(2012) 12 UK CK 0034

In the Uttarakhand High Court

Case No : Trade Tax Revision No. 44 of 2007

Sharvshri Sita Ram Anirudh Kumar APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 18-12-2012

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 15A, 28A(1)

Citation : (2013) 60 VST 111

Hon'ble Judges : Barin Ghosh, C.J;Umesh Chandra Dhyani, J

Bench : Division Bench

Advocate : Surendra Kumar Posti, for the Appellant; Vinay Kumar, for the Respondent

Final Decision : Allowed

Judgement

Barin Ghosh, C.J.—Section 15A of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act"), against clause (o) of sub-section (1), provided that, if the assessing authority is satisfied that any dealer or other person imports or transports, or attempts to import or transport, or abets the import or transport, of any goods in contravention of the provisions of section 28A, it may, after such inquiry, if any, as it may deem necessary, direct that such dealer or person shall pay, by way of penalty, in addition to the tax, if any, payable by him. u/s 28A, sub-section (1), an importer is required to obtain the prescribed form of declaration on payment of the prescribed fee from the assessing authority haying jurisdiction over the area, where his principal place of business is situate or, in case there is no such place, where he ordinarily resides, in the event, he intends to bring import or otherwise receive, into the State from any place outside the State, any goods as mentioned in the said sub-section. Sub-section (2) of section 28A imposes certain obligations upon the importer in relation to goods, which are to be consigned by road. Such obligations may be summarized thus: The importer is required to furnish the form to the consignor; copy thereof is to be delivered to the first check-post; if there is no check-post, the same is required to be delivered to the assessing authority on the next working day; the importer is required to preserve one copy of the form with him.

In the instant case, this form was not produced at the check-post at the time when the truck, carrying the goods, crossed the check-post. There is no dispute that, before the truck crossed the check-post, the form was obtained. No sooner it was pointed out that the form has not been furnished at the check-post, the same was, produced. The said state of affair clearly indicates that there was an infraction of the provisions of section 28A, as there was failure to produce the form in question at the time when the goods crossed the check-post. The form was available and the same was produced at the check-post. There was, in the background of the facts of the case, no question of the assessing authority being satisfied that the revisionist imported goods in contravention of the provisions of section 28A of the Act.

2. We, accordingly, interfere and set aside the penalty levied by the assessing authority and, as such, set aside the orders of the assessing authority as well as of the appellate authority and the Tribunal. The revision is, accordingly, allowed.