(2016) 12 AHC CK 0222

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 478 of 2016

The Commissioner Commercial Tax APPELLANT

Vs

S/S D.B. Sons RESPONDENT

Date of Decision : 20-12-2016

Acts Referred:

Citation : (2017) 95 UPTC 147

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : Sri B.K. Pandey, S.C, for the Applicant; Sri. Aloke Kumar, Advocate, for the Opposite Party

Final Decision : Disposed Off

Judgement

Surya Prakash Kesarwani, J.—Heard Sri B.K. Pandey, learned counsel for the applicant and Sri Aloke Kumar, learned counsel for the respondent-assessee.

2. Briefly stated the facts of the present case are that the survey was conducted by the Special Investigation Branch of the applicant''s department in a Cold Storage being run under the name and style of "M/s. Vishwanath Cold Storage & Ice Factory, Padari Bazaar, Gorakhpur".

3. A show cause notice dated 13.9.2016 was issued by the Assistant Commissioner, Commercial Tax Mobile Squad, Third Unit, Tara Mandal, Gorakhpur to the respondent on certain points allegedly indicating some unaccounted stock of dry chilly. The assessee submitted a reply which was found to be not satisfactory. By order dated 24.10.2016 the goods were seized and cash security amounting to Rs.2,19,891/- being equivalent to 15% of the estimated value of the goods was demanded for release of the goods.

4. Aggrieved with the aforesaid seizure order, the respondent - assessee filed an application under proviso to Section 48(7) of the U.P. VAT Act, 2008 (hereinafter referred to as "the Act") which was rejected by the Joint Commissioner (SIB), Commercial Tax Zone - A, Gorakhpur by order dated 18.11.2016.

5. Aggrieved with the said order the respondent - assessee preferred Second Appeal No.647 of 2016 before the Member Commercial Tax Tribunal, Gorakhpur, Bench Gorakhpur which has been allowed by the impugned order dated 29.11.2016.

6. Learned standing counsel for the applicant submits that despite there being clear instances of unaccounted stock supported by the documentary evidences, the Tribunal committed a manifest error of law and facts to direct for release of the goods without security.

7. Sri Aloke Kumar, learned counsel for the respondent assessee submits that respondent assessee is a registered dealer. Entire goods were duly accounted in the books of accounts and no discrepancy whatsoever was found. He submits that even if there was some error in the register of the cold storage, yet it can not be made basis to reject the contention of the respondent assessee unless any discrepancy is found in the books of accounts or the invoices. He submits that entire stock is well supported by purchased invoices. Part removal of stock was supported by slips of cold storage. Under the circumstances, there was no occasion for the authorities to seize the goods or demand cash security for release of the goods.

8. I have carefully considered the submissions of learned counsel for the parties.

9. Perusal of the seizure order, order of the Joint Commissioner under Proviso to Section 48(7) of the Act and the impugned order of the Tribunal shows that some discrepancies were found by the Mobile Squad Authority in the stock of dry chilly stored by the respondent assessee in the aforesaid cold storage. The discrepancy was explained by the respondent assessee but the explanation was found to be unsatisfactory by the Mobile Squad Authority. The stand of the assessee that no discrepancies whatsoever was found in his books of accounts, is the matter to be examined at the time of penalty proceedings, if any, or at the time of assessment proceedings. However, it can not be said that there was absolutely no material before the Mobile Squad Authority to seize the goods and to demand security.

10. Considering the facts and circumstances of the case, I am of the view that the ends of justice should be better served if the goods are directed to be released on deposit of the security in the form of other than cash or bank guarantee for an amount equivalent to the amount of tax as may be involved with respect to the seized goods.

11. Respondent assessee shall furnish the aforesaid security within two weeks from today and on furnishing of the security the goods shall be released forthwith.

12. It is clarified that the assessment proceedings or the penalty proceedings, if any, shall be completed without being influenced by any of the observations made in the body of this order.

13. Revision is disposed of.