
(2011) 05 AHC CK 0443

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 278 of 2011

Pan Parag Indian Limited

APPELLANT

Vs

Commissioner, Commercial Tax

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Uttar Pradesh Value Added Tax Act, 2008 — Section 48, 48(7), 50, 51, 51(1)

Citation : (2012) 51 VST 116

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

**Advocate : Bharat Ji Agrawal, assisted by Piyush Agarwal, for the Appellant;
U.K. Pandey, for the Respondent**

Judgement

Pankaj Mithal, J.—The revisionist is a registered dealer under the U.P. Value Added Tax Act, 2008 (hereinafter referred as, "the Act") as well as Central Sales Tax Act and is engaged in the manufacturing of pan masala from its factory situate in industrial area Fazalganj, Kanpur. Betel nut (supari) is one of the raw material used by the revisionist in making pan masala. It is generally purchased by the revisionist from outside the State of U.P. and is imported in U.P. The revisionist allegedly purchased 212 bags of betelnut (supari) weighing 15,900 kgs. from M/s. Madhukar Narsimha Hegde of Sagar in Karnataka vide bill No. 293 dated December 16, 2010 against import declaration form 38 No, 1234785. The goods were said to have been dispatched vide consignment note No. 519692 through East India Transport Agency bearing full particulars of the consignment. The goods on the request of the revisionist were withheld at Nagpur. Subsequently, the goods continued onward journey from Nagpur to Kanpur vide truck No. UP38-9091. On reaching Kanpur the goods were downloaded in the godown of the East India Transport Agency on February 9, 2011. Thereafter on February 11, 2011 were dispatched to the factory of the revisionist through truck No. UP78/6897. The goods were detained at the factory gate in the afternoon of the February 11, 2011 from where the goods along with vehicles were carried to the office of the commercial tax. After a show-cause notice was issued on

February 11, 2011 and a reply was submitted by the revisionist an order of seizure was passed on February 16, 2011 with the direction for their release on furnishing cash security of Rs. 8,98,400 equivalent to 40 per cent of the estimated value of the goods, i.e., Rs. 22,26,000 as against Rs. 19,46,160 mentioned in the bill.

2. The representation of the revisionist was rejected by the Joint Commissioner, S.I.B., Commercial Tax, u/s 48(7) of the Act vide order dated March 1, 2011, annexure 12 to the revision.

3. Aggrieved, the revisionist preferred appeal before the Commercial Tax Tribunal. The Tribunal vide order dated March 26, 2011, partly modified the order appealed against and directed for the release of the goods on revisionist furnishing security of twice the amount of the tax leviable on the said goods.

4. Still not satisfied, the revisionist has preferred this revision assailing the orders of the Tribunal, Joint Commissioner, S.I.B., and of the seizing authority.

5. Challenging the aforesaid orders the primary argument is as the goods were admittedly raw material which were not meant for sale in respect whereof all documents including form XXXVIII were duly furnished the seizure was not justified particularly when no penalty could have been imposed.

6. A preliminary objection has been raised that the validity of the seizure order cannot be adjudicated in revision by the court and it is only the quantum of the security demanded which is open for consideration in this revision.

7. I have heard, Sri Bharat Ji Agarwal, Senior Advocate, assisted by Sri Piyush Agarwal, learned counsel for the revisionist and Sri U.K. Pandey, who has accepted notice on behalf of the respondents.

8. Both the parties agree for the final disposal of the revision at the very outset, in view of the fact that the preliminary objection and the question raised are purely legal in nature and the revision involves no factual dispute.

9. Section 51 of the Act lays down that where any taxable goods are imported from outside the State the dealer shall furnish a declaration in prescribed form along with other documents as may be prescribed. One of the documents prescribed is import declaration form XXXVIII. Rule 56 of the Rules framed under the Act lays down that a registered dealer importing goods into the State from outside the State shall send to the selling dealer two copies (original and duplicate portions) of the aforesaid form obtained or downloaded from the official side of the Department.

10. Section 51(4) of the Act further provides that where the officer authorized while making inspection or search finds that any taxable goods in respect of which declaration has not been made u/s 51(1) of the Act is satisfied that such taxable goods are being imported in an attempt to evade payment of tax under this Act, he may order detention of goods for reasons recorded.

11. By virtue of section 51(5) of the provisions of sub-sections (3), (7), (8), (9) and (10) of section 48 have been applied to such detention mutatis mutandis. Thus, section 51 of the Act provides that the goods imported in U.P. must be accompanied by import declaration form besides other documents, the officer authorized is empowered to detain the goods and that some of the sub-sections of section 48 of the Act as enumerated above shall apply mutatis mutandis in respect to such detention.

