

(2016) 07 AHC CK 0234

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 1568 of 2006

M/s Jay Tech. Printing Systems (Pvt.) Limited

APPELLANT

Vs

Commissioner, U.P. Trade Tax, Lucknow

RESPONDENT

Date of Decision : 22-07-2016

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 13(1-A), 13-A(4)

Citation : (2016) 9 ADJ 441

Hon'ble Judges : Yashwant Varma, J.

Bench : Single Bench

Advocate : Krishna Agarwal and Pawan Shree Agarwal, Advocates, for the Applicant; S.C, for the Opposite Party

Final Decision : Allowed

Judgement

Yashwant Varma, J.— Heard the learned counsel for the revisionist and the learned standing counsel.

2. This revision emanates from proceedings taken against the assessee for levy of penalty under the provisions of Section 13A (4) of the U.P. Trade Tax Act 1948. The assessee is said to be engaged in the business of printing of lottery tickets and case making on job work basis. Two consignments being sent by it outside the State of U.P under the cover of gate pass Nos. 167 and 64 were seized on 28 July 1998. At the time of seizure, the officers found that there was certain overwriting over the gate passes. The revisionist was put to notice and in its reply submitted that certain goods which had been received by it for the purposes of completion of job work contracts were being returned under the gate passes in question. The details of the dealer and the description of goods being returned were also declared. The assessing authority however did not accept the explanation furnished by the assessee and accordingly proceeded to impose penalty in terms of sub section (4) Section 13A. Aggrieved thereby, the assessee took the matter before the first appellate authority, which held that both the revisionist and entities to whom the goods were dispatched were bona fide

registered dealers. It further recorded a categorical finding that the goods which were being dispatched had been duly accounted for in the books of accounts. The first appellate authority therefore took the view that no cause existed for imposition of penalty. The Department took the order of the first appellate authority in appeal. The order impugned herein is the judgment of the Tribunal on the said appeal.

3. As a reading of the order of the Tribunal would indicate what has apparently weighed with it was a failure on the part of the revisionist to furnish details of how the material had actually been imported by it into the State of U.P. It has noticed what in its view was a shifting and vacillating stand of the revisionist inasmuch as while before the assessing authority its assertion was of the goods having been imported into the State under the cover of gate pass Nos. 4 and 13, before the first appellate authority the case set up by the revisionist was that the raw material had been received under gate pass Nos. 3 and 4. On this basis, the Tribunal came to the conclusion that the explanation so proffered was not liable to be countenanced and consequently upheld the order of the assessing authority imposing penalty.

4. For the purpose of sustaining a seizure under Section 13 (13 A), this Court finds that it must be established that the goods found in a vehicle building or place are not traceable to any bona fide dealer. The second contingency in which a seizure could take place is upon the authority doubting the goods having been properly accounted for in the accounts, register and other documents. The two contingencies are :-

(a) The goods not being traceable to a bona fide dealer;

(b) A doubt that such goods have not been properly accounted for.

5. Insofar as imposition of penalty is concerned, the same is an order which comes to be passed after the dealer has been put to notice, an explanation obtained from him and upon the authority being satisfied that the goods were omitted from being shown in the accounts, registers and other documents maintained by the dealer. The width, expanse and content of sub sections (1A) and (4) of Section 13A operate therefore in different spheres. While the power under sub section (1A) is exercised pro tem and at a time when the officer harbours a doubt about the goods being traceable to a bona fide dealer or not being duly accounted for, imposition of penalty under sub section (4) comes to be imposed only upon the authority being satisfied that the goods were omitted from being shown in the accounts, registers and other documents maintained by a dealer. The traceability of the goods to a bona fide dealer stands deleted from sub section (4). The doubt on account of which a seizure is effected under sub section (1A) stands replaced with the satisfaction of the authority that the goods had not been accounted for in the books, registers and other documents of the dealer.

6. Significantly neither the assessing authority nor for that matter the Tribunal

return or record any finding as to whether the goods which were seized had not been accounted for in the books of accounts which were maintained by the assessee. As noted above, both the assessing authority as well as the Tribunal have primarily proceeded to consider a failure on the part of the assessee to establish how the raw material had entered into the State to be fatal to its case. The Tribunal as well as the assessing authority have also referred to inconsistencies in the pleas taken by the assessee in respect of the bills and gate passes under which the raw material is said to have entered into the State.

7. On both scores this Court finds that the assessing authority as well as the Tribunal have permitted the introduction of considerations that were wholly irrelevant to the exercise of power under section 13A. The goods were shown to belong to a bona fide dealer. They were shown to have been duly entered in the books of accounts. How the raw material from which the goods were manufactured entered into the State was a wholly irrelevant consideration and clearly tainted the statutory enquiry beyond repair.

8. Having embarked upon this exercise, in the opinion of this Court, both the assessing authority as well as the Tribunal completely misdirected the enquiry, which was liable to be undertaken under subsection (4). It is on account of this approach that no findings have been entered by the Tribunal as to whether the goods had been duly accounted for by the assessee. The Tribunal, this Court notes, does not refer to any evidence nor records any reason to dispel what the first appellate authority recorded in his order namely that the goods had been duly recorded in the books of accounts of the assessee.

9. For all the aforesaid reasons, the order of the assessing authority dated 14 February 2001 as also that of the Tribunal dated 18 September 2006 cannot be sustained.

10. The revision is accordingly allowed. The orders dated 14 February 2001 and 18 September 2006 passed by the assessing authority and the Tribunal respectively are hereby set aside.