(2013) 10 AHC CK 0193

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 776 of 2013

Prakash Transport Corporation APPELLANT

Vs

Commissioner RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Citation : (2014) 73 VST 308

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Judgement

Pankaj Mithal, J.—Heard Sri Aloke Kumar, learned counsel for the dealer revisionist and Sri U.K. Pandey, learned counsel for the respondent-Department. The revisionist has preferred this revision against the order of seizure but permitting release of seized goods on furnishing security of 40 per cent of the estimated value of the goods under the U.P. Value Added Tax Act, 2008 (hereinafter referred to as "the VAT Act") and of similar amount under the Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007 (hereinafter referred to as "the Entry Tax Act") which has been reduced to 15 per cent, by the Commercial Tax Tribunal while upholding the seizure vide order dated September 26, 2013.

2. The submission of learned counsel for the revisionist is that the order of seizure has been passed basically for the reason that the goods were not accompanied by the transit declaration form. The transit declaration form was produced by the person in-charge of the vehicle in pursuance of the show-cause notice and therefore, for the technical default that it was not available at the time of checking/detention the seizure is not justified and the demand of security is illegal.

3. The revisionist is a transporter and is not engaged in trading of any commodity. The revisionist was carrying goods of a consignor of Orissa to a consignee in Punjab both of whom are said to be registered dealers in their respective States. All necessary documents including G.R. and tax invoices were

accompanying the goods. The goods during transit from Cuttack in Orissa to Ludhiana in Punjab had to pass through the State of U.P.

4. The vehicle carrying the goods was intercepted by the Mobile Squad of the Commercial Tax Department of U.P. on the national highway at Naubatpur, U.P. A show-cause notice dated September 13, 2013 was issued as the goods were not accompanied by form 38/39 or the transit declaration form. In response to the show-cause notice the revisionist produced transit declaration form dated September 18, 2013 with full details relating to the transit of goods through the State of U.P. The Assistant Commissioner, Commercial Tax was not satisfied. He passed an order of seizure on September 21, 2013 and demanded security for the release of the goods separately under the VAT Act as well as the Entry Tax Act. The representation of the revisionist u/s 48(7) of the VAT Act was rejected by the Joint Commissioner (S.I.B.) vide order dated September 25, 2013 in view of the circular dated September 3, 2013. In appeal to the Tribunal, the impugned order dated September 26, 2013 has been passed affirming the seizure order but reducing the security demanded.

5. There is no dispute that the goods at the time of detention were not accompanied by either form 38/39 or the transit declaration form. The transit declaration form which was produced pursuant to the show-cause notice was downloaded by the revisionist subsequent to the detention and it was not in existence when the goods entered the State of U.P. or when they were checked and detained.

6. The order of seizure dated September 21, 2013 which has been filed as annexure 10 with the revision is an order passed under sections 48/50/51 read with rule 52 of the VAT Act and section 13 of the Entry Tax Act. It states that the explanation furnished by the revisionist is not satisfactory. The transit declaration form which has been prescribed by the circular of the Commissioner as per section 52 of the VAT Act read with rule 58 of the Value Added Tax Rules, 2008 (hereinafter referred to as "the Rules") was not accompanying the goods. It gives rise to a presumption that the goods were likely to be unloaded within the State of U.P. for sale with the intention to avoid tax. In short, the order of seizure was passed for the sole reason that the transit declaration form was not mere when the goods were detained.

7. The order of Tribunal records that the goods were detained on September 13, 2013. The transit declaration form was not produced at the time of detention. It was downloaded on September 18, 2013 and was produced on September 19, 2013 with the reply to the show-cause notice. The goods have been seized as they were not accompanied by the transit declaration form. It further records that there was no discrepancy whatsoever in any other document accompanying the goods. The consignor and consignee are bona fide dealers. There was no unloading of goods within the State of U.P. The order of the tribunal also reflects that the seizure was only on the ground that the goods were not accompanied by the transit declaration form.

