

(2016) 01 AHC CK 0312
In the Allahabad High Court
Case No : Writ Tax No. 866 of 2012

M/S Yuvraj Trading Company

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Citation : (2016) 92 UPTC 169

Hon'ble Judges : Tarun Agarwala and Vinod Kumar Misra, JJ.

Bench : Division Bench

Advocate : N.C. Gupta and Praveen Kumar, Advocates, for the Petitioner; C.S.C. and S.P. Kesarwani, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. We have heard Sri N.C. Gupta, learned counsel for the petitioner and Sri C.B. Tripathi, learned Special Counsel for the State.
2. The petitioner is registered firm dealing in sale and purchase of plastic granules in the State of Bihar. The petitioner alleges that he had purchased 600 bags of plastic granules from M/s Himalaya Enterprises Bhiwani, State of Hariyana. The said good were being transported from New Delhi to Sasaram in the State of Bihar when it got detained by the Mobile Squad of the Commercial Tax Department in the District of Etawah on 1st December, 2011. A show cause notice was issued to the driver of the vehicle and, thereafter, a seizure order dated 2nd December, 2011 was passed seizing the goods and directing to deposit a sum of Rs. 5,20,515/- towards security as a precondition for release of the goods. Thereafter an application under Section 48(7) of the U.P. Value Added Tax Act was filed before the Joint Commissioner wherein the petitioner appeared personally. This application was rejected on 7th December, 2011 pursuant to which, an appeal was filed before the Tribunal which was also rejected on 4th January, 2012. Thereafter the petitioner filed a revision before the High Court which was disposed of by an order dated 25th January, 2012 wherein the High Court affirmed the seizure order but directed the petitioner to deposit the

security in the shape of cash equal to tax which was liable to be paid on the goods and thereupon the goods would be released. The value of tax worked out by the department was Rs. 57,835/.

3. In the meanwhile pursuant to the order of the Joint Commissioner dated 7.12.2011, the driver of the vehicle deposited a sum of Rs. One lac as security based on which, 110 bags were released in favour of the driver on 22nd December 2011. This part release of 110 bags was to the extent of the penalty amount involved on these 110 bags. Subsequently, pursuant to the order of the High Court since the total value of the tax involved was Rs. 57,835/-, the balance 490 bags were released without demanding any further amount inasmuch as the security of Rs. One lac already paid by the driver covered the entire amount of 600 bags.

4. The petitioner has filed the present writ petition contending that only 490 bags were released and that 110 bags were not given to the petitioner but by collusion the same were released for ulterior purposes to the driver. The petitioner has therefore prayed for a writ of mandamus commanding the respondents to release 110 bags of plastic granules or, in the alternative, direct the Commissioner Commercial Tax to pay the cost of the 110 bags of plastic granules.

5. The contention of the learned counsel for the petitioner is two folds, namely, that when the petitioner appeared in person the goods could not have been released to the driver and that the goods if, any, should have been released only to the petitioner. Since the same was not done, the respondents are liable to release the goods in favour of the petitioner or pay the value of the goods. Learned counsel further submitted that there is no provision under the Act to release part of the goods.

6. Having heard, learned counsel for the petitioner and having perused the record, we find it strange that the petitioner does not dispute the deposit of Rs. One lac made by the driver on 22nd December, 2011 and only dispute the receiving of the goods by the driver. Nothing has been brought on record to indicate that the petitioner paid the security separately pursuant to the order of the High Court. In fact, the order sheet of the Commercial Tax Officer who had seized the goods indicates that 490 bags were released without demanding any further security inasmuch as the amount of Rs. One lac deposited earlier covered the security for the entire 490 bags.

7. Section 48(7) of the U.P. Value Added Tax contemplates that the officer seizing the goods shall serve the notice on the dealer or the person incharge with regard to the seizure of the goods. In the instant case, the person incharge of the goods at the relevant moment of time was the driver of the vehicle who was transporting the goods. The show cause notice and thereafter the seizure order were issued in the name of the driver.

8. We are of the opinion that goods are transported from different parts of the country and the vehicle is driven by the driver. When the goods are detained it is

not humanly possible to serve the notice to the owner of the goods who is sitting some where else in some other part of the country outside the State of Uttar Pradesh. The goods detained are required to be handled and disposed off at the earliest. In such circumstance, unless otherwise instructed by the owner, the person incharge of the goods would be the driver. We find that the petitioner appeared before the authorities immediately thereafter, but did not object to the fact that notice or custody of the goods should not be given to the driver. On the other hand there is proof that the driver deposited a sum of Rs. One lac towards security on 22nd December, 2011 which fact has not been disputed by the petitioner. Consequently, we are of the opinion that the goods released by the Tax Department in favour of the driver was in consonance with the provision of Section 48(7) of the U.P. Value Added Tax as in our opinion, the driver was the person incharge at that moment of time. This view of ours is also fortified by a decision of this Court in M/s Gopal Carriers v. State of U.P. Through Secretary and four others in Writ Tax No. 797 of 2013 decided 24th September, 2013 in which it has been held that the person incharge of the vehicle would include a driver and transporter as well.

9. We also find from the provision of Section 48 that there is no embargo of releasing the goods in part. In the absence of any provision it is the discretion of the authority to release the goods either upon receiving the entire amount as demanded or release a part of the goods upon furnishing security to that extent. Consequently, we do not find any error when only 110 bags were released in favour of the driver upon furnishing security in part.

10. In the light of the aforesaid, we do not find any error in the proceedings initiated by the respondents.

11. The writ petition fails and is dismissed.