
(2009) 08 AHC CK 0175
In the Allahabad High Court
Case No : Trade Tax Revision No. 890 of 2001

Setu Textiles, Baghpat

APPELLANT

Vs

Commissioner of Trade Tax, U.P. Lucknow

RESPONDENT

Date of Decision : 26-08-2009

Acts Referred:

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

Citation : (2009) 08 AHC CK 0175

Hon'ble Judges : Rajes Kumar, J

Final Decision : Allowed

Judgement

Rajesh Kumar, J.—The present revision under Section 11 of the U.P. Trade Tax Act (hereinafter referred to as the "Act") is directed against the order of the Tribunal dated 6.6.2001 in Appeal no. 415 of 2000 for the assessment year 1998-99 by which the Tribunal has rejected the appeal and confirmed the penalty under Section 15A(1)(o) of the Act.

2. The applicant was a registered dealer under the U.P. Trade Tax Act and engaged in the business of manufacture and sale of cloths, which was exempted under Section 4 of the Act. The applicant's unit claimed to be 100% export oriented unit. Acid was one of the raw materials used in the manufacturing of cloths. On 10.8.1998, the Check Post Officer has inspected Tanker No. D.L./G.B.2562 loaded with 10100 kg. Glacial Acetic Acid. The driver of the vehicle produced one proforma invoice only issued by M/s. Dhampur Alco Chem. Ltd., New Delhi. In the absence of declaration form and other documents, the goods were detained and a show cause notice was issued. The applicant filed reply stating therein that the order of the supply was given by the applicant to M/s. Dhampur Alco Chem. Ltd., New Delhi, for the supply of Glacial Acetic Acid and one Form 31 no. 2113927 was also issued. A cheque no. 645933 dated 25.7.1988 for Rs.3,24,000/- was also issued. In pursuance of the order, M/s. Dhampur Alco Chem. Ltd., New Delhi, has placed its order to M/s. S.S. Shanker Rav Mohartpatil S.S.K.L. Shakarnagar Akulj, Maharashtra. The said party has

despatched 10100 kg. Glacial Acetic Acid against challan no. 355 dated 1.8.1998 to Delhi. The goods were despatched in Tanker no. D.L./G.B.2562 from Shakarnagar, Maharashtra to Delhi. The driver of the vehicle was instructed to keep the vehicle away from the check post and wait for the necessary documents.

3. It is the case of the applicant that while the vehicle was standing before the check post and waiting for the documents, the Check Post Officer inspected the vehicle and found that the documents relating to the goods were not available. The copies of the invoice number, declaration form, etc. were produced before the Check Post Officer. However, the Check Post Officer has not accepted the plea of the applicant and passed the seizure order and demanded security at 40% of the value of the goods, which was reduced by the Joint Commissioner, Check Post to Rs.82,458/ in the form of bank guarantee. The applicant furnished the bank guarantee and the goods were released. In pursuance of the seizure order, the penalty proceeding under section 15A(1)(o) of the Act was initiated. The applicant reiterated the reply given before the Check Post Officer and submitted that no case of an attempt to evade the tax has been made out and, therefore, the penalty was not leviable. However, the assessing authority has not accepted the plea of the applicant and levied the penalty at Rs.82,458/ vide order dated 22.10.99. The order of the assessing authority has been confirmed in first appeal and by the Tribunal in second appeal.

4. Being aggrieved by the order, the present revision has been filed. The Tribunal has held that at the time of inspection, the declaration forms and bills were not available and, therefore, there was a violation of Section 28A of the Act.

5. Heard Sri Piyush Agrawal, learned counsel for the applicant, and learned Standing Counsel.

6. Learned counsel for the applicant submitted that in pursuance of the order booked by the applicant for the purchase of Glacial Acetic Acid, a sum of Rs.3,24,000/ was paid by cheque to M/s. Dhampur Alco Chem. Ltd., New Delhi on 25.7.1998. This establishes the intent to record the purchases in the books of account. He further submitted that the applicant was a manufacturer of handloom and powerloom cloths which were exempted from tax and since acid was raw material and not meant for sale. He further submitted that after the show cause notice, invoice and declaration forms were submitted before the Check Post officer. He further submitted that on the basis of the seizure, the books of account have been rejected. The Tribunal by the impugned order dated 8.3.2007 in Appeal no. 255 of 2002 accepted the books of account and disclosed turnover. Photocopy of the order of the Tribunal has been provided, which is part of the record. On the basis of the aforesaid material, it is submitted that no case of an attempt to evade the tax exists and, therefore, penalty is liable to be set aside.

7. Learned Standing Counsel relied upon the order of the Tribunal.

8. Having heard learned counsel for the parties, I have perused the impugned

order and the materials available on record.

9. It is not in dispute that the applicant was the manufacturer of handloom and powerloom cloths which were exempted from tax under Section 4 of the Act. It has also not been disputed that the Glacial Acetic Acid was the raw material required in the manufacturing of handloom cloths. It has also not been disputed that the applicant had booked the order for the supply of the Acid with M/s. Dhampur Alco Chem. Ltd., New Delhi and made an advance payment through cheque no. 645933 dated 25.7.1988 prior to the seizure of the goods. Along with the goods, proforma invoice was available. It was the case of the applicant that the driver of the vehicle, which was coming from Maharashtra, was directed to park the vehicle prior to the check post and wait for the documents and he was standing prior to the check post and waiting for the documents. The Check Post Officer inspected the vehicle. In my view having regard to the fact that the payment was made in advance by cheque, Form C was issued and bills and Form 31 were submitted at the check post, the dealer was the manufacturer of exempted goods and items sought to be imported were raw materials and the Tribunal has accepted the books of account and disclosed turnover and has held that the entries of the goods seized have been duly made in the books of account. No inference can be drawn that there was an attempt to evade the tax. The Tribunal and the authorities below have committed error in levying the penalty.

10. The Apex Court in the case of CST Versus M/S Oriental Carbon Limited, reported in 1997 NTN 105 while affirming the decision in the case of CST Vs M/s. Oriental Carbon Ltd., reported in 1985 U.P.T.C.613 held that penalty under Section 15A(1)(o) of the Act cannot be levied unless a case of an attempt to evade the tax is made out.

11. On the facts and circumstances stated above, I am of the view that no case of an attempt to evade the tax is made out and, therefore, the penalty is liable to be set aside.

12. In the result, revision is allowed. The order of the Tribunal dated 6.6.2001 is set aside and penalty under Section 15A(1)(o) of the Act is quashed.