8. In the above factual background the question which arises for examination is whether the goods in transit are liable to be seized for want of transit declaration form.

9. The power to seize goods is contained in sections 48 and 50 of the VAT Act read with rule 55 of the Rules framed under the VAT Act.

10. Section 48 of the VAT Act is quite comprehensive and provides for the procedure for seizing the goods, for release of the same on security and for making a representation to the higher authority, if necessary. It empowers the officer authorised to seize the goods on the following grounds:

"(i) Where the goods are not accounted for by the dealer in his accounts, registers or other documents maintained in the ordinary course of his business?;

(ii) Where the value of the goods in the documents accompanying the goods is under-valued to the extent of more than 50 per cent, of the value of the goods prevalent at the relevant time in the local market?;

(iii) Where the goods are not traceable to any bona fide dealer?; and

(iv) Where the documents issued by the dealer and accompanying the goods contains wrong particulars?"

11. In addition to the above, section 50 of the VAT Act provides that the officer authorised may also seize the goods where on making search or inspection he is of the opinion that the goods were being transported or attempted to be transported without being covered by the proper and genuine documents referred to in the preceding sub-sections of section 50 of the VAT Act and for the reason to be recorded that there was an attempt to evade assessment or payment of tax likely to be due under the Act.

12. Rule 55 of the Rules provides for the inspection of goods in transit. Sub-rule (2) of rule 55 of the Rules provides that if the officer authorised finds or has reason to believe that anyone or more consignments are not covered by one or more of the documents referred to in sub-rule (1) of rule 54 of the Rules or if any such documents is false, bogus, incorrect, incomplete or invalid, he shall order for the seizure of the goods.

13. In other words, the goods are also liable to be seized if they are not covered by proper documents as prescribed, i.e., form 38/39 vide section 50 of the VAT Act read with rule 54(1) of the Rules or where such document are false, incorrect, incomplete or invalid.

14. Apart from the above provisions in the Act and the Rules, no other provision has been placed before me which may authorise the officer to seize the goods which are being imported in the State or are in transit through the State.

15. None of the above provisions specifically provides for the seizure of goods for want of transit declaration form.

16. Section 52 of the VAT Act provides for the transit of the goods through the State of U.P. It reads as under:

"52. Provision for goods passing through the State.--When a vehicle coming from any place outside the State and bound for any other place outside the State and carrying goods referred to in sub-section (1) of section 50, passes through the State, the driver or other person in charge of such vehicle shall carry such documents as may be prescribed failing which it shall be presumed that the goods carried thereby are meant for sale within the State by the owner or person in charge of the vehicle."

17. According to the above provision the driver or the person in charge of the vehicle carrying the goods through the State of U.P. is required to carry such documents as may be prescribed failing which a presumption can be drawn that the goods are likely to be sold within the State of U.P.

18. Rule 58 of the Rules repeats the above provision as contained in section 52 of the VAT Act and lays down that the goods coming from outside the State of U.P. and going to a distant place outside the State while passing through the State of U.P. are supposed to be accompanied by the documents as may be determined by general or special order issued by the Commissioner from time to time failing which a presumption shall be drawn that the goods carried are meant for sale within the State of U.P.

19. The Commissioner, Commercial Tax, U.P., in accordance with the provisions of section 52 of the VAT Act read with rule 55(5) of the Rules is said to have issued a circular dated July 30, 2009 prescribing for the downloading of a transit declaration form from the website of the Commercial Tax Department of the U.P. for the purpose of carrying goods through the State of U.P. It provides that at the time of entry of the goods in the State a transit declaration form is to be downloaded and duly filled up, inter alia, giving the route through which the goods are to be carried in U.P. mentioning two important places through which the goods would pass, the entry and exit points, the time of entry and the proposed time of exit which should not exceed four days from the date of entry.

20. The transit declaration form as provided by the above circular by the Commissioner has to accompany the goods in transit through the State of U.P. Any deviation or any default in carrying the said transit declaration form would only attract the presumption which has been provided in section 52 of the VAT Act and rule 58 of the Rules. The default in carrying the transit declaration form is not a ground specifically provided for the seizure of goods under the VAT Act.

