(2016) 07 AHC CK 0170

In the Allahabad High Court

Case No : Sales/trade Tax Revision No. 1580 of 2005

Radhika Oil Industries APPELLANT

Vs

Commissioner Trade Tax RESPONDENT

Date of Decision : 29-07-2016

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 15A(1)(o), Section 28A, Section 28B

Citation : (2016) 11 ADJ 550

Hon'ble Judges : Yashwant Varma, J.

Bench : Single Bench

Advocate : Kunwar Saksena, M.M. Rai and Nitin Kesarwani, Advocates, for the Applicant; C.S.C, for the Opposite Party

Final Decision : Allowed

Judgement

Yashwant Varma, J. - Heard Sri M.M. Rai, the learned counsel for the revisionist and the learned Standing Counsel.

2. The challenge in the present proceedings is to a levy of penalty for alleged contravention of the provisions of Section 28A of the U.P. Trade Tax Act, 19481. A penalty has come to be imposed upon the revisionist in terms of the provisions of Section 15A(1)(o) of the 1948 Act. The case of the revisionist was that a tanker vehicle commenced its journey in the State of Rajasthan and was bound to the premises of a dealer namely Rama Phosphate Ltd. at Indore in the State of Madhya Pradesh. This vehicle is stated to have been intercepted near the Saiyan crossing just prior to the check post established by the Trade Tax authorities in the district of Agra. Since the goods were not accompanied with the documents required in terms of the provisions of Section 28A, they were detained. A notice to show cause was issued on 5 February 2000 calling upon the person in charge of the vehicle to establish cause as to why penalty be not imposed. A reply is stated to have been submitted on 7 February 2000 which, however, did not in the opinion of the authorised person commend acceptance. Accordingly a seizure order was passed and a subsequent penalty order came to be made on 30 March

2000. The revisionist took out a first appeal but the same did not meet any success. Constrained by the order of dismissal of its first appeal, it approached the Tribunal, which has while upholding the levy of penalty reduced the quantum thereof to Rs. 48,000/- being 12% of the value of the goods. It is against the said order that the instant revision has come to be instituted.

3. In order to appreciate the submissions advanced by Sri Rai, it would be first apposite to refer to the provisions of Section 28-A and 28-B of the 1948 Act, which read as follows:

"28-A. Import of goods into the State against declaration. -(1) Any person (hereinafter in this section referred to as the importer) who intends to bring, import or otherwise receive, into the State from any place without the State, any goods other than the goods exempt under clause (a) of Section 4 in such quantity or measure or of such value, as exceeds,--

(a) (i) twenty kilograms in the case of foodgrains, cereals, pulses, soyabean, and all products thereof, and all raw materials including resin, rosin and oilseeds used for extracting oils of any kind; or

(ii) rupees fifty, in the case of other goods; or

(b) the quantity, measure or value notified by the State Government in that behalf, in connection with business, shall obtain the prescribed form of declaration, on payment of the prescribed fee, from the Assessing Authority having jurisdiction over the area where his principal place of business is situated or, in case there is no such place, where he ordinarily resides:

Provided that where the importer intends to bring, import or otherwise receive such goods otherwise than in connection with business, he may, at his option, in the like manner obtain the prescribed form of certificate.

(2) Where such goods are to be consigned by road,-

(a) the importer shall furnish to the consignor the declaration in the prescribed form in duplicate duly filled in and signed by him and the driver or any other person-in-charge of any vehicle carrying any such goods shall carry with him the copies of such declaration duly verified by the consignor in the prescribed manner together with such other documents as may be prescribed, and shall deliver one copy of such declaration,--

(i) where such goods are brought by a road on which a check-post or barrier is established under Section 28, to the officer-in-charge of such check-post or barrier before crossing the check-post or barrier, and

(ii) where such goods are brought by a road on which no such check-post or barrier is established, to the officer-in-charge of the nearest check-post or barrier established under the said section before transporting such goods further within the State;

and the other copy of the declaration and the remaining documents along with the goods to the importer or his agent,

