
(2011) 12 AHC CK 0156
In the Allahabad High Court
Case No : Writ Tax No. - 830 of 2010

M/s Utsav Oil Traders

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Uttar Pradesh Value Added Tax Act, 2008 — Section 48(7)

Citation : (2011) 12 AHC CK 0156

Hon'ble Judges : R.K. Agrawal, J;B. Amit Sthalekar, J

Bench : Division Bench

Judgement

1. By means of the present writ petition, the petitioner seeks a writ, order or direction in the nature of certiorari quashing the order dated 15th May, 2010 issued by the Assistant Commissioner, Commercial Tax, Mobile Squad, Unit-III, Mathura, respondent no. 2, filed as annexure no. 13 to the writ petition and a writ of mandamus commanding the said respondent to release the goods of the petitioner so seized vide Seizure Memo no. 12/2 and 12/3 dated 4th April, 2009.

2. Briefly stated the facts giving rise to present writ petition are as follows:-

The petitioner is a proprietorship concern registered under the provisions of U.P. Value Added Tax Act, hereinafter referred to as "the Act". It is engaged in the business of purchase and sale of Lubricant Oil. According to the petitioner on 20th March, 2009 it had sold 29 Drums of Lubricant Oil to one M/s. Hanuman Oil Company, 20/147, Jamuna Kinara, Agra. The value of the goods was approximately Rs. 2,43,056/-. On the same day it had sold some quantity of Lubricant Oil to another dealer, namely, M/s. Shree Ram Oil Trading Company, Daresi no. 3, Agra. The value of the goods was Rs. 3,03,793/-. The goods were loaded on two vehicles. It was intercepted at Mathura and after recording the statement of truck drivers the goods were detained and a show cause notice was issued as to why the goods be not seized. After considering the reply the goods were seized on 4th April, 2009 which was directed to be released on furnishing cash security of Rs. 2,32,000/- and Rs. 2,19,914/- respectively. The petitioner

made a representation under the proviso to Section 48(7) of the Act before the Joint Commissioner (S.I.B.), Commercial Tax, Mathura Range, Mathura, who allowed the representation and directed the petitioner to furnish security in cash equivalent to the three times of the tax leviable on the said goods. The petitioner was not satisfied with the said order and preferred an appeal before the Tribunal and thereafter approached this Court by filing a Revision. In the Revision preferred before this Court, the Court vide judgment and order dated 6th August, 2009 while prima facie coming to the conclusion that the seizure was justified had directed for the release of the goods on the deposit of cash security to the extent of two times of the tax leviable and furnishing of security other than cash or Bank guarantee for the remaining amount. For reasons best known to the petitioner it did not comply with the order passed by this Court as a result of which the goods remained seized. In the meantime the penalty proceedings were brought to its logical end and the Assessing Authority imposed Rs. 1,74,000/- and Rs. 1,89,994/- respectively as penalty. The petitioner preferred appeals before the Additional Commissioner Grade-II(Appeal), Commercial Tax, Noida. Along with the appeal the petitioner also filed application for grant of stay. The Additional Commissioner Grade-II(Appeals), Commercial Tax, Noida vide order dated 5th March, 2010 granted 50% stay. The matter was taken up further in appeal before the Tribunal and the Tribunal vide order dated 30th March, 2010 granted stay to the extent of 85% of the disputed amount of penalty till the disposal of the appeal. The petitioner had deposited a total sum of Rs. 54,600/- on 29th April, 2010 vide Challan Nos. 15 and 16 which represented 15% of the total amount of penalty levied by the Assessing Authority and had also furnished security for the remaining 85% of the amount. After depositing the amount and furnishing requisite security, the petitioner vide application dated 29th April, 2010 filed before the respondent no. 2 sought release of the goods. The respondent no. 2, however, declined to release the goods and insisted upon depositing the amount in terms of the Court's order dated 6th August, 2009 or till the finalization of the penalty proceedings in appeal. Faced with this situation, the petitioner has approached this Court.

3. We have heard Sri Aloke Kumar, learned counsel for the petitioner and Sri U.K. Pandey, learned Standing Counsel for the respondents and have perused the averments made in the writ petition, its annexures and the affidavits exchanged between the parties.

4. Sri Aloke Kumar, learned counsel for the petitioner, submitted that as the petitioner has deposited 15% of the penalty in cash and has also furnished security for the remaining 85% of the amount of the penalty imposed by the Assessing Authority in compliance of the order passed by the Tribunal the seized goods are liable to be released and the view taken by the respondent no. 2 is wholly contrary to law and defeats the very purpose of the statutory provisions.

5. Sri U.K. Pandey, learned Standing Counsel, on the other hand justified the action of the authorities and submitted that as there is no order of release by the

Tribunal, the respondent no. 2 has rightly insisted upon the depositing of the amount in terms of the Court's earlier order or upon the finalization of penalty proceedings.

6. We have given our thoughtful consideration to the various plea raised by the learned counsel for the parties. The demand of security for releasing the goods, which have been seized, is only for safeguarding the interest of the Revenue in respect of the amount which may be levied as tax on account of evasion and also the penalty which may be imposed. In the present case the penalty order has been passed. The Tribunal in the appeal preferred by the petitioner against the penalty order has granted partial stay of the order passed by the first appellant authority by directing the petitioner to deposit 15% of amount of penalty in cash and furnish the security for the remaining amount which the petitioner had complied with. Thus, the interest of the Revenue has been amply safeguarded as in the event the appellate authority upholds the order of penalty then the amount of penalty can very well be realised from the security furnished by the petitioner. That being the position, we are of the considered opinion that the respondent no. 2 ought to have released the goods seized by him on 4th April, 2009. We, therefore, allow the writ petition and direct the respondent no. 2 to release the seized goods belonging to the petitioner which have been seized on 4th April, 2009 forthwith. However, we may make it clear that the security furnished by the petitioner should be to the satisfaction of the Assessing Authority and if he has accepted the security so furnished only then the goods should be released.

7. On the facts and circumstances of the case, the parties are directed to bear their own costs.