(2016) 05 AHC CK 0298

In the Allahabad High Court

Case No : Sales/Trade Tax Revision Nos. 136 and 137 of 2016

M/S Abhishek Bulk Carriers APPELLANT

Vs

Commissioner, Commercial Tax RESPONDENT

Date of Decision : 03-05-2016

Acts Referred:

Citation : (2016) 93 UPTC 344

Hon'ble Judges : Pankaj Mithal, J.

Bench : Single Bench

Advocate : Nitin Kesarwani, Advocate, for the Applicant; C.S.C, for the Opposite Party

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—Heard learned counsel for the parties.

2. The applicant revisionist is a transporter. He was transporting Soya Refind Oil from Fateh Nagar, Uaipur Rajasthan to New Delhi through State of U.P. The vehicle was intercepted and the goods were detained by the Assistant Commissioner, Mobile Squad as the goods were not accompanied by Transit Declaration Form. A show cause notice was issued on 15.3.2016 and a seizure order was passed on 17.3.2016. The representation of the applicant revisionist moved under Section 48 (7) of the U.P. Value Added Tax Act, 2008 was rejected and the appeal to the tribunal has been dismissed by the impugned order dated 12.4.2016.

3. The submission of the applicant revisionist is that there was no intention to evade tax or commit any offence. The goods were fully covered by the proper documents which were not doubted. The Transit Declaration Form was immediately down loaded, duly filled up and was presented in reply to the show cause notice.Therefore, the goods were not liable to be seized.

4. One of the questions of law which arises for consideration is whether the tribunal is justified in upholding the order of seizure despite fact that all other

documents regarding movement of the goods were found to be genuine and in order except the Transit Declaration Form which was also submitted along with the reply to the show cause notice.

5. The above question is fully covered by my decision in the case of M/s. Prakash Transport v. The Commissioner Commercial Tax U.P. Lucknow 2013 TLD 379.

6. In Prakash Transport (Supra) the goods were also seized under the Act for want of Transit Declaration Form even though it was produced in reply to the show cause notice.

7. In the said case it was held that the circular dated 30th July 2009 issued by the Commissioner, Commercial Tax U.P, Lucknow under Section 52 of the Value Added Tax Act, 2008 read with Rule 55(5) of the Rules provides that the goods in transit should be accompanied by Transit Declaration Form and its absence would attract the presumption which has been provided under Section 52 of the Act and Rule 58 of the Rules.

8. The presumption under the aforesaid provisions is that the goods are likely to be sold within the State of U.P. but they do not provide that the goods could be seized if they are not accompanied by the Transit Declaration Form. No other provision in the Act or the Rules also envisages that the goods could be seized for default in carrying the Transit Declaration Form and as such it is not a ground for seizure of the goods under the Act.

9. In addition to the above, question is also covered by the Prakash Parcel Services Limited v. State of U.P. and Others 2013 UPTC 912 wherein its has been held that where the goods are moving along with necessary documents except Transit Declaration Form and the department has not raised any question about the genuineness of the documents accompanying the goods, it has no right to seize them for want of Transit Declaration Form.

10. This apart, when in response to the show cause notice full and complete documents have been furnished leaving no ambiguity, illegality or irregularity, the seizure is not justified. After all, the purpose of the show cause is to explain the factual position and which if explained to the satisfaction of the authority would not justify seizure of the goods.

11. It may not be out of context to mention here that taking a long route destination or that there was a shorter route available is not a relevant criteria for detaining or seizing the goods. The reasoning that the transporters have devised a novel method of evading tax by not carrying the Transit Declaration Form and to produce it only if checked is only based on conjunctures and surmises.

12. The goods moving from one State to another through the State of U.P, are not liable to any tax in U.P. The liability to pay tax in U.P. would only arise, if the goods have been down loaded in U.P. for sale in the market which is not the case. The absence of Transit Declaration Form gives rise to the presumption of

likely sale in U.P., but not the power for seizing the goods.

13. In view of the aforesaid facts and circumstances, the impugned orders of the tribunal dated 12.4.2016 are set aside and the seized goods are directed to be released forthwith.

14. The revisions are allowed.

