(2016) 01 SC CK 0010

In the Supreme Court Of India

Case No : Petition(s) for Special Leave to Appeal (C) Nos.145-146 of 2016, (Arising out of impugned final judgment and order dated 30/09/2015 in CTR No. 446 of 2015, 14/10/2015 in CMA No. 446 of 2015, 14/10/2015 in CMA No. 3524118 of 2015 passed by the High Court o

The Commissioner, Commercial Taxes APPELLANT

Vs

M/s. Jay Narayan Enterprises RESPONDENT

Date of Decision : 15-01-2016

Acts Referred:
Uttar Pradesh Value Added Tax Act, 2008 — Section 48, Section 52

Citation : (2017) 95 UPTC 357

Hon'ble Judges : Mr. Dipak Misra and Mr. N.V. Ramana, JJ.

Bench : Division Bench

Advocate : Mr. Ravi Prakash Mehrotra, AOR, for the Petitioner; Mr. Abhinav Kr. Malik, Advocate, for the Respondent

Final Decision : Disposed Of

Judgement

1. It is submitted by Mr. Ravi Prakash Mehrotra, learned counsel for the petitioner-State that the High Court has fallen into error by recording the finding that the transit declaration form was downloaded before the order of seizure was passed. He has drawn our attention to Section 52 of the U.P. Value Added Tax, 2008. The said provision reads as under:

"When a vehicle coming from any place outside the state and bound for any other place outside the state, and carrying goods referred to in sub-section (1) of Section 51, passes through the state, the driver or other person in charge of such vehicle shall obtain in the prescribed manner an authorisation for transit of goods from the officer in charge of the first check post or barrier after his entry into the state and deliver it to the officer in charge of the last check post or barrier before his exit from the state, failing which it shall be presumed that the goods carried thereby have been sold within the state by the owner or person in charge of the vehicle.

Provided that the goods carried by such vehicle are, after their entry into the state, transported outside the state by any other vehicle or conveyance, the onus of proving that the goods have actually moved out of the state shall be on the owner or person in charge of the vehicle.

Explanation - For the purpose of this section, the hirer of the vehicle shall also be deemed to be the owner of the vehicle."

2. Relying on the said provision, it is submitted by Mr. Mehrotra that the transit declaration form is to be with the person plying the vehicle, but the same having not been established, a downloading of the said form would not sub-serve the purpose. In essence, the submission is that the goods cannot be transported beyond the territory without the said requisite form.

3. On a perusal of the order passed by the High Court, we do not find that the said aspect has been adverted to.

4. In view of the aforesaid, we permit the petitioner to file an application for review within a period of three weeks. The High Court will entertain the review on merits and squarely deal with this aspect. If in ultimate eventuality, there would be no interference in review, liberty is granted to the petitioner to challenge the impugned order (the main order) and the order passed in review.

5. The special leave petition is, accordingly, disposed of.

