(2016) 12 AHC CK 0213

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 477 of 2016

The Commissioner Commercial Tax APPELLANT

Vs

S/S Sri Ram Agency RESPONDENT

Date of Decision : 20-12-2016

Acts Referred:

Citation : (2017) 95 UPTC 149

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : Sri. B.K. Pandey, S.C, for the Applicant; Sri Rishi Raj Kapoor, Advocate, for the Opposite Party

Final Decision : Disposed Off

Judgement

Surya Prakash Kesarwani, J.—Heard Sri B.K. Pandey, learned standing counsel for the revisionist and Sri Rishi Raj Kapoor, learned counsel for the respondent assessee who has put in appearance and has also filed counter affidavit which is taken on record.

2. On 15.12.2016 this Court passed the following order:

"Heard Sri B.K. Pandey, learned Standing Counsel for the revisionist. This revision has been filed challenging the order dated 29.11.2016 in Second Appeal No. 624 of 2016 under Section 48(7) of the U.P. VAT Act, 2008 passed by Member, Commercial Tax Tribunal, Gorakhpur Bench, Gorakhpur.

On 22.07.2016, two trucks bearing registration numbers UK 06 CA 8544 and UK 06 CA 7293 carrying ''Sariya'' along with tax invoice nos. 732, 733, 734 and 735 all dated 21.07.2016 for 8.94, 8.06, 8.10 and 7.00 MTs sariya were intercepted at Kasaya. The trucks were coming from the side of Tamkuhiraj. ''Sariya'' loaded in the trucks were bearing brand mark of Neel Kamal TMT and Natraj TMT which are manufactured by manufacturers situated in Bihar.

The aforesaid tax invoices were issued in the name of M/s. Om Prakash Khadh

Bhandar, Chauri-Chaura, Gorakhpur, M/s. Prakash Iron Stores, Chauri-Chaura, Gorakhpur and M/s. Prakash Iron Stores, Chauri-Chaura, Gorakhpur. The statement of the driver of truck bearing registration No. UK 06 CA 8544 namely Sri Karnail Singh was recorded, who stated that he has loaded ''sariya'' in question from Patna (Bihar) and the bill which was given at Patna was taken back at the border and new bill which is accompanying the goods was handed over to him. He was not having any weighment slip. No Form-21, as prescribed by Rule 40 of the U.P. VAT Rules under Section 21 of the U.P. VAT Act were accompanying the goods.

On these facts, the Assistant Commissioner (Incharge), Commercial Tax, Mobile Squad Unit-3, Gorakhpur issued a show cause notice dated 22.07.2016 to the respondent requiring them to show cause as to why the goods may not be seized as the same is being transported to evade payment of tax. No reply was submitted by the respondent. Consequently, by order dated 28.07.2016 the goods were seized giving an option for release of goods on deposit of security of Rs. 1,65,485/- to cover up the penalty likely to be imposed. The respondent-assessee filed an application under Section 48(7) of the Act before the Joint Commissioner, SIB, Commercial Tax, Zone-A, Gorakhpur who rejected the application by a detailed order dated 22.09.2016. Aggrieved with this order, the respondent filed a Second Appeal No. 624 of 2016 before the Member, Commercial Tax Tribunal, Gorakhpur Bench, Gorakhpur, who allowed the appeal and directed the goods to be released without security.

The impugned order has been passed by the Tribunal merely on the ground that the respondent was not afforded opportunity to cross examine the driver, whereas, the drivers were own men of the respondent-assessee. The Tribunal has completely overlooked and did not address at all on the findings recorded by the Mobile Squad Authority and the Joint Commissioner that the goods were not accompanying Form-21 which is a mandatory requirement for transportation of ''sariya''. That apart, the Tribunal has also not taken into consideration the other grounds raised in the seizure order and the order of Joint Commissioner (SIB).

On these facts, prima-facie I find that the Tribunal has acted in a most arbitrary manner and has completely failed to discharge the statutory obligation under Rule 63(4) of the U.P. VAT Rules, 2008.

In view of the aforesaid, as an interim measure the operation of the impugned order dated 29.11.2016 in Second Appeal No. 624 of 2016 under Section 48(7) of the U.P. VAT Act, 2008 passed by Member, Commercial Tax Tribunal, Gorakhpur Bench, Gorakhpur shall remain stayed till the next date fixed.

Admit on the questions of law framed in the memorandum of revision. Affidavit of service has been filed today which is taken on record and perusal thereof shows that the notice has been served on 12.12.2016 upon the authorised representative of the respondent-assessee.

Put up on 20.12.2016 for final disposal of the revision.

The revisionist shall inform this order in writing to the respondent-assess within 48 hours and shall file an affidavit of compliance on or before the next date fixed."

3. Sri Rishi Raj Kapoor, learned counsel for the respondent assessee submits that in view of the paragraphs 12 and 13 of the circular of the Commissioner Commercial Tax dated 4.10.2013 there was no need to issue "Form 21" to be accompanied with the goods for reason that each invoice were for a quantity below 9 Metric Tons.

4. Learned standing counsel submits that the two invoices both issued to M/s. Om Prakash Khadh Bhandar on the same date were accompanying the goods, the weight of which comes to about 17 Metric Tons. He submits that the Modus operandi adopted by the respondent assessee by ill motive to evade tax payment of the tax can not be protected or saved by the circular of the Commissioner dated 4.10.2013.

5. Sri Rishi Raj Kapoor, learned counsel for the respondent assessee further submits that the assessee is ready to deposit cash security of Rs. one lac for release of the goods.

6. Learned standing counsel submits that if the respondent assessee deposits the cash security as offered, the goods shall be released.

7. In view of the aforesaid, the impugned order of the Tribunal is modified. The goods shall be released forthwith on deposit of cash security on Rs. one lac.

8. It is made clear that this Court has not adjudicated the case on merit. The authority concerned shall be at liberty to pass penalty order and to frame assessment without being influenced by any of the observations made in the body of this Order.

9. Revision is disposed of.