(2009) 03 UK CK 0041

In the Uttarakhand High Court

Case No : Trade Tax Revision No. 35 of 2007

Pyarelal Kailashchand — APPELLANT

Vs

Commissioner, Trade Tax — RESPONDENT

Date of Decision : 20-03-2009

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 15A(1)

Citation : (2009) 03 UK CK 0041

Hon'ble Judges : Prafulla C. Pant, J;Brahma Singh Verma, J

Bench : Division Bench

Advocate : Piyush Garg, for the Appellant; Sudhir Kumar, Brief Holder, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This revision, filed u/s 11 of the U.P. Trade Tax Act, 1948 (applicable to the State of Uttarakhand), is directed against the order dated 09-03-2007, passed by Commercial Tax Tribunal, Uttarakhand, Bench Haldwani in Second Appeal No. 03 of 2007.

2. Heard learned Counsel for the parties.

3. Brief facts of the case are that on 8-3-2002, Assistant Commissioner (Enforcement) Commercial Tax, Kashipur, checked vehicle No. U.P.03/1095, loaded with 335 bags of flour (Atta). The driver of the vehicle could not show the import declaration form (No. 31) relating to consignment. On this, Checking Officer, after valuation of the flour at Rs. 1,05,000/-, and accepting the surety of 42,000/-, released the goods. The assessing officer, exercising his power u/s 15-A(1)(o) of the U.P. Trade Tax Act, 1948, vide his order dated 25-2-2003, imposed a penalty of Rs. 42,000/- on the Assessee-revisionist. Aggrieved by the said order, the Assessee-revisionist preferred an appeal before the Joint Commissioner (Appeals). The said authority vide its order dated 25-8-2006 dismissed the appeal. Consequently, Second Appeal No. 03 of 2007 was filed

before the Commercial Tax Tribunal by the revisionist. After hearing the parties, the said second appeal is dismissed vide impugned order dated 9th March 2007. Hence this revision.

4. The sole question of law involved in this revision is whether there was no intention to evade the tax on the part of dealer and the penalty imposed u/s 15-A(1)(o) of the aforesaid Act is liable to be set aside?

5. Admittedly on 8th March 2002, 335 bags of flour were being carried in vehicle No. UP. 03/1095 and the driver could not show the import declaration when the vehicle was intercepted and checked by the Assistant Commissioner (Enforcement) Kashipur. The case of the revisionist is that he moved an application on the very day, i.e. 8-3-2002 that due to driver''s mistake, the import declaration form (No. 31) could not be shown; but the Form 31 existed in respect of the consignment. Supplementary affidavit has been filed on behalf of the revisionist before this Court, enclosing a copy of the application moved on 8-3-2002 to the Assistant Commissioner (Enforcement) Commercial Tax, Kashipur. We have gone through the said document. It nowhere discloses that Form 31 was shown by the dealer or the consignor. What is mentioned in the said application is that the goods may be released on surety.

6. Learned Counsel for the State-Respondent submitted that since the goods were being imported from Shahjahanpur, it was not difficult for the revisionist to get Form 31 later endorsed from the consignor and to produce within 24 hours to save him from imposition of tax when he was caught importing the goods liable to pay the tax. It is further submitted on behalf of the State-Respondent that it is clear case where the dealer has attempted to evade the tax and thereafter when the goods were seized, the document Form 31 was got endorsed from the consignor to validate the transaction.

7. Whether Form 31 was shown to the authority concerned by the revisionist or not, is a question of fact with regard to which there is concurrent finding against him. As such, this Court does not think it just and proper to interfere with the same. As far as the intention to evade the tax is concerned, the same is definitely required before the penalty can be imposed u/s 15-A(1)(o) of U.P. Trade Tax Act, 1948. In the present case, the same is clear on the part of the dealer, as neither the driver of the vehicle nor thereafter Form 31 was shown to the authorities concerned within time. It appears that purchase was attempted to be shown within State to avoid Central Sales Tax, and after the vehicle was intercepted, the endorsement was got made in Form 31 from the seller, it is pertinent to mention here that commercial tax authorities have taken note of the fact that there was no mention of Form 31 on other papers relating to consignment.

8. Therefore, we do not find any substance in the argument advanced on behalf of the revisionist that there was no intention to evade tax and the revision is liable to be dismissed.

9. The revision is dismissed.

