(2016) 11 AHC CK 0192

In the Allahabad High Court

Case No : Trade Tax Revision No. 464 of 2006

Kaushilya Metals APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 18-11-2016

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 15A(l)(o)

Citation : (2017) 95 UPTC 71

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : Kunwar Saksena, Suyash Agarwal, Sri M.M. Rai, Advocates, for the Applicant; Sri B.K. Pandey, Standing Counsel, for the Opposite Party

Final Decision : Allowed

Judgement

Surya Prakash Kesarwani, J.—Heard Sri M.M. Rai, learned counsel for the applicant-revisionist and Sri B.K. Pandey, learned standing counsel for the respondent.

2. This revision has been filed challenging the order dated 10.3.2006 passed by the Member, Commercial Tax Tribunal, Varanasi Bench-V, Varanasi in Second Appeal No.515 of 2003 for the Assessment Year 2002-03, under Section 15-A (1) (o) of the U.P. Trade Tax Act, 1948 (hereinafter referred to as the ''Act'').

3. The appeal was admitted on 29.7.2009.

4. With the consent of the learned counsel for the parties, this revision is being heard on the following questions of law:

"(i) Whether on the facts and in the circumstances of the case, the levy of penalty in regard to the import of 6873.800 Kg. metal waste was justified when copy of goods receipt, purchase invoice/bill and Form-31was produced before the Check Post Authorities voluntary ?

(ii) Whether on the facts and in the circumstances of the case, the import of extra 2000 Kg. metal waste without any documents could be treated to be an import by the applicant with a view to evade payment of tax ?

(iii) Whether on the facts and in the circumstances of the case, the authorities below including the Tribunal were justified in levying penalty in regard to entire import of 8873.800 Kg. metal waste when valid documents in regard to import of 6,873.88 Kg. were produced before the authorities at the check post and no defect therein was noticed ?

(iv) Whether o the facts and in circumstances of the case, the quantum of penalty levied was justified ?"

5. Briefly stated, facts of the present case are that the applicant is a registered dealer and is engaged in the business of trading of ''metal waste''. According to the assessee he purchased 6807.00 Kg. metric metal waste filled in 99 bags from ''Quality Enterprises'', Mumbai under Bill No.24 dated 22.4.2002 for Rs. 1,63,531.36 including Central Sales Tax @ 4% amounting to Rs.6289.66. The aforesaid goods were being brought through Truck No. MHO-4H/8721 accompanied with the aforesaid bill and Form-31 No.F/JJ-0952524. When the goods reached at Drummondganj, Mirzapur on 3.5.2002, the person in charge of the vehicle produced the aforesaid Form-31, bill and GR No.015941 dated 22.4.2002 before the Check Post Authority. On physical verification, the authorities found that additionally, 2000 Kgs. of metal waste was also loaded in the aforesaid truck. Consequently, the goods were detained and a show cause notice for seizure of the extra goods was issued, which was replied by the assessee on 10.5.2002. In his reply the assessee submitted that the extra goods found in the truck is not related to his firm. The value of the extra found 2000 Kgs. metal waste was estimated @ Rs.65/- per Kg. and security @ 40% amounting to Rs. 52,000/- was demanded, which was deposited by the transporter and the goods were released to him.

6. The case of the assessee from the very beginning is that he has no concern with the extra found metal waste and for that reason he did not get it released. However, the assessing authority issued a penalty notice under section 15-A (1) (o) of the Act, which was replied by the assessee along with an affidavit dated 8.10.2002. He again took the stand that neither he had any concern with the goods released nor he got it released nor he deposited the security and, therefore, no penalty is leviable on him with respect to the disputed goods. He further explained that the goods belonging to him, were accompanied with proper and genuine bill and form-31, as aforementioned. The assessing authority did not accept the explanation of the assessee and passed the penalty order dated 19.10.2002 levying penalty @ 40% amounting to Rs.2,30,719.00 on the value of the entire goods including those covered by bill as well as the extra found goods.

7. Aggrieved with this order, the assessee filed First Appeal No.1089 of 2002 before the Joint Commissioner (Appeal)- IV, Commercial Tax, Allahabad, which

was dismissed by order dated 28.6.2003. Aggrieved with the order of the First Appellate Authority, the assessee preferred Second Appeal No.515 of 2003 before the Member, Commercial Tax Tribunal, Varanasi Bench-V, Varanasi, which was also dismissed by the impugned order dated 10.3.2006. Aggrieved with this order, the assessee has preferred the present revision.