12. It may be noted that by virtue of section 51(5) of the Act in respect of detention/seizure of goods made u/s 51 of the Act, the provisions of section 48(7) have been made applicable. Section 48(7) of the Act authorises the officer seizing the goods to pass an order of seizure after serving upon the dealer concerned a show-cause notice and to impose penalty not exceeding such amount as would be a sufficient to cover the penalty liable to be imposed.

13. The order of seizure is u/s 51(4) of the Act in respect whereof the penalty likely to be imposed is provided in item No. 14 of the table contained in section 54 of the Act. It provides where goods are imported in the State in contravention of provision of section 50/51 of the Act with the view to evade payment of tax in addition to the tax penalty of 40 per cent of the value of the goods can be imposed.

14. Proviso to section 48(7) of the Act further provides that the aforesaid security demanded for the release of the goods for sufficient reasons to be recorded in writing may be relaxed by the Commissioner or such other officer authorized not below the rank of the Deputy Commissioner and the goods may be directed to be released without any deposit or on depositing lesser amount or on furnishing security in such other form as may be deemed fit.

15. In view of the proviso to section 48(7) of the Act, the Commissioner or the officer authorized on his behalf not below the rank of Deputy Commissioner is authorized to direct for the release of the goods on the lesser amount of security than the amount sufficient to cover the penalty provided u/s 54 of the Act. The said provision does not empower the Commissioner to adjudicate about the validity of the seizure.

16. It is worth noting that the direction issued in exercise of power u/s 48(7) of the Act is appealable before the Tribunal u/s 57(4) of the Act which obviously refers to the directions in connection with the release of the goods. Appeal to the Tribunal is not provided against the seizure order which is independent to direction for release of goods on security or without security.

17. The appeal to the Tribunal u/s 57(4) of the Act is against the direction for the release of the goods on furnishing security of an amount sufficient to cover the penalty leviable or any lesser amount and not against the seizure/detention order. Such an appeal is not in respect of the validity of the seizure order. The validity of the seizure order passed u/s 51(4) of the Act is not liable to be looked into while passing the order u/s 48(7) of the Act and therefore by implication,

the validity of such seizure cannot be adjudicated even in appeal before the Tribunal.

18. In the instant case, the order of seizure is actually one passed u/s 51(4) of the Act against which no direct appeal to the Tribunal is envisaged under the Act.

19. The submission of Sri Bharat Ji Agarwal, is that as section 48 of the Act empowers the Commissioner or officer authorized not below the rank of the Deputy Commissioner to release the goods even without any deposit or any lesser amount of security which inherently means that the authority is vested with the jurisdiction to decide about the validity of the seizure order also. It is only in cases where the seizure is invalid that the goods can be directed to be released without security.

20. The submission though attractive cannot be accepted. Every order of seizure may not necessarily involve imposition of penalty as in many cases there may not be intention to evade tax. The security is demanded to cover the penalty likely to be imposed which is in addition to the tax liability. In such a situation the authority may direct for" the release of the goods without security or on lesser amount of security but that would not mean that the seizure is invalid. The validity of seizure order cannot be adjudged on representation u/s 48(7) of the Act or in appeal before Tribunal.

21. The scope of section 48(7) of the Act or of an appeal against it u/s 57(4) of the Act before the Tribunal cannot be enlarged to include within its fold the determination of the validity of the seizure order when it is not so provided under the statute.

22. In view of the aforesaid facts and circumstances, as the appeal before the Tribunal is directed against the direction issued with regard to security for release of goods u/s 48(7) of the Act only and not about the validity of the seizure order, the Tribunal has no authority to examine the legality or illegality of the seizure order. As a necessary corollary to the above, this court in revision against the order of the Tribunal also does not have any jurisdiction to examine and adjudicate the validity of the seizure order except for expressing opinion upon the quantum and the nature of security demanded for the release of the goods.

23. Accordingly, the preliminary objection raised is answered in favour of the Revenue and it is held that neither the Commissioner or the officer authorized not below the rank of Deputy Commissioner u/s 48(7) of the Act nor the Tribunal in appeal u/s 57(4) of the Act has the power to decide about the validity of the seizure order and consequently this court in revision also lacks jurisdiction in respect thereof.

24. The revision in so far as it challenges the validity of the seizure order is not maintainable.

25. As far as the quantum of security demanded equivalent to twice the tax imposable, no error in such an order has been shown and such a direction being

dependent upon the judicial discretion of the authorities/Tribunal, no question of law in connection thereto arises leaving any scope for interference in the same in exercise of revisional jurisdiction. The revision as such lacks merit and is dismissed with liberty to the revisionist to challenge the seizure order before appropriate forum as may be advised. No order as to costs.