(2007) 10 AHC CK 0031

In the Allahabad High Court

Shanker Lal Chaubey APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 28B

Citation : (2008) 14 VST 102

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—These are three revisions arising from the order of the Tribunal dated August 26, 2002 all for the assessment year 1993-94.

2. In all three revisions, since the common facts are involved, the same are being disposed of by a common order. The Tribunal has also disposed of three separate appeals of the three parties by a common order as the common facts and questions were involved.

3. The brief facts of the case are that all the three parties, who are applicants in the present revisions, obtained transit passes at the Shree Nagar check-post, Hamirpur for the transportation of the goods through the State of U. P. meant for delivery at Patna, State of Bihar. Under the provisions of Section 28B of the U. P. Trade Tax Act, 1948 the said three transit passes were to be surrendered at the exit check-post, namely, Naubatpur while leaving the State of U. P. When the assessing authority received the information that the alleged three transit passes were not surrendered at the Naubatpur check-post, proceedings u/s 15A(1)(q) were initiated. It appears that the ex parte orders were passed which were reopened and thereafter show cause notices were issued to the applicants. On the date fixed neither they could appear in person nor could they furnish any reply to the show cause notices. The assessing authority passed the penalty order and levied the penalty for the violation of Section 28B of the Act. Being aggrieved by the penalty orders, the applicants filed appeals before the Deputy Commissioner (Appeals), Trade Tax, Jhansi. The Deputy Commissioner (Appeals)

vide order dated April 7, 1998 rejected the appeals. Being aggrieved by the order of the Deputy Commissioner (Appeals) the applicant filed three separate appeals before the Tribunal. The Tribunal by the impugned order allowed the appeals in part. The Tribunal held that there was violation of provisions of Section 28B of the Act but reduced the quantum of penalty.

4. Heard Sri Alok Kumar, learned Counsel for the applicant and Sri B. K. Pandey, learned Standing Counsel. The learned Counsel for the applicant submitted that the goods, in respect of which the transit passes were obtained from the Shree Nagar check-post, Hamirpur, were unloaded at Kanpur Central Railway Station and thereafter dispatched through railway to Patna State of Bihar where impugned goods were delivered to the respective parties. He submitted that when the goods were booked at the Kanpur Railway Station, necessary endorsement had been taken from the booking clerk of the railway in the transit pass which was submitted before the authority concerned to establish that the same goods in respect of which transit passes were obtained, were dispatched to Patna through railway. He submitted that the aforesaid endorsement clearly establishes that the goods have not been sold inside the State of U. P. and have gone outside the State of U. P. and thus the presumption raised u/s 28B of the Act stand rebutted. In the circumstances, no penalty was leviable. He further submitted that in form XXXIV it was mentioned that the impugned goods are to go to Patna through railway from Kanpur.

5. Sri B.K. Pandey, learned Standing Counsel, submitted that u/s 28B of the Act the applicants have to surrender the transit passes at the exit check-post. He submitted that the applicants had no option under the law to break the movement and dispatch the goods through railway from any place inside the State of U. P. He submitted that before the booking of the goods at Kanpur railway station, no information has been given to the trade tax authority. He further submitted that the transit pass had been obtained on December 25,1993 while according to the applicant the goods had arrived at Kanpur on December 30, 1993 and booked on January 1, 1994. It has not been explained that when maximum time for the transportation from Shree Nagar check-post, Hamirpur to Kanpur is about 6-8 hours, why it took 5 days in reaching Kanpur from Hamirpur. He further submitted that the booking clerk of railway has no authority under the law to make an endorsement in the transit passes and therefore such endorsement has no evidentiary value. He further submitted that it was claimed that the goods were dispatched by a party of Chhatarpur (M. P.) and on inquiry, it was found that the said party had not disclosed such sales in its assessment as inter-State sales and could not produce the books of account for necessary verification. In this view of the matter, the dealer failed to prove that the goods had actually gone outside the State of U. P. He submitted that the method adopted by the applicant was an organised and planned way to evade the tax and even the Tribunal has taken a lenient view in reducing the quantum of penalty. He submitted that this kind of method adopted by the applicant may be dealt with severely.

6. The learned Standing Counsel further submitted that the argument of learned Counsel for the applicant that in form XXXIV there was a mention that the goods would be sent to Patna from Kanpur railway station is an afterthought. Nowhere this fact has been pleaded before the authorities below even in the grounds of appeal or before the Deputy Commissioner (Appeals) and appears to be by way of manipulation.

7. Heard learned Counsel for the parties. I have perused the order of the Tribunal and authorities below. I do not find any substance in the argument of the learned Counsel for the applicants. Form XXXIV which was obtained in the entry check-post has to be surrendered at the exit check-post as provided u/s 28B of the Act. There was no option with the applicant to dispatch the goods through railway from Kanpur to Patna. It is not proved that the goods which is claimed to have been dispatched to Patna through railway station were the same goods in respect of which form 34 was obtained. Before dispatching the goods through railway no information was given to the trade tax authorities. On inquiry, it was found that Chhatarpur party has not shown such transactions as inter-State sales in its assessment proceedings and books of account have not been produced for necessary verification. In this view of the matter, the applicants failed to prove that the goods in respect of which the transit passes were obtained have gone outside the State of U. P. The admitted fact is that the transit passes obtained at the entry check-post have not been surrendered at the exit check-post. In view of the above, it is a clear case where an organised and planned method had been adopted by the applicant to evade the tax. The submission of learned Counsel for the applicant that in form XXXIV there was a mention that the goods would be sent to Patna from Kanpur railway station is an afterthought. Nowhere this fact has been pleaded before the authorities below even in the grounds of appeals and in the circumstances this fact cannot be noticed for the first time in this Court. The Tribunal has rightly upheld the penalty and no interference is called for by this Court. In the result, all the three revisions fail and are dismissed.