
(2007) 04 AHC CK 0299
In the Allahabad High Court

Ram Dayal Raj Kumar

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

Date of Decision : 06-04-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 21 VST 605

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act") is directed against the order of the Tribunal dated June 12, 2001 relating to the assessment year 1988-89, by which the Tribunal has confirmed the penalty u/s 15A(1)(o) of the Act at Rs. 10,000.

2. Brief facts of the case are that the applicant is a registered dealer and was carrying on the business of foodgrains, etc., against from XXXI No. 3223727. The applicant had imported 98 bags urad (mogar) and rajma (dagi). At the check-post, bill, bulity and declaration form were produced for necessary endorsement. On physical verification in place of urad (mogra) and rajma (dagi), dal urad dhova and normal rajma were found. On the basis of the wrong description of the goods, the same were seized and on the estimated value of Rs. 1 lakh, security at Rs. 40,000 was demanded. In pursuance of the seizure, penalty proceeding u/s 15A(1)(o) of the Act was initiated. The applicant submitted the reply. In reply, it was stated that urad (mogra) is being called dal dhova in the seller area and in respect of the rajma it was submitted that it was of inferior quality. The assessing authority accepted the explanation with regard to the urad (mogra) but had not accepted the explanation with regard to the rajma (dagi) and on the estimated value of Rs. 40,000 a sum of Rs. 16,000 was levied towards penalty. The order of the assessing authority has been confirmed in first appeal. The Tribunal by the impugned order allowed the appeal in part. The

Tribunal confirmed the levy of penalty but has reduced the quantum of penalty to Rs. 10,000.

3. Heard Sri Amit Jaitley, learned Counsel holding brief on behalf of Sri Piyush Agrawal, Advocate for the applicant and Sri Nimai Das, learned Standing Counsel.

4. Learned Counsel for the applicant submitted that since the quality of rajma was inferior, in the description it was mentioned rajma (dagi). He submitted that merely because there was a difference of opinion with regard to the description of goods between the applicant and the revenue authorities, it cannot be said that the applicant attempted to evade the tax. He submitted that at the check-post, bill, bulity and declaration form were submitted for necessary verification. In case, the Check-post Officer has any doubt about the quality of the goods, sample of the same would have been taken for consideration at the time of assessment proceedings, but no sample was taken by the Check-post Officer. He submitted that merely because the assessing authority has different opinion about the nature of the goods it cannot be said that the applicant had attempted to evade the tax. Learned Standing Counsel relied upon the order of the Tribunal.

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

6. The purpose of the declaration form is to make the Department aware about the transaction. In the present case, the applicant had made a declaration before the Check-post Officer about the import of the goods, bill, bulity and the declaration form were produced. In case, the Check-post Officer had any doubt about the nature of the goods, the Check-post Officer would have made the necessary endorsement in form XXXI and taken a sample of the goods for consideration at the time of the assessment proceedings. It appears that no sample had been taken. Even assuming that there was difference of opinion about the nature of the goods, it does not lead to the inference that the applicant had attempted to evade the tax. On the facts and circumstances of the case, the Revenue failed to make out any case that the applicant attempted to evade the tax. In the absence of any such material, penalty u/s 15A(1)(o) of the Act cannot be sustained.

7. In the result, revision is allowed. Order of the Tribunal is set aside and the penalty u/s 15A(1)(o) of the Act is quashed.