(2017) 03 AHC CK 0118

In the Allahabad High Court

Case No : Sale/Trade Tax Revision No. 83 of 2017

M/s. Sumit Enterprises APPELLANT

Vs

The Commissioner, Commercial Tax RESPONDENT

Date of Decision : 08-03-2017

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

Citation : (2017) 95 UPTC 394

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.—The goods belonging to the assessee were seized on the ground that at the time of seizure such goods did not accompany bill, bilty and declaration form. A show cause notice was issued fixing 22.1.2017 as the date for appearance of the assessee. The assessee appeared on the date fixed and furnished bill and bilty and proof of the consignor and consignee, who were registered dealers. The explanation also stated that since transportation had taken place within the State, no declaration form was required. It was also contended that at the time of seizure of goods the documents required could not be produced because part of consignment was taken by the revisionist and rickshaw puller was given such documents. The tribunal has found substance in the suspicion generated by the authorities on account of non availability of bill and bilty at the time of seizure. The authorities apparently were of the view that materials in support of explanation were subsequently prepared.

2. Learned counsel for the revisionist submits that there can be no presumption in law that goods were being transported with an intent to evade tax, specially when documents were produced to support the transaction itself. It is also contended that there is no finding that the documents produced along with reply

were not bona fide or were not in accordance with law. Submission is that in such circumstances, the seizure was unwarranted, particularly as dealer is a registered dealer. Learned counsel has placed reliance upon a decision of this Court in Elder Pharmaceuticals Ltd. v. Commissioner of Trade Tax 1999 UPTC 931 in order to contend that where documents relating to transaction were produced pursuant to show cause notice, the order of seizure cannot be sustained. Reliance has also been placed upon another decision of this Court in Castrol India Ltd. and another v. Commissioner, Commercial Tax 2012 (49) NTN 202 to contend that where valid documents were produced, pursuant to show cause notice, the seizure of goods were not justified.

3. Learned Standing Counsel, however, submits that although the goods were seized on 15.1.2017, but the reply was submitted only on 22.1.2017 and it is quite possible that within such time the assessee may have managed to prepare the documents in support of the transaction.

4. From the materials placed on record, it appears that there is no finding in the order of the authorities that the documents produced were not genuine. So far as delay of about one week, as alleged by learned Standing Counsel, is concerned, this Court finds that the notice issued on 15.1.2017 clearly required the assessee to appear before the before the authority on 22.1.2017 and furnish its explanation. The assessee on the date so indicated in the notice had appeared and furnished documents in support of the transaction. Unless genuineness of documents was disputed or there was any other material to discard the claim setup by the assessee, the authorities were not justified in doubting the transaction itself so as to justify the order of seizure. Admittedly, documents evidencing the transaction in the form of bill, bilty etc. were produced in response to the show cause notice. In the facts and circumstances of the present case, the department has failed to bring on record any material to warrant confirmation of seizure proceedings.

5. In such circumstances, the revision stands disposed of with the observation that the goods in question shall be released without insisting upon the assessee to deposit any security, specially as the dealer is a registered dealer in the State. Further proceedings in accordance with law may be drawn accordingly.