(b) the officer-in-charge of the check-post or barrier shall grant a receipt for the copy of declaration delivered to him and it shall not be necessary for the driver or the person-in-charge of the vehicle to deliver any copy of the declaration at any other check-post or barrier that he may cross, if he shows such receipt to the officer-in-charge of such other check-post or barrier;

(d) the importer shall preserve the other copy of the declaration and other documents delivered to him or to his agent under Clause (a) for such period as may be prescribed and produce them before the Assessing Authority whenever demanded by it within such period.

(3) Where such goods are consigned by rail, river, air or post, the importer shall not--

(a) obtain or cause to be obtained delivery thereof unless he furnishes or causes to be furnished to such officer, as may be authorised in this behalf, by the State Government, a declaration in the prescribed form in duplicate duly filled in and signed by him for endorsement by such officer ; and

(b) after taking delivery, carry the goods away or cause the goods to be carried away from the railway station, steamer or boat, station, air-port or post-office, as the case may be, unless a copy of the declaration duly endorsed by such officer is carried with the goods.

(4) Where such goods are brought into the State as personal luggage, the person bringing them shall carry with him the declaration in the prescribed form duly filled in and signed by the importer, and the importer shall submit the same for endorsement by the officer referred to in sub-section (3) by the next working day.

(4-A) Where any person intends to bring, import or otherwise receive into the State from any place without the State any goods referred to in sub-section (1) otherwise than in connection with business and obtains the prescribed form of certificate, the provisions of sub-sections (2), (3) and (4) shall, mutatis mutandis, apply as if the word "certificate" were substituted for the word "declaration" used therein.

(5) The driver or other person-in-charge of any vehicle carrying any goods referred to in the preceding sub-section shall stop the vehicle at every such check-post or barrier or, when so required by an officer authorised under sub-section (2) of Section 13, at any other place, and keep it stationary for so long as may be considered necessary by the officer-in-charge of the check-post or barrier or the officer authorised under sub-section (2) of Section 13, as the case may be, and allow him to search the vehicle and inspect the goods and all documents referred to in the preceding sub-section, and shall, if so required, give his name and address and the names and addresses of the owner of the vehicle and of the consignor and the consignee of the goods.

(6) Where the officer making the search or inspection under this section finds any person transporting or attempting or abetting to transport any goods to which this section applies without being covered by the proper and genuine documents referred to in the preceding sub-sections and if, for reasons to be recorded, he is satisfied, after giving such person an opportunity of being heard, that such goods were being so transported in an attempt to evade assessment or payment of tax due or likely to be due under this Act, he may order detention of such goods.

(7) The provisions of sub-sections (2), (6) and (8) of Section 13-A shall mutatis mutandis apply to such detention, as they apply to seizure under that section.

(8) Nothing contained in this section shall be construed to impose any obligation on any railway administration or railway servant or the post office or any officer of the post office, or to empower any search, detention or seizure of any goods while on a railway as defined in the Indian Railways Act, 1890, or in a post office as defined in the Indian Post Office Act, 1898.

28-B. Transit of goods by road through the State and issue of authorisation for transit of goods.-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 28-A, passes through the State, the driver or other person-in-charge of such vehicle shall obtain in the prescribed manner an authorisation for transit of goods from the officer-in-charge of the first check-post or barrier after his entry into the State and deliver it to the officer-in-charge of the last check-post or barrier before his exit from the State, failing which it shall be presumed that the goods carried thereby have been sold within the State by the owner or person-in-charge of the vehicle:

Provided that where the goods carried by such vehicle are, after their entry into the State, transported outside the State by any other vehicle or conveyance, the onus of proving that goods have actually moved out of the State shall be on the owner or person-in-charge of the vehicle.

Explanation.--For the purpose of this section, the hirer of the vehicle shall also be deemed to be the owner of the vehicle."