8. Learned counsel for the applicant submits that the penalty order, the order of the First Appellate Authority and the impugned order of the Tribunal are glaring example of highhandedness and adoption of harassing attitude by the departmental authorities including the Tribunal, inasmuch as, without there being any evidence on record with regard to the extra goods of 2000 Kgs. to be belonging to the assessee, the penalty has been levied upon the assessee not only with respect to the extra goods found, but also with respect to the goods which were covered by proper and genuine documents, namely, Form- 31 bill and GR No.015941 dated 22.4.2002, and which were not even seized. The authorities and the Tribunal have totally ignored the fact that merely the extra found goods were seized and on estimated value thereof, the security to cover up penalty, was demanded which was neither deposited by the applicant nor he got it released. He, therefore, submits that the revision deserves to be allowed with heavy cost.

9. Learned standing counsel supports the impugned order of the Tribunal. However, he does not dispute that merely 2000 Kgs. extra found metal waste was seized and security was demanded only in that respect and no discrepancy was found with respect to the goods covered by the bill and form-31. He also does not dispute that the applicant has taken a clear stand from the very beginning that he has no concern with extra found goods.

10. I have carefully considered the submissions of the learned counsels for the parties.

11. The facts as afore noted, clearly reveals that the applicant-assessee has imported 6,807 Kgs. metal waste filled in 99 bags from ''Quality Enterprises'', Mumbai, under bill No.24 dated 22.4.2002 accompanied with Form-31 No.F/ JJ-0952524. and GR of the transporter and were being transported in truck No. MHO-4H-8721.

12. In his reply to the show cause notice for seizure of the excess found goods, the assessee took clear stand that he has no concern with it. The authorities seizing the goods have merely seized extra found goods and demanded security only in respect thereof which was deposited by one Sri Subhash Chand, who has no interest in the assessee''s firm. According to the assessee, probably, Subhash Chand was representative of the transporter. No finding has been recorded by the authorities with regard to the identity of Sri Subhash Chand or his connection with the assessee. Under the circumstances, the imposition of penalty by the assessing authority on the quantity covered by the aforesaid bill and form-31, proves arbitrary approach adopted by him with only reason to cause harassment

to the assessee. The approach of the first appellate authority and the Tribunal were also not different. They also acted in the same manner.

13. The Tribunal even being the last fact finding authority has completely failed to discharge the mandatory obligation under Rule 68(5) of the U.P. Trade Tax Rules. Despite consistent stand taken by the assessee right from the very beginning, none of the authorities including the Tribunal have taken pain to address on the issues raised by the assessee. Neither the assessing authority nor the first appellate authority nor the Tribunal have recorded any finding that who got released the goods. There was no material before the authorities to impose penalty under section 15-A(1)(o) of the Act.

14. Section 15-A (1)(o) of the Act, provides that if the assessing authorities is satisfied that any dealer or other person imports or transports, or attempts to import or transport or abets the import or transport of any goods in contravention of the provisions of Section 28-A, then it may, after such inquiry, if any, as it may deem necessary, direct that such dealer or person shall pay, by way of penalty, in addition to the tax, if any, payable by him, penalty for a sum not exceeding forty percent of the value of goods involved or three times of the tax leviable on such goods under any of the provisions of this Act, whichever is higher.

15. The fact, as noted above, clearly shows that the authorities themselves have found the goods covered by bill No.24 dated 22.4.2002 and form-31 No.F/JJ-0952524 were being imported in accordance with law. No discrepancy or breach of any of the provisions of the Act, was found. Under the circumstances, there was no occasion to levy penalty under Section 15-A (1)(o) of the Act with respect to the goods covered by the aforesaid bill.

16. Now, the question remains with regard to justification of penalty upon the assessee with respect to the extra found metal waste of 2000 Kgs. in his reply to the show cause notice for seizure of goods, the assessee has clearly stated that he has no concern with extra found goods and thereupon such extra found goods were seized and the same were released on deposit of security by one Subhash Chand. There is no finding in the penalty order that the extra found goods of 2000 Kgs. belong to the assessee and the same were got released by him. On the contrary, the transporter had also issued a certificate that the assessee has no concern with the aforesaid 2000 Kgs. metal scrap. This certificate was also filed before the authority. Under the circumstances, there was no evidence before the assessing authority or the first appellate authority or the Tribunal for import or transport of extra found metal waste by the assessee in contravention of the provisions of Section 28-A of the Act. Under the circumstances, with respect to those goods, no penalty could have been imposed upon the assessee.

17. In view of the above discussions, the revision is allowed. The impugned order dated 10.3.2006 in Second Appeal No.515 of 2003 for the Assessment Year 2002-03 passed by the Member, Commercial Tax Tribunal, Varanasi Bench-V,

Varanasi, is hereby set aside. The amount of penalty, if any, deposited by the assessee shall be refunded by the assessing authority within four weeks from today along with interest from the date of deposit. The revision is allowed with costs of Rs.5,000/-which shall be paid by the respondent to the assessee within four weeks.