(2010) 09 AHC CK 0103

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1317 of 2005

H.R. Abhai Kumar APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 30

Citation : (2012) 53 VST 467

Hon'ble Judges : Yatindra Singh, J;Rajes Kumar, J

Bench : Division Bench

Advocate : Praveen Kumar and Ashok Kumar, for the Appellant; S.P. Kesarwani, Additional Chief Standing Counsel, for the Respondent

Judgement

1. The petitioner claims himself to be purchaser and importer. He was importing 15 bags of Chiraunji said to be purchased from M/s. Babu Ram Deo Traders, Raipur, (M.P.) against bill No. 5, dated February 5, 1999 and against form XXXI No. F/EE/3710231 for Rs. 1,40,625. The goods were being brought by M/s. South Golden Transport Company through truck No. MP-23/DA-5279. The goods were seized at the Check-post Naraini, District Band a vide order dated February 10, 1999 and was directed to be released on furnishing of security to the extent of Rs. 2,81,250 and after the seizure of the goods., the same were given in the custody of M/s. South Golden Transport Company (respondent No. 5). The petitioner filed an application under proviso to section 30A(6) of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act"). The said application was partly allowed on October 27, 1999 and the goods were ordered to be released on furnishing security to the extent of three times of the tax. The petitioner neither furnished any security nor the goods were released in his favour.

2. Subsequently, penalty proceeding was started u/s 15A(1)(o) of the Act in respect of seized goods. The Assistant Commissioner/Trade Tax Officer, Sector 6, Kanpur (respondent No. 3) passed an ex parte order on February 29, 2000 imposing penalty of Rs. 1,12,500. The petitioner filed an application u/s 30 of the

Act for setting aside the ex parte order and the earlier order has been recalled. Thereafter, respondent No. 3 passed an order and imposed the penalty at Rs. 42,000. The petitioner filed an appeal before the Deputy Commissioner (Appeals) 1, Trade Tax, Kanpur, which has been allowed on March 23, 2001 and the penalty was set aside.

3. According to the petitioner, he filed an application on September 5, 2002 before the Trade Tax Officer, Check-post Naraini, District Banda (respondent No. 4) for the release of the seized goods. However, the goods were not released and ultimately, the petitioner filed applications on June 28, 2003, August 28, 2003 and September 17, 2004, for the release of the goods bat the goods were not released. Respondent No. 3 sent a letter on March 3, 2003 to the petitioner to contact with respondent No. 4 for release of the goods. Respondent No. 4 wrote a letter, with a copy to the petitioner to respondent No. 5 to release the goods and he was asked to get his goods from respondent No. 5. According to the petitioner he approached the respondent No. 5 but the goods were not released and hence the present writ petition was filed.

4. During pendency of this writ petition, the Department filed an appeal before the Tribunal against the appellate order deleting the penalty. The Tribunal rejected the appeal of the Department on June 15, 2010.

5. Heard Sri Ashok Kumar, counsel for the petitioner and Sri S.P. Kesarwani, learned Additional Chief Standing Counsel.

6. It is not disputed that the petitioner''s goods were seized by the Trade Tax Department on February 10, 1999 and the goods were given in the supurdigi of respondent No. 5 by respondent No. 4, an official of the Trade Tax Department. The receiver holds the property on behalf of respondent No. 4 and not on behalf of the petitioner. There is no outstanding dues of any kind against the goods or against the petitioner and, as such, the Trade Tax Department is under legal obligation either to release the goods or pay its value. It is not for the petitioner to get his goods from respondent No. 5. It is for respondent Nos. 1 to 4 to ensure that the goods are taken from respondent No. 5 and handed over to the petitioner and in case, if the goods are not handed over, the responsibility lies on respondent Nos. 1 to 4 but so far the goods have not yet been returned.

7. Considering the circumstances that more than eleven years have passed, it would be appropriate to pass an order directing the respondents to pay the value of the goods along with interest to the petitioner.

8. The seizure order dated February 10, 1999, records that the bill was issued by M/s. Babu Ram Deo Traders, Raipur, (M.P.). The price of the goods is also mentioned in the bill as Rs. 1,40,625.

9. Now it leads the question of interest to be awarded to the petitioner. The penalty proceedings were decided in favour of the petitioner on March 23, 2001. Considering the entire circumstances of the case, it would be appropriate to

award interest at the rate of six percent from the date of seizure of the goods, namely, from February 10, 1999 till the entire payment is paid to him.

10. The liability to pay the amount is of respondent No. 4 but we are informed that the check-posts have been abolished. The Commissioner of Trade Tax, U.P., Lucknow (respondent No. 2) is the overall incharge of the Trade Tax Department. He should ensure that the payment of aforesaid amount be made to the petitioner at an early date, preferably within three months from the dale of production of the certified copy of this order. It would be open to respondent Nos. 1 to 4 to recover the goods or the value of the goods from respondent No. 5 along with interest at the rate of six percent per annum from the date of seizure of the goods till the entire payment is made. With the aforesaid direction the writ petition stand disposed of.

