(2013) 07 AHC CK 0067

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 518 of 2013

Lalitpur Power Generation Co. Ltd. APPELLANT

Vs

Commissioner RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Citation : (2014) 70 VST 351

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Judgement

Pankaj Mithal, J.—Heard Sri Rahul Agrawal, learned counsel for the revisionist and Sri U.K. Pandey, learned counsel for the respondent. The revision is directed against the order of the Tribunal dated June 19, 2013 by which the order of seizure dated June 10, 2013 has been upheld and the seized goods have been directed to be released on furnishing security of Rs. 4,90,000 as reduced by the first appellate authority.

2. The revisionist is a registered dealer in U.P. and engaged in establishing a thermal power station at Lalitpur.

3. The revisionists ordered a high pressure flash tank for the purposes of thermal power station to the BHEL, Bhopal, and for the purposes of bringing it inside the State of U.P. issued form XXXVIII to the BHEL. The aforesaid high pressure flash tank accompanied by form XXXVIII which was being brought inside the State of U.P. when it was seized on one of the grounds that the columns of form XXXVIII had remained blank and as such there appears to be an attempt to evade tax.

4. The submission of Sri Rahul Agrawal, learned counsel for the revisionist, that H.P. flash tank which is used in construction of thermal power station is exempt from tax in U.P. vide notification dated July 13, 2006 issued by the Principal Secretary, Institutional Finance Tax and Registration, U.P., and as such there could have been any attempt on part of the revisionist to evade tax. Secondly, it is incorrect to state that form XXXVIII was blank and he has relied upon the

photostat copy of the same which has been filed along with the stay application to show that all the columns were crossed out and that there was no possibility of its reuse.

5. The Tribunal in passing the impugned order has not considered the above two aspects at all.

6. It is important to note that for the purposes of seizing the goods brought inside the State of U.P. in exercise of power u/s 50 of the U.P. Value Added Tax Act, 2008 an attempt to evade tax is a necessary condition and that would be fulfilled if the goods brought inside the State of U.P. are not taxable. It was therefore incumbent upon the authorities to examine as to whether the goods were taxable items or not before seizing the goods which aspect has been completely overlooked in the present case.

7. The authorities have also not assigned any reason as to how form XXXVIII accompanying the goods would have been reused leading to evasion of tax when the columns in the form were marked X all through and no new figure could be filled therein.

8. In view of the aforesaid facts and circumstances with the consent of the parties the impugned order of the Tribunal dated June 19, 2013 is set aside and the matter is remanded to it for reconsideration at least on the above two aspects though it will be open to the Tribunal to address itself on other aspects as well, as may be argued before it.

9. The Tribunal will proceed and decide the matter in accordance with law as expeditiously as possible preferably within a period of two months and in the meantime the seized goods, i.e., high pressure flash tank shall be released forthwith in favour of the revisionist on furnishing security other than cash and bank guarantee of the amount required by the first appellate authority. The revision is allowed.

