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(2013) 03 AHC CK 0254

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 213 of 2013

M/s. Super Speed Roadlines (India) APPELLANT

Vs

Commissioner, Commercial Tax RESPONDENT

Date of Decision : 15-03-2013

Acts Referred:

Uttar Pradesh Value Added Tax Act, 2008 — Section 2(h), 42, 45, 48, 48(7)

Citation : (2013) 5 ADJ 289 : (2014) 4 ALJ 84 : (2013) 64 VST 317

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : N.C. Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—The transporter has filed this revision for the quashing of the order of seizure dated 4.12.2012 and for a direction for the release of the seized goods without demanding any security so as to permit him to carry the goods further to their destination at Kolkata. The case of the transporter is that he loaded the goods in his vehicle from Delhi for delivery at Kolkata. The goods were booked by M/s. Avon Traders Delhi for delivery to M/s. Khaitan Enterprise Kolkata and an invoice was given to him whereupon he issued the bilty.

2. The transporter being the person incharge of the vehicle carrying the goods before entering in the State of U.P. as required down loaded the Transit Declaration Form bearing No. D20121100348986 from the official website of the Commercial Tax Department and duly filled up the same.

3. The goods in transit were detained by the Mobile Squad at Mathura and a show-cause notice dated 28.11.2012 was given as to why the goods may not be seized.

4. In response to the show-cause notice the transporter filed reply contending that in the Transit Declaration Form the goods by mistake have been described as cotton fabric instead of cotton coated fabric and the Tin number of the Kolkata

dealer differs slightly. Since the consigner and the consignee are both registered dealers of their respective States and as all necessary documents are accompanying the goods they not liable to be seized.

5. The Assistant Commissioner Commercial Tax mobile squad on consideration of the reply passed a seizure order on 4.12.2012 in purported exercise of power u/s 52 of the U.P. Value Added Tax Act, 2008 (hereinafter referred to as the Act) but ordered for the release of the same on furnishing security of Rs. 1,60,000/- @ 40% of the value of the goods amounting to Rs. 4,00,000/-.

6. The transporter represented against it by filing an application u/s 48(7) of the Act which was rejected on 28.1.2013 and the order of release of the goods as aforesaid was confirmed.

7. The appeal preferred by the transporter u/s 57(4) of the Act before the Tribunal was dismissed on 7.2.2013.

8. It is after failing in his attempt to get the seized goods released without any security that the transporter has preferred this revision u/s 58 of the Act.

9. Section 60 of the Act provides for the orders of the authorities which cannot be challenged by means of appeal or revision. Section 60 of the Act reads as under:

60. Orders against which no appeal or revision shall lie.-- No appeal and no application for revision shall lie against:

(a) an order or notice initiating an inquiry for assessment or re-assessment;

(b) any order or action u/s 45, [sub-section (1) or sub-section (2)] of Section 48, sub-section (6) of Section 50 or an order of seizure of goods; and

(c) any direction issued by the Commissioner in exercise of powers as may be prescribed."

10. A reading of the above provision establishes that no appeal or revision is provided against the order of seizure of goods.

11. In view of the above, the order of seizure dated 4.12.2012 cannot be challenged in this revision.

12. In the scheme of the Act the power to seize goods has been laid down u/s 48 of the Act. The Officer seizing the goods also has the power to order for the release of the seized goods on deposit of the amount sufficient to cover the penalty likely to be imposed. Sub-Section (7) of Section 48 of the Act further lays down that the Commissioner or an Officer not below the rank of the Deputy Commissioner authorized on behalf of the Commissioner may by an order in writing direct for the release of the goods without any deposit or on deposit of lesser amount or on furnishing security other than cash or indemnity bond in such form as may deem fit.

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13. u/s 48(7) of the Act the Commissioner/Additional Commissioner is only authorized to consider the release of the seized goods without deposit or on depositing of a lesser amount or on furnishing security as may be considered proper but he has no jurisdiction to adjudicate the validity or the correctness of the order of seizure.

14. Therefore, the dispute u/s 48(7) of the Act is confined to the condition of the release regarding deposit of the amount sufficient to cover the penalty likely to be imposed or a lesser amount or furnishing security for the release of the goods but not to challenge the seizure order.