4. A perusal of Section 28-A would establish that a person who intends to bring, import or otherwise receive goods, "into the State" from any place outside the State of U.P. is liable to obtain a declaration form as prescribed upon payment of the requisite fee. From the plain and unambiguous language of Section 28A, it is clear that the obligation which is placed in terms of its provision is upon a person who intends to bring import or otherwise receive goods into the State. Section 28-A obviously, therefore, cannot apply to goods, which are merely transiting the State of U.P. on their journey onwards to another State.

5. The case of goods which enter the State of U.P. and transit the State onwards has in fact been taken care of and requisite provisions in respect of such

eventuality provisioned for in Section 28-B. Here the obligation which is placed is that the person carrying goods is required to obtain an authorisation for transit of goods from the officer in charge of the first check post or barrier which falls after his entry into the State and surrender the same before he exits the State at the last check post failing which the provision raises a presumption that the goods have been sold within the State. While clause (o) of Section 15-A (1) deals with the levy of penalty in a case where goods have been imported or transported in contravention of the provisions of Section 28-A, clause (q) provides for a levy of penalty in case of an infraction of Section 28B.

6. The Tribunal has in the opinion of this Court while undertaking a labored exercise to uphold the levy of penalty clearly failed to bear in mind the fundamental facets of Sections 28A and 28B. While various faults have been found with respect to the quality of the documentation which was found to be accompanying the goods in question, the Tribunal has failed to bear in mind the primary ingredients for applicability of Section 28-A. It does not at any place in its judgment record any reason to disbelieve the submission of the assessee that the goods were transiting the State of U.P. and were bound for Indore in the State of M.P. Obviously, therefore, there was no occasion for it being asserted or held that the goods in question were intended to be brought, imported or otherwise received into the State of U.P. Since in view of the above the provisions of section 28A did not apply, consequently the levy of penalty in terms of clause (o) of Section 15-A (1) was clearly unsustainable and unjustified.

7. While it is true that the proceedings for levy of penalty were instituted with reference to clause (o) of Section 15-A (1) alone, the case of the revisionist may be tested even on the pedestal of Section 28-B. It becomes pertinent to note that for violation of Section 28-B or its provisions a like penalty is provisioned for in clause (q) of Section 15-A(1). The vehicle in question commenced its journey in the State of Rajasthan and is stated to have been apprehended just before the check post at Saiyan. The submission of the learned counsel for the revisionist that Saiyan was in fact the first check post which the revisionist would cross in its passage of transit is not disputed. Now it needs to be borne in mind that section 28B lays down the requirement of obtaining what may be called a transit pass. This is a document which the person in charge of the vehicle must obtain at the time of entry into the State and surrender upon exiting the State. The time at which this transit pass is to be obtained and surrendered is prescribed to be "the first check-post or barrier after his entry into the State and deliver it to the officer-in-charge of the last check-post or barrier before his exit from the State". The statutory presumption of a sale having occurred within the State or a violation of section 28-B would come about only upon the failure on the part of the person to obtain the requisite form and declaration upon crossing the first check post or barrier which fell after his entry into the State. Here, the vehicle was apprehended before the first check post which fell upon entry into the State. It was not the case of the Department that the vehicle of the revisionist had crossed the Saiyan check post and was exiting the State of U.P. at which stage

the goods were apprehended. The provisions of section 28B were therefore not infringed. Consequently, the question of a levy of penalty in terms of section 15A (1)(q) would also not arise. The Court therefore finds that the orders of the authorised officer, first appellate authority as well as the Tribunal are clearly unsustainable and arbitrary.

8. For the aforesaid reasons, this revision shall stand allowed. The orders dated 7 February 2000 and 30 May 2000 passed by authorised officer, 8 December 2000 passed by the first appellate authority as well as the order dated 3 March 2005 passed by the Tribunal are hereby set aside.