(2017) 03 AHC CK 0092

In the Allahabad High Court

Case No : Sale/Trade Tax Revision No. 92 of 2017

M/s. Agrawal Agencies APPELLANT

Vs

The Commissioner, Commercial Tax RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:
Uttar Pradesh Value Added Tax Act, 2008 — Section 48

Citation : (2017) 95 UPTC 405

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Suyash Agarwal, Advocate, for the Applicant; C.S.C, for the Opposite Party

Final Decision : Disposed Off

Judgement

Ashwani Kumar Mishra, J.—Goods belonging to the revisionist were seized, and its release made conditional upon depositing of cash security/bank guarantee to the extent of Rs. 2,06,000/-. The order of the Tribunal records that the goods were sold vide Form-38, shown to be belonging to M/s. Agrawal Agencies, along with bill and equity, which contain particulars of M/s. Sumit Enterprises. The explanation submitted by the assessee was that the goods, in fact, were being sent to M/s. Sumit Enterprises, and it was on account of mistake on part of the transporter that the description of consignee was wrongly mentioned. It is also contended that the assessee is a registered dealer in the State of U.P. and in case any liability is to impose upon the assessee, then it could always be recovered from it, and there was no necessity of directing assessee to deposit cash security/bank guarantee.

2. Learned counsel for the revisionist submits that in the facts and circumstances the direction to deposit cash security/bank guarantee was not required. It is also stated that a plausible explanation had been furnished on behalf of the assessee and there was no material to doubt it.

3. Learned Standing Counsel, on the other hand, points out that Form-38 which is stated to have been issued by M/s. Sumit Enterprises is of a date subsequent to dispatch of goods, and the authorities were therefore justified in proceeding against the revisionist.

4. From the materials placed, it is not in dispute that there was an anomaly in mentioning the details of the consignee, and the subsequent Form-38 produced, has also been disputed. In such circumstances, the authorities were justified in directing the revisionist to secure interest of the State and thereby require deposit of cash security/bank guarantee to the required extent, for release of goods. However, as the assessee is a registered dealer in the State of U.P., the interest of the department would have been adequately protected, in case security other than cash/bank guarantee, along with indemnity bond was got furnished by it.

5. The revision, accordingly stands disposed off, by observing that in case the revisionist furnishes an indemnity bond, and also furnishes security other than cash/bank guarantee, the seized goods shall be released, subject to the appropriate proceedings which may be drawn in accordance with law.

