(1985) 01 AHC CK 0062

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 107 of 1983

Rajasthan Yarn Syndicate APPELLANT

Vs

Assistant Commissioner, Sales Tax (Executive) and Another RESPONDENT

Date of Decision : 01-01-1985

Acts Referred:

Citation : (1985) 60 STC 85

Hon'ble Judges : V.N. Khare, J;N.D. Ojha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.D. Ojha, J.—By this writ petition the petitioner seeks the quashing of a show cause notice dated 10th December, 1983 issued by the Sales Tax Officer, Mobile Squad, Jhansi, as also an order of the Assistant Commissioner (Executive), Sales Tax, Jhansi, dated 14th December, 1983. A further prayer has been made that that cotton yarn belonging to the petitioner which was seized by the Sales Tax Officer, Mobile Squad, Jhansi, while it was being transported on a truck from Kanpur to Mauranipur, may be directed to be released in favour of the petitioner.

2. The case of the petitioner as is apparent from paragraph 5 of the writ petition is that the cotton yarn belongs to it. The quantity of the cotton yarn belonging to the petitioner, Rajasthan Yarn Syndicate, 49/50, General Ganj, Kanpur, is shown as 24 bags in the said paragraph. According to the petitioner cotton yarn is taxable at single point and the tax is payable either by the manufacturer or by the importer. The seizure of the cotton yarn by respondent No. 2 as well as the issue of the notice have been challenged on the ground that respondent No. 2 had no jurisdiction to do so.

3. Having heard counsel for the petitioner and the Standing Counsel for the respondents we are of opinion that on the facts of the instant case the writ petition deserves to be allowed. The fact that the petitioner is the owner of the cotton yarn which was being transported from Kanpur to Mauranipur as stated in

paragraph 5 of the writ petition stands admitted in the counter-affidavit. The allegation in paragraph 3 of the writ petition that the petitioner is not the manufacturer of the cotton yarn has not been denied in the counter-affidavit. It has also not been stated specifically in the counter-affidavit that the petitioner was importing the cotton yarn at the time when it was seized. Indeed as already pointed out above, the contents of paragraph 5 of the writ petition having been admitted it is apparent that at the time when the cotton yarn in question was seized the same was being transported from Kanpur to Mauranipur within the State of Uttar Pradesh. It appears that the ground on which the cotton yarn of the petitioner has been seized is that the value of the goods was not mentioned in the challan. The Standing Counsel was required to point out any relevant provision either in the U. P. Sales Tax Act or the Rules framed thereunder whereby it was obligatory on the petitioner who was only transporting the cotton yarn from one place to another within the State of Uttar Pradesh to have mentioned the value of the goods, which were being transported, in the challan. In this view of the matter , the seizure of the cotton yarn in question, on the face of it, was without jurisdiction. On the same ground the notice requiring the petitioner to show cause as to why penalty proceedings may not be initiated against it is also without jurisdiction.

4. In the result the writ petition succeeds and is allowed and the respondents are directed not to initiate proceedings for penalty against the petitioner on the basis of the seizure referred to above. They are further directed to release the cotton yarn seized from the petitioner on 10th December, 1983 from vehicle No. UPV 1101 by the Sales Tax Officer, Mobile Squad, Jhansi, forthwith on the production of a certified copy of this order. There shall be no order as to costs.

5. A copy of this order may be supplied to counsel for the petitioner within three days on payment of usual charges.

