(2009) 07 AHC CK 0180

In the Allahabad High Court

Case No : Commercial Tax Revision No. 483 of 2009

J.C.T.Ltd. APPELLANT

Vs

Commissioner, Commercial Tax, U.P. Lucknow RESPONDENT

Date of Decision : 15-07-2009

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 48(2)

Citation : (2009) 07 AHC CK 0180

Hon'ble Judges : Rajes Kumar, J

Final Decision : Partly Allowed

Judgement

Rajesh Kumar, J.—The present revision under Section 58 of the U.P. Value Added Tax Act (called the ''Act'' for brevity) read with Section 11 of the U.P. Trade Tax Act (called the Trade Tax Act'' for short) is directed against the order of the Tribunal dated 30.4.2009 in Second Appeal No. 42 of 2009.

2. The brief facts of the case giving rise to the present revision are that the applicant is a Public Limited Company, incorporated under the Indian Companies Act, 1956, having its registered office at Dharamshala Road, village Chohal, district Hoshiyarpur (Punjab) and branch office in U.P. at Maunath Bhanjan, Mau. The applicant is manufacturer of ''Nylon Filament Yarn'', which is being manufactured at its plant at Hoshiyarpur (Punjab). It is claimed that the Nylon Filament Yarn, after manufacturing, is rolled on the plastic coated iron cops. The goods are being sent to Maunath Bhanjan by way of stock transfer from the factory. At Maunath Bhanjan the sales are made to various dealers with the condition to return the cops for which the dealer furnishes bank guarantee. The dealer maintains stock register in respect of such iron cops and time to time used to sent such cops to the Head Office. In the course of business the Maunath Bhanjan Branch Office despatched 20,000 iron cops against delivery challan No. 59, dated 7.3.2009, through a transporter, viz. Mis. Sudhir Road Carrier in truck No. PB10AA/9767 in respect of which Bilty No. 73216, dated 7.3.2009. was prepared. When the vehicle reached at Bijnor, the Commercial Tax Officer, Mobile

Squad, Bijnor, intercepted the truck and issued a showcause notice requiring the applicant to explain as to why on the delivery challan serial number and TIN number have been stamped and the delivery challan has not been preauthenticated by the applicant. The applicant filed reply to the showcause notice and submitted therein that it is a bona fide dealer registered under the Trade Tax Act and, due to nonprinting of TIN number and Serial Number on delivery challan, the employee of the applicant has stamped serial number and TIN number on the delivery challan and also put signature and stamp. The goods was not meant for sale and there was no intention to evade the payment of tax.

3. The Assistant Commissioner, Commercial Tax, Mobile Squad, Bijnor, vide order dated 14.3.2009, rejected the reply, seized the goods and demanded the security to the extent of Rs. 2,25,000/ in cash, being three times of the tax. The seizure order was passed under Section 48(2) of the Act.

4. Aggrieved by the aforesaid order, the applicant filed an application under Section 48(7) of the Act before the Joint Commissioner (SIB), Commercial Tax, Bijnor. The Joint Commissioner (SIB), vide order dated 18.3.2009, rejected the application and confirmed the seizure and the demand of security.

5. Aggrieved by the said order, the applicant filed appeal before the Tribunal. The Tribunal, by the impugned order, rejected the appeal.

6. Heard learned counsel for the applicant and learned Standing Counsel.

7. Learned counsel for the applicant submitted that under Section 48(2) the goods can only be seized if it was not traceable to the bona fide dealer and was not recorded in the books of account, documents and register. In the present case there is no dispute that the applicant is a bona fide dealer. So far as the entry in the books of account is concerned, the goods was accompanied by challan in which the serial number and TIN number and the complete details of the goods were mentioned. It was also mentioned that the goods was not for sale. None of the authorities has recorded any finding that the goods were not found entered in the books of account and, therefore, the condition of Rule 48(2) are not fulfilled and the seizure of the goods was patently illegal. He further submitted that mentioning of serial number and TIN number by stamping is one of the form of printing and, therefore, no adverse inference can be drawn.