21. It is not the case of the Department that any other document specified u/s 50 of the VAT Act or the rule 54 of the Rules or as a matter of fact by any other provision of the VAT Act/Rules was not accompanying the goods or was false, incorrect, incomplete or invalid. Therefore, none of the grounds enumerated under the VAT Act actually existed authorising the seizure of the goods.

22. Sri U.K. Pandey, learned standing counsel, submitted that in the absence of transit declaration form it can easily be presumed that the goods were meant for sale within the State of U.P. Therefore, form 38 was necessary. Since the goods were not accompanied even by form 38 they were liable to seizure u/s 50(4) of the VAT Act read with section 48 of the VAT Act.

23. The submission is attractive but devoid of substance as in the present case the notice as well as the seizure order clearly indicates that the goods were under transit from the State of Orissa to the State of Punjab. The consignor and consignee of the goods are bona fide dealers. The goods were not being unloaded in the State of U.P. It means that the same were meant for transportation from outside U.P. to a place outside U.P. The seizure of goods was only for the reason that they were not accompanied by the transit declaration form meaning that the Department itself treated the goods to be under transit through the State of U.P. for which form 38/39 was not necessary. Accordingly, the goods were not supposed to be accompanied by form 38 which is required only for importing the goods inside U.P. The seizure is not for the reason that form 38/39 was not there.

24. In the era of globalization, geographical and trade barriers have become things of the past. It is for this reason that the Department itself had abolished the check-posts. The checking of vehicles or goods during transportation may be necessary for promoting the interest of the Revenue but practical experience is otherwise and it is common knowledge that such exercise causes hindrance not only in trade and commerce and delay in transit of goods but also in the smooth flow of traffic. This apart one cannot loose sight of the ground reality that in a country like India where most of the people are not literate, one cannot expect a driver or the cleaner of the vehicle to be competent enough to download a transit declaration form, fill it correctly and produce it before the authority on demand. Generally, the driver or the cleaner of the vehicle are not possessed of internet facility. There is no guarantee that at every place of entry in U.P. from outside there is sufficient provision where a person can go and download the transit declaration form. Even if cyber cafe is available one is never sure of its proper functioning enabling downloading of transit declaration form round the clock.

25. In such circumstances, the provision for downloading a transit declaration from and to produce it on demand as stipulated by the circular of the Commissioner dated July 30, 09 and September 3, 2013 is totally impractical.

26. In Prakash Parcel Service Limited Vs. State of U.P., it has been held that as the goods were moving along with necessary documents and the Department has neither raised any question or doubt about the genuineness of the documents which were accompanying the goods at the time of interception, merely for the reason that the goods were not accompanied by transit declaration form which was produced subsequently the seizure of goods becomes bad. Therefore, even if the production of the transit declaration form in response to the show cause notice was an afterthought for which no credit could have been given to it in view

of Naresh Kumar v. Commissioner, Commercial Tax [2014] 2 VST-OL 524 (All) : [2013] UPTC 843, wherein it has been held that transit declaration form produced in response to the show-cause notice after downloading it subsequent to detention cannot be recognized as an authentic document, as possession and production of transit declaration form for carrying goods through the State of U.P. is not a ground for seizure, the seizure is without jurisdiction. The absence of transit declaration form only gives rise to a rebuttable presumption and may attract penal consequences but the goods cannot be seized for non-production of it.

27. The answer to the question, therefore, is that the goods cannot be seized for absence of transit declaration form.

28. In view of the aforesaid facts and circumstances, I am of the opinion that as the Act does not specifically provide for the seizure of goods for not carrying the transit declaration form, the order of seizure dated September 21, 2013 is without jurisdiction and cannot be sustained.

29. Accordingly, order dated September 21, 2013 and all the consequential orders including that of the tribunal dated September 26, 2013 are set aside. The revision is allowed. No costs.