(2007) 02 AHC CK 0125

In the Allahabad High Court

Paswara Papers Ltd. APPELLANT

Vs

The Commissioner of Trade Tax RESPONDENT

Date of Decision : 09-02-2007

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2007) 02 AHC CK 0125

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of UP. Trade Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal dated 29th March, 2000 relating to the assessment year, 1997-1998

2. Applicant is a registered dealer under the U.P. Trade Tax Act and Central Sales Tax Act and was granted eligibility certificate u/s 4-A of the Act. According to it the turnover was not liable to tax. Applicant was using coal as a fuel in the manufacturing of its product. As per Circulars dated 26th July, 1996, 23rd September, 1996 and 23rd May, 1997 which are Annexures 3, 4 and 5 of the revision petition, no security was required to be taken for the import of the coal required for use as a fuel from the registered dealer. Applicant was accordingly issued declaration form, namely, Form 31 as provided u/s 28-A of the Act for the import of coal without any security for use as a fuel. The Form was issued for the import of 10 Tonnes of coal. During the year under consideration, while importing the coal more than 10 Tonnes applicant made voluntarily declaration at the check post in respect of the excess quantity of coal. In respect of excess quantity of coal, check post officer taken the deposit and issued the receipt. The receipt was issued for compounding fee. The total amount deposited was to the extent of 2,52,702/-. The applicant sought for adjustment of the amount of Rs. 2,52,702/- with the amount of tax payable, but the same was refused on the ground that the nature of the deposit was compounding fee and not the security. Tribunal

also denied the adjustment of the disputed amount on the ground that the amount was deposited as a compounding fee.

3. Heard learned Counsel for the parties.

4. Learned Counsel for the applicant submitted that the check post officer was requircd to take the deposit only in pursuance of the Circulars dated 26th July, 1996, 23rd September, 1996 and 23rd May, 1997. He submitted that as per the circulars, in case, where the coal was required to be used as a fuel, no security was required to be taken. He further submitted that in respect of the import of the excess quantity of coal as per the circulars to the extent of two times of the tax was required to be taken and not the compounding fee. He submitted that the compounding fee was chargeable in lieu of penalty leviable for the violation of Section 28-A of the Act. while in the present case, since the coal was imported against declaration form and voluntarily declaration was made at the check post, there was no question of levy of penalty. He submitted that the check post officer has arbitrarily mentioned compounding fee in the receipt, while as per circulars, the nature of the deposit was security and is liable to be adjusted under Rule 88.

5. Learned Standing Counsel submitted that since the applicant had deposited the amount towards compounding fee, it was not adjustable with any other amount of tax. He submitted that in case, if the applicant had any grievance about the nature of the deposit, the same should be addressed at the time of issue of the receipt.

6. Having heard the learned Counsel for the parties, I have perused the order of the Tribunal and the authorities below.

7. I find substance in the argument of the learned Counsel for the applicant.

8. Section 8-C(3-A) of the Act gives power to the Commissioner of Trade Tax to demand the cash security by n general order in respect of any goods notified by the Government. Section 8-C(3-A) of the Act reads as follows:

8-C. Security in interest of revenue.

(3-A) Notwithstanding anything contained in Sub-section (2) or Sub-section (3), the Commissioner of Sales Tax may, in respect of any goods notified by the Government in this behalf, by a general order in writing, direct that a cash security of such amount as may be specified in such order shall required to be furnished by a dealer or person requiring any of the forms prescribed under this Act.

9. Coal is one of the notified goods, notified vide notification No. ST-II-2051/ XI-2(3)/88-Act-74-56-Order-90, dated 13.9.1990 issued in exercise of power u/s 8-C(3-A) of the Act. In exercise of power u/s 8-C(3-A) of, the Act Commissioner of Trade Tax issued circulars/orders time to time demanding the security in respect of the coal, for the issue of declaration Form and for the deposit of the cash security at the check post under certain circumstances.

10. It is useful to refer the relevant part of the Circular dated 23rd May, 1997, which is relevant for the year under consideration. It may be mentioned here that the language of the Circular dated 23rd May, 1997 are same to the language of the Circulars dated 23rd July, 1996 and 23rd September, 1996 except the difference in the amount of the security.

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11. As Per the Crircular referred hereinabove, no security was required to be demanded in case of import of coal required to be used as a fuel. Admittedly, the applicant was issued Form 31 for the import of coal as a fuel and, therefore, even if the applicant has imported coal exceeding 10 tonnes, no security was required to be-taken. Clause 1 of the Circular provides that if the import is without declaration form on the voluntarily declaration, the compounding fee at the rate of Rs. 100 per MT could be deposited and in case, of the import of the coal as against voluntarily declaration then on the excess quantity security to the extent of two times of the tax should be deposited. In the present case, admittedly, the coal was imported against declaration Form. It is not a case of import of coal without declaration Form and, therefore, as per Circular, the deposit should not be asked as a compounding fee. In fact, no amount should be asked to be deposited because the coal was imported for use as a fuel against the declaration form. However, in case, if the deposit was taken, its nature could not be a compounding fee, but could only be in the form of the security. Merely because in the receipt, the compounding fee was arbitrarily mentioned, the same cannot be treated as compounding fee in case if it is not in the nature of compounding fee as per circular issued by the Commissioner of Trade Tax in pursuance of which the deposit was sought. Thus, in my view the deposit should be treated as security, which is liable to be adjusted under Rule 88. Assessing authority is accordingly directed to adjust the amount of Rs. 2,52,702/-, which was deposited at the check post while importing the coal for use as a fuel on the excess

quantity of coal over and above 10 tons.

12. In the result, revision is allowed. The order of the Tribunal is set aside and the matter is remanded back to the assessing authority with the direction to adjust the amount of Rs. 2,52,702/-, which was deposited at the check post while importing the coal for use as a fuel on the excess quantity of coal over and above 10 tons.