15. In common understanding, the release of the goods can only be demanded by the owner of the goods. A transporter who is not the owner of the goods cannot ask for the release of the goods in his independent capacity. He cannot even be a "person aggrieved" by the demand of the security for the release of the goods.

16. The transporter is not claiming himself to be the owner or dealer of the goods therefore, a preliminary question arises as to whether he is a "person aggrieved" by the seizure of the goods and is entitle to get them released when neither the consigner nor the consignee who may be the rightful owners of the goods are not coming before the Court either challenging the order of seizure or the order of the tribunal refusing to release the goods without security.

17. Sri N.C. Gupta, learned counsel for the transporter submits that as u/s 52 of the Act read with Rule 58 of the Rules, the driver or the person incharge of the vehicle carrying the goods is responsible to carry such documents as may be prescribed, the petitioner is also the person aggrieved entitle to challenge the seizure order and that of the tribunal.

18. Section 52 of the Act as well as Rule 58 of the Rules only provides that where a vehicle coming from any place outside the State and is bound to go outside the State carrying goods of the specified description passes through the State of U.P., the driver or the person incharge of the vehicle shall carry with the goods the documents prescribed failing which it shall be presumed that the goods are meant for sale in the State of U.P. In other words, it only give rise to a presumption of the sale of the aforesaid goods in transit in the State of U.P. if the documents are not accompanying the goods. The aforesaid presumption is a rebutable in nature and can be rebutted during the proceedings for penalty if any.

19. The assessing authority in exercise of power u/s 54 of the Act is authorized to impose penalty upon a dealer or the person as the case may be if to his satisfaction they have committed any wrong mentioned in column (2) of the table contained therein. In the table at item No. 15 it has been provided that where the dealer or the person incharge of the vehicle fails to carry the documents referred to in Section 52 and also fails to prove that the goods carried in the vehicle were meant for delivery to dealer or the person outside State a penalty not exceeding 40% of the value of the goods can be imposed.

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20. The driver or the person incharge of the vehicle are agents of the transporter. Therefore, transporter is vicariously liable for the penalty if any imposed upon any of them u/s 54 of the Act but the aforesaid penalty is not for the seizure of the goods but on account of the fact that the transporter or his agent who is obliged to carry the documents with the goods fails to carry them. Therefore, for the act of omission of statutory duty cast upon them, the transporter exposes himself to penalty proceeding but it would not make him the person aggrieved to ask for the release of the goods.

21. Sri Gupta, then submitted that as the show-cause notice and the order of seizure were served upon the driver or the person incharge of the vehicle, the transporter has a right to contest and participate in the proceedings.

22. It is true that the provision of the Act contemplates for the service of show-cause notice and the order of seizure upon the person incharge of the vehicle but the aforesaid service upon him is in capacity of a representative of the dealer.

23. This is implicit from the reading of Sub-Sections (4) and (7) of Section 48 of the Act which provides for the service of notice not only upon the person incharge of the goods at the time of the seizure but also upon the dealer.

24. The aforesaid provision indicates that in reality the notice and the order is required to be served upon the dealer but as on spot the dealer is not to be found, it is permitted to be served upon the person incharge of the vehicle/goods with the intention that he will inform the dealer who would appear and contest the proceedings or allow them to be pursued by the person incharge.

25. Thus, by mere service of the show-cause notice upon the person incharge of the vehicle or the order of the seizure upon him would again not make him the "person aggrieved" to ask for the release of the goods or for waving the security demanded unless the transporter produces an authority of the owner of the goods to get them released on his behalf.

26. This apart, the appeal to the tribunal Section 57(4) of the Act can be preferred by the person aggrieved. The relevant part of Section 57(4) of the Act reads as under:

(4) Any person aggrieved by [an order passed u/s 42, Section 55] Section 56, a decision u/s 59 or a direction under the proviso of sub-section (7) of Section 48 may, within ninety days from the date of service of the copy of such order, decision of direction on him, prefer an appeal to the Tribunal.

27. The expression used in Section 57(4) of the Act is "any person aggrieved". So it is the "person aggrieved" alone who is entitle to file an appeal before the tribunal.

28. In Corpus Juris Secundum Vol. IV Edn. I page 556 a person aggrieved is broadly described as a party or person affected by a decision if it operates directly and injuriously upon his personal, pecuniary and proprietary rights.