8. Learned Standing Counsel submitted that under Rule 54 a proforma of the challan is prescribed and once there is a statutory proforma prescribed the goods cannot be despatched on an unprescribed challan. Admittedly, the challan under which the goods were despatched were not in a prescribed form. He further submitted that the dealer himself has admitted that they are preparing the challans by computer, but due to breakdown the handmade challan was prepared. This shows that for this particular transaction regular challan has not been used which gives rise an inference that the goods were not properly accounted for in the books of account and all the authorities below have rightly upheld the seizure of the goods.

9. Heard learned counsel for the parties, perused, the impugned order and have given my anxious considerations to the rival submissions.

Section 48(2) of the Act and Rule 41(1) reads as follows:

"48. Power to seize goods.

(1)..................

(2) Where any officer referred to in subsection (1) has reason to believe that the goods found in any vehicle, vessel, building or place are not traced to any bonafide dealer or that it is doubtful if such goods are properly accounted for by any dealer in his accounts, registers or other documents, maintained in the ordinary course of his business, he shall have power to seize such goods, and the remaining provisions of this section shall mutatis mutandis apply in relation to such seizure."

"41. Challan or transfer invoice. (1) The dealer shall prepare the challan or transfer invoice referred to in subsection (5) of Section 21 in three copies marked Original, Duplicate and Triplicate from a bounded book and each copy of challan or transfer invoice shall contain following particulars in respect of goods delivered or dispatched:

(i) Name and address of the dealer; (ii) Name of branch or depot;

(iii) Taxpayer''s Identification Number (Registration Number) of dealer consigning or delivering goods;

(iv) Book No.;

(v) Serial No.;

(vi) Date;

(vii) Signature of the authorized person who has authenticated the challan or invoice;

(viii) Name and address of the dealer or person to whom goods are delivered or consigned;

(ix) Taxpayer''s Identification Number of consignee dealer, if any;

(x) Sale or stock transfer................

(xi) Time of removal of goods in case of manufacturer

(xii) Following details in respect of goods delivered or consigned;

(a) Description of goods,

(b) Identification mark or batch No. if any,

(c) Quantity or measure of goods,

(d) No. of packets,

(e) Actual or estimated value of goods;

(xiii) Taxinvoice or saleinvoice No. and date (if issued at the time of sale);

(xiv) Mode of transportation;

(xv) Signature and status of person issuing challan or transfer invoice."

10. As per Section 48(2) the goods can be seized only when it is not traceable to bona fide dealer and it is doubtful that it is not properly accounted for in the books of account, documents or register. There is no dispute that the applicant is a bona fide dealer. Learned counsel for the applicant contended that the iron cops were returned by the purchasing dealer as per the terms and conditions and the same has been despatched by the Branch Office to the Head Office by way of stock transfer, which is apparent from the challan. However, once under the rule the format of the challan is prescribed, it is obligatory on the part of the dealer to use challan in such format. Admittedly, the challan under which the goods were despatched was not in the prescribed format. The dealer in its reply has admitted that they were preparing challan by computer and due to failure of the computer the present challan has been prepared. A perusal of the challan shows that it bears SI. No. 39. It means that other number of challans must have been issued earlier. In view of the above it appears that the challan under which the goods have been despatched is not a challan maintained in the regular course of business. This fact raises doubt. However, prima facie it appears that the goods were despatched by way of stock transfer and not by way of sale. These are the fact which can more appropriately be examined in the penalty proceeding. At this stage the demand of security in cash appears to be unjustified. The applicant is a registered dealer and, therefore, in my opinion on the facts and circumstances of the present case the goods can be released on furnishing of security other than cash and bank guarantee to the extent of the amount of tax. It will be open to the applicant to make submission in detail in the penalty proceedings. It is made clear that the finding recorded in this order and in the order of the Tribunal and the authorities below may not prejudice the penalty proceeding and shall be decided independently on the basis of the material on record.

11. In the result the revision is allowed in part. The order of the Tribunal is modified to the extent stated above.

