it is not necessary to establish mens rea in order to impose the penalty. The penalty, which has been imposed on the assessee, therefore, is not justified in the facts and circumstances of the case, which are that at the relevant time the assessee was an exempted unit and its final product was exempted and it was not liable to pay any tax at that time. The books of accounts of the assessee having been accepted at that stage also did not reflect any intention to evade any payment of tax. The penalty imposed, therefore, is not justified and it is deleted.

17. However, learned standing counsel is correct in saying that form XXXI which accompanied the consignment was completely blank and it is the requirement under the law that it should be filled. The non-filling of the form completely cannot be said to be a mere technical defect but rather it shows non-compliance of the requirements of procedural law.

18. For this reason, I deem it appropriate to direct the assessee to pay Rs. 10,000 as costs into the High Court Legal Services Committee, Allahabad. This order is being passed on the assessee only as deterrent for the future so that the assessee remains a vigilant and law abiding citizen. The revision is allowed.