(2014) 04 AHC CK 0001

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 102 of 2014

Raphik Mohammad APPELLANT

Vs

Commissioner, Commercial Tax RESPONDENT

Date of Decision : 17-04-2014

Acts Referred:

Uttar Pradesh Value Added Tax Act, 2008 — Section 48(7) 50 50(1) 58

Citation : (2015) 83 VST 356

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Kunwar Saksena, Advocate for the Appellant;

Judgement

Sudhir Agarwal, J.

1. This commercial tax revision under section 58 of the Uttar Pradesh Value Added Tax Act, 2008 (hereinafter referred to as "the Act, 2008") was entertained to consider the following two questions of law :

"(i) Whether seizure of goods in purported exercise of power under section 50 of the Uttar Pradesh Value Added Tax Act, 2008 was justified ?

(ii) Whether quantum and form of security demanded for release of the goods was excessive and arbitrary ?"

The Assistant Commissioner (Mobile Unit No. 8), Commercial Tax Department, Ghaziabad on November 28, 2013 at about 4.25 a.m. in the early morning intercepted a vehicle, in the form of new chassis of a goods carrier, with registration No. RJ 20 TC 0176/Temporary/12608, near Indrapuram Cut, on National Highway No. 24, Ghaziabad. It is said that driver on inquiry told that he was taking the chassis from Jaipur to Moradabad for getting its body, built by some body maker. Except temporary registration certificate and insurance certificate, issued on November 27, 2013, driver did not possess any other document. The Officer Incharge, Mobile Unit, forming an opinion that chassis was being taken to Moradabad or elsewhere in U.P. for sale, by evading payment of tax, detained it and issued notice to driver of vehicle to explain as to why the chassis be not seized. The driver submitted explanation through his authorized representative/advocate Sri M.K. Arora wherein he claimed that he was taking chassis to Moradabad for getting its body built thereat and not for sale. He also said that owner of vehicle had purchased chassis against a loan sanctioned by bank.

2. The Assistant Commissioner, however, vide order dated December 19, 2013, dissatisfied with explanation, directed for seizure of chassis and it was to be released on furnishing a cash security of Rs. 6,24,000, equivalent to 40 per cent, of the estimated value of chassis. The revisionist filed application under section 48(7) of the Act, 2008 which was rejected by Joint Commissioner on December 28, 2013, whereupon Appeal No. 753 of 2013 preferred by revisionist has also been dismissed by the Tribunal vide impugned order dated January 3, 2014.

3. Sri Kunwar Saksena, learned counsel for the revisionist, contended that there was no material to infer that chassis was liable to be sold by evading payment of tax or that there was any illegality or irregularity so as to justify aforesaid seizure. The entire proceedings including impugned orders are patently illegal. He said that chassis was not brought in U.P. in connection with any business so as to attract section 50(1) particularly when there was no intention to evade payment of tax. The chassis having been purchased against bank loan, could not have been resold anywhere and, therefore also, seizure of chassis is patently illegal.

4. The record shows that revisionist is not a mere driver but the owner of chassis in question as the invoice was issued by M/s. Ganga Nagar Motors, Kota (Rajasthan) in the name of revisionist. The chassis is shown hypothecated to HDFC Bank. Regarding intention of revisionist, it is too early at this stage to form any conclusive opinion but the fact remains that revisionist did not inform checking authority as to whom he has to met for getting the body, built on the chassis. The revisionist has given his address at Kota whereat the chassis was purchased. He was driving chassis to Moradabad for getting a body built thereon without naming the person or agency who has to undergo such job.

5. However, this by itself, in my view, may not be sufficient to give an impression and no person of ordinary prudence, having reasonable acquaintance in the matter like present, on the basis of above material, can form an opinion that the driver or owner has brought chassis in State of U.P. for sale, by evading payment of tax. A chassis registered on temporary basis and hypothecated to bank, cannot be sold without several formalities in which various other agencies like Transport Department, HDFC Bank, etc., are involved. It is not the case of revisionist that a person, purchasing a single vehicle or chassis would answer the definition of a "dealer" or such a person, if enters into State of U.P., has to obtain requisite forms, necessary for import of goods by dealers. To me it appears that the respondents-authorities in this case have adopted an extra hyper-technical

view based on total conjectures and surmises. This is nothing but a sheer endeavour on their part to harass an otherwise bona fide purchaser of goods outside the State of U.P. I do not find as to how seizure is consistent with the requirement of statute. In fact seizure from its very inception is patently illegal and amounts to gross abuse of process of law. In the result, revision is allowed. Both the questions of law are answered in favour of revisionist and against Revenue. The impugned orders are hereby quashed. The respondents-authorities are directed to release chassis in question forthwith and without any further delay. The revisionist shall also be entitled to cost, which I quantify to Rs. 5,000.