
(2010) 01 AHC CK 0022

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 1042 of 2006

Interarch Building Product Ltd.

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11(1), 15A(1)

Citation : (2011) 40 VST 133

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Bharati Sapru, J.—Heard learned Counsel for the Assessee and learned standing counsel for the State.

2. This revision has been filed by the Assessee u/s 11(1) of the U. P. Trade Tax Act for the assessment year 2002-03 against the order of the Tribunal dated March 28, 2006 by which it has confirmed the penalty imposed on the Assessee u/s 15A(1) (o) of the Act. The questions of law framed are hereunder:

(1) Whether in view of the judgments of this honourable court in the case of Network Limited, Noida v. Commissioner of Trade Tax reported in (1999) UPTC 750, Commissioner of Sales Tax v. Jaipur Golder Transport Co. reported in (1999) UPTC 1167, Central Footwear, Varanasi v. Commissioner of Sales Tax reported in (2003) 22 NTN 238 and Commissioner of Sales Tax v. Micro Foam Industries Limited reported in (2003) STI 251, the imposition of penalty is justified ?

(2) Whether form XXXI having been filed along with the reply to show-cause notice before the seizure, the levy of penalty is justified ?

(3) Whether in view of the judgments of this honourable court in the case of Kalyan Plastic Industries v. Commissioner of Sales Tax (1993) UPTC 1366, DCM Limited v. Commissioner of Sales Tax reported in (1993) UPTC 1212,

Commissioner of Sales Tax v. Garg Associates Pvt. Limited reported in (1993) UPTC 79, WIMCO Limited v. Commissioner of Sales Tax reported in (1993) UPTC 148, the imposition of penalty is justified ?

(4) Where the Applicant has imported the goods as raw material and not meant for resale, the imposition of penalty is justified ? Where the Applicant has imported the goods against form C and the relevant entries are duly made in the books of accounts of the Applicant, still the imposition of penalty is justified ?

(5) Where the goods are being imported through bank, the authorities were justified in imposing the penalty ?

(6) Whether in any view of the matter, the imposition of penalty of Rs. 1,27,206 is justified ?

(7) Whether in view of the facts and circumstances of the case, the order passed by the Trade Tax Tribunal is justified ?

3. The facts of the case are that the Assessee had placed a purchase order on January 7, 2003 on one ESSAR Steels Limited, New Delhi, for supply of H. R. coils. The Assessee is a limited company incorporated under the Indian Companies Act having its registered office at B. 30, sector 57, NOIDA.

4. Thus, the raw materials have been brought in from Delhi to NOIDA. It was a requirement that the raw material should have been accompanied with form XXXI. It is the Assessee's case that he has sent ten forms XXXI in compliance with the purchase order. However, on January 29, 2003 the raw material was found to be not supported by any form XXXI.

5. The goods were therefore, detained and a show-cause notice was issued.

6. The Assessee has submitted a detailed reply to the show-cause notice. He also placed form XXXI. The reply of the Assessee is appended as annexure 3 to the revision. However, the reply of the Assessee was not accepted and proceedings u/s 15A(1) (o) of the U. P. Trade Tax Act were initiated and a penalty order was passed on March 31, 2003.

7. Aggrieved by the said order the Assessee filed an appeal, which was also dismissed on December 18, 2003 and thereafter a second appeal was filed by the Assessee before the Trade Tax Tribunal, which has also been dismissed on March 28, 2006.

8. However, a perusal of the order of the Tribunal shows that admittedly the case, which had been brought in was in the nature of raw material and after issuance of a show-cause notice the Assessee had along with its reply submitted form XXXI before the passing of seizure order.

9. The Tribunal has come to the conclusion that the forms XXXI, which were produced by the Assessee, were either false or forged or were not answering the description of the goods, which had been brought in. No discrepancy has been

found by the Tribunal in its order against form XXXI, which was produced before the order of seizure.

10. Having heard learned Counsels for both sides, I am of the opinion that since the Tribunal had not recorded any adverse finding against forms XXXI, which were placed by the Assessee before the passing of the seizure order it could not be said that the Assessee did not have the required documents or that any intention to evade the tax was reflected from the documents that were there before the Tribunal or even there before the assessing authority. Thus, the provisions of Section 15A(l)(o) of the Act are not attracted in the facts and circumstances of the case and the imposition of penalty is not justified. The questions of law are answered in favour of the Assessee and against the Department. The penalty is deleted.

11. This revision is allowed.