(2007) 08 AHC CK 0059

In the Allahabad High Court

Dina Nath Gupta and Another — APPELLANT

Vs

Commissioner of Trade Tax — RESPONDENT

Date of Decision : 23-08-2007

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

Citation : (2008) 14 VST 248

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vikram Nath, J.—These are bunch of revisions arising out of assessment as well as penalty proceedings u/s 15A(1)(q) of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act").

2. Revisionists are the owners of the vehicle. According to the assessing officer the goods which entered the State of U.P. and the trip sheets which were issued at the entry check-post were not got discharged at the notified exit check-post, therefore it presumed that the goods have been sold within the State of U.P. The assessing officer on this finding imposed tax liability on the owner of the vehicle as also 10 times penalty as provided u/s 15A(1)(q) of the Act for violation of the provisions of Section 28B of the Act. On appeal the Joint Commissioner (Appeals) after considering the material on record as adduced by the dealer came to the conclusion that the goods in fact had been transported outside the State of U.P., and therefore, there was no question of assessment of tax or penalty. It further recorded that the dealer had filed the dispatch and the trip sheet from the exit check-post and also sufficient evidence of the purchasing dealer situate outside the State of U.P., who was stated to have received the goods.

3. On the other hand the Joint Commissioner (Appeals) vide order dated May 1, 2004 allowed the appeal of the dealer with regard to the assessment as well as penalty. Aggrieved by the appellate order the Commissioner of Trade Tax filed

appeal before the Tribunal. The Tribunal vide order dated May 31, 2007 allowed the appeal of the department and restored the order passed by the assessing officer both with regard to the assessment of tax as also the penalty. Aggrieved by the order of the Tribunal the present revisions have been filed by the dealer. They relate to different transit passes used by the vehicles owned by the revisionists.

4. I have heard Sri Piyush Agrawal, learned Counsel for the revisionist and '' the learned Standing Counsel for the department and have also perused the material on record.

5. Long drawn arguments have been made by the learned Counsel for the parties but these revisions can be allowed on the short question of denial of opportunity by the Tribunal.

6. One of the submissions made by the learned Counsel for the applicant is that before the Tribunal, during the course of hearing, the Assistant Commissioner (in-charge), Sahayata Kendra Drumondganj, Mirzapur vide letter No. 119 dated May 30, 2007 filed written submissions and along with the same a report of the Economic Offences Wing was also submitted. According to the report certain documents filed by the dealer were found to be forged and delivery of the goods of the dealer outside the State of U.P., was not established. These written arguments as also the report of the Economic Offences Wing was relied upon by the Tribunal while reversing the judgment of the appellate authority and restoring that of the assessing officer. According to the learned Counsel for the applicant the said report was not supplied to the applicant nor he was afforded any opportunity to rebut the same. In the circumstances, the applicant had no opportunity to defend himself and to meet out the report of the Economic Offences Wing.

7. On the other hand, learned Standing Counsel submitted that the order of the Tribunal is justified inasmuch as the Joint Commissioner (Appeals) had knocked off the tax liability and penalty placing reliance upon certain material filed by the dealer in appeal and such material could not have been filed in appeal and in fact such material was contrary to the report of the Economic Offences Wing. Therefore, the order of the Tribunal does not suffer from any infirmity.

8. Considering the submissions on the aforementioned issue of denial of opportunity on a perusal of the judgment of the Joint Commissioner (Appeals) it is apparent that the evidence with regard to discharge of the trip sheet was filed before the appellate authority. Further the affidavit of the various parties outside the State of U.P. who had claimed to have taken the delivery of the goods in question was also filed in appeal. Further the appellate authority did not get the said material verified through the departmental officials before proceeding to rely upon the same. Thus, the finding of the Tribunal that the Joint Commissioner (Appeals) had relied upon the evidence filed by the dealer before it without getting the same verified through the departmental officials appears to be

correct.

9. In the circumstances, the course open to the Tribunal was to have either got the said material verified by the departmental officials while keeping the second appeal pending or to have remanded the matter to the Joint Commissioner (Appeals) to pass fresh order after due verification in accordance with law.

10. From a perusal of the order of the Tribunal it is apparent that the report of the Economic Offences Wing was placed on its record along with letter of the Assistant Commissioner (in-charge), Sahayata Kendra Drumondganj, Mirzapur dated May 30, 2007. The judgment of the Tribunal is dated May 31, 2007. Thus, it appears that the report was placed before the Tribunal only a day before the passing of the judgment or may be it was placed on the date of the judgment itself. The order of the Tribunal does not mention at any place that the dealer was confronted with such material or that he was given any opportunity to rebut the same.

11. Further the Tribunal has placed reliance upon the report of the Economic Offences (Wing and based on the same it set aside the finding recorded by the Joint Commissioner (Appeals) holding that the evidence led by the dealer before the Joint Commissioner (Appeals) was not worth reliance.

12. Be that as it may, according to the settled principles of natural justice the appellate authority and the Tribunal ought to have afforded opportunity in the best possible form to the parties before drawing any adverse inference against the same. In the present case, firstly, the Joint Commissioner (Appeals) did not discharge its burden by getting the documents verified and similarly the Tribunal admitted and relied upon the report without confronting the dealer with the same and without giving an opportunity to f. rebut.

13. This Court cannot consider the material and record a finding as to whether the trip sheet was got discharged or not, or that the affidavits were filed by the parties outside the State of U. P. claiming to have taken delivery of goods as this would be appreciation of evidence and moreso where there are conflicting reports on such evidence.

14. In view of the above discussion it would be appropriate that the matter be remitted to the Joint Commissioner (Appeals) to examine the matter afresh after getting the evidence led by the dealer as also the various reports placed by the department and after due verification and affording due opportunity to the parties to reconsider the evidence led by the either party and pass appropriate orders afresh.

15. Further if the assessment order goes, the penalty order cannot be sustained and will automatically go.

16. In the circumstances, the revisions relating to assessment and penalty are allowed and the orders passed by the Joint Commissioner (Appeals) and the Tribunal are set aside. Other question raised in these revisions would be open for

the parties to be raised before the Joint Commissioner (Appeals) as this Court has only allowed the revisions on the point of denial of sufficient opportunity.

17. Revisions are accordingly allowed as above. There shall however be no order as to costs.