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29. It is settled law that a person who suffers a legal injury by any order alone can be recognized as the person aggrieved. The person aggrieved has to establish his interest in the property concerned or the loss he is likely to suffer from the order impugned. The transporter who is not the owner of the seized goods has no right or interest in them therefore, refusal of the authorities to release the said goods without security does not infringe any legal right of the transporter so as to give him a right to challenge the order. The transporter is not a person who has wrongly been deprived of any entitlement of legal right or who has suffered adversely in legal sense on the seizure of goods or on refusal to release them without security.

30. In view of the aforesaid facts and circumstances, in my opinion the transporter is not a person aggrieved who can raise any grievance either against the seizure of the goods or against refusal to release the same without security. He at best can only complaint about the confinement of his vehicle in which the seized goods were loaded and were being carried.

31. The vehicle is not the subject-matter of seizure and the transporter can always ask the authorities to allow the vehicle to go without insisting for the release of the goods.

32. Learned counsel for the transporter in the end made a feeble attempt to suggest that transporter would be included in the definition of a dealer contained in Section 2(h) of the Act.

33. The argument has been noted only to be rejected inasmuch as on repeated quarries the counsel had made it clear that the transporter herein is not a dealer and is also not claiming ownership in the goods seized.

34. Sri N.C. Gupta, learned counsel for the transporter has cited Bikaner Assam Roadlines India Ltd. Ghaziabad v. The Commissioner, Trade Tax, U.P. Lucknow, 2005(26) NTN 245, wherein the Transporter was held to be liable for the act of the driver and rightly so as the driver of the vehicle is an agent of the transporter. The aforesaid decision is not an authority on the "person aggrieved". It is therefore, of no assistance to the transporter.

35. Similarly in M/s. Ashok Road Lines, Agra v. Commissioner of Sales Tax, U.P. Lucknow, 2003 (22) NTN 412, his Lordship of this Court while dealing with a case u/s 28-B of the U.P. Trade Tax Act held the transporter to be person incharge of the vehicle. There are no two opinions on the above ratio but this does not help the transporter to substantiate his plea that he is a person aggrieved entitle to release of the goods.

36. In Commissioner of Sales Tax v. S/ S/Guru Bux Singh, 1992 UPTC (65), relied upon by the counsel for the transporter the Court only held that a "person" comprehends even a transporter and he may be made liable to pay penalty. Again the aforesaid decision does not deal with the expression "person aggrieved" or holds that even a transporter is entitle to get the seized goods

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released. The transporter may be liable to penalty as his agents fail to fulfil the statutory duty cast upon them to carry the documents prescribed with the goods in transit.

37. In Sodhi Transport Company and another v. State of U.P. and another, 1986 UPTC 721, the Supreme Court in considering the provisions of Section 28-B of the U.P. Trade Tax Act held that a tax becomes payable only when a finding is recorded that the goods are actually sold within the State of U.P. and in the said situation the person who has brought the goods inside the State would become a dealer. The aforesaid stage has not come in the present case therefore, it is premature to describe the transporter as a dealer authorizing him to the release of the goods.

38. In one another case C.S.T. v. Seth Industrial Corporation, 1994 UPTC 140, a single Judge of this Court permitted release of seized goods in favour of the transporter holding him to be the person incharge of the vehicle. In the said case both, the owner as well as the transporter have filed objections before the Assistant Commissioner meaning thereby that the owner of the goods was also before the authorities and as such the situation was different. Moreover the aforesaid decision does not lay down that the transporter has any independent right to ask for the release of the goods. In view of above, the said authority is not of much assistance to the transporter in the facts and circumstances of the present case.

39. It is important to note that the transporter has not specifically challenged the order of the tribunal dated 7.2.2013. A challenge to the order of seizure dated 4.12.2012 directly in revision is not acceptable. The relief to release the seized goods without any security does not involve any question of law as the condition for release of the goods is dependent upon the discretion of the authority concerned. Therefore, no relief in this regard is permissible in exercise of revisional power u/s 58 of the Act.

40. In the light of the discussion made above, I hold that the transporter though a person incharge of the vehicle or the goods is not the owner of the goods and has no locus to demand the release of the seized goods in his independent capacity. He is also not a "person aggrieved" to challenge the order passed u/s 48(7) of the Act before the Tribunal u/s 57(4) of the Act by way of an appeal and to demand release of the goods without security or lesser amount of security. The revision as such fails and is dismissed.

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