(2007) 05 AHC CK 0050

In the Allahabad High Court

The Commissioner, Trade Tax — APPELLANT

Vs

S/S Harjeet Kaur — RESPONDENT

Date of Decision : 11-05-2007

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2007) 05 AHC CK 0050

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—These eight revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the order of Tribunal dated 22.04.2000 all relating to the assessment year 1991-92 arising from the assessment proceeding u/s 7(4) of the Act.

2. Opposite party claimed to be the transporter, engaged in transporting the goods of different parties from one place to another place and while transporting the goods from outside the State of U.P. to outside the State of U.P. obtained Transit Passes at the entry check post, which were required to be surrendered at the exit check post u/s 28-B of the Act. The claim of the opposite party is that all such Transit Passes have been surrendered at the exit check post. However, proceeding u/s 7(4) and 15-A(1)(q) of the Act have been initiated by the Trade Tax Officer. Narani Check Post, Banda on the ground that the said Transit Passes have been got surrendered at the exit check post by the manipulation in forged form with the collusion of the officer/employee of the check post, hence the benefit of said endorsement, can not be given. It has also been alleged that on enquiry it was found that hirer transporter was not in existence and on enquiry at the Naubatpur and Sonauli check post, it was found that such Transit Passes were got passed by manipulation. Opposite party refuted the aforesaid allegation made by the assessing authority. Assessing authority, however, levied the penalty u/s 15-A(1)(q) of the Act and also passed the assessment orders u/s

7(4) of the Act and levied the tax on the presumption that the goods had been sold inside the State of U.P.

3. In all the present revisions, we are concerned with the assessment orders passed u/s 7(4) of the Act. Appeals tiled against the assessment orders passed u/s 7(4) of the Act have been allowed vide order dated 09.04.1999 and matters have remanded back to the assessing authority. Being aggrieved by the appellate orders, opposite party filed further appeals before the Tribunal. Tribunal by the impugned order allowed the appeal and set aside the assessment orders passed u/s 7(4) of the Act. Tribunal held that the alleged Transit Passes have been surrendered at the exit check post and the entry in this regard are available in Panji-4 register. Tribunal further observed that in case, if higher officer found anything to the contrary the proper notice should be issued and the officers found involved with the collusion be punished. Tribunal held that u/s 7(4) of the Act read with Section 28-B of the Act presumption of sale of goods inside the State of U.P. can be drawn only if the Transit Passes are not surrendered. Tribunal held that in the absence of any contrary material, burden lies upon the revenue to prove that the goods had been sold inside the State of U.P. Tribunal further held that the penalty levied u/s 15-A(1)(q) of the Act on the same ground have been deleted and, thus, there is no justification to remand back the matter to the assessing authority and accordingly, Tribunal quashed the orders passed u/s 7(4) of the Act. Being aggrieved by the order of the Tribunal, present revisions have been filed.

4. Heard Sri B.K. Pandey, Learned Standing Counsel and Sri Piyush Agrawal, learned Counsel for the opposite party. Learned Standing Counsel was asked to produce Panji-4 or any other record where the manipulation is alleged. Despite the time being granted Panji-4 and other records, on which manipulation was made have not been produced. Sri V.K. Singh, Additional Commissioner, Varanasi Incharge of the check post was asked to appear. He appeared before this Court on 14.03.2007 and stated that relevant Panji-4 are not traceable. However, stated that in the year 1993 some enquiry was made and the report was prepared. Short time was sought to file the affidavit. On 22.03.2007 an affidavit was filed by Sri V.K. Singh, Additional Commissioner, Grade-I, Trade Tax, Varanasi Zone, Varanasi. In para 2 of the affidavit, it has been stated that original record of Panji-4 arc not traceable. After enquiry, it was found that Panji-4 relating to those trucks were sent to Headquarter, Lucknow vide letter No. 1655, dated 21.03.1995. When the enquiry was made from Headquarter, Lucknow, it was informed that original record of Panji-4 are not available but the photocopy relating to page of Panji-4 is available. Photocopy of the relevant page of Panji-4 has been filed.

5. I have perused the order of Tribunal, authorities below and the photocopy of Panji-4, which has been filed alongwith supplementary affidavit. I do not find any manipulation in Panji-4. Learned Standing Counsel submitted that it may be possible that the pages of Panji-4 may-have been replaced but in the absence of

any material, this argument can not be accepted. It appears that either the allegations made by the assessing authority that the Transit Pass were got surrendered by manipulation at the exit check post is wrong based upon his own notion or if it is not so, further manipulation has been made with the records to protect/shield some of the officers or the employees involved in the case. In the enquiry report, involvement of the staff was found in the manipulation but the nature of punishment is very mild.

6. In my view, the manipulation in the record, which is in the custody of the staff or the officers of the department is a very serious matter. In case, if it is true that Transit Pass were got passed by manipulation at the exit check post, it directly relates to the huge revenue loss. On the basis of such manipulation, tax and penalty, which ought to have been levied could not be levied, causing huge revenue loss. Thus, such matter requires rigorous enquiry and the involved persons should be dealt with seriously and the revenue loss should be recovered from such persons. Taking such situation lightly encourages the multiplicity of such happenings leads to huge revenue loss. Thus, in my view, rigorous enquiry is required to be made and the serious punishment should be awarded in these cases, if it is found that some manipulations had been carried on in the records.

7. Section 28-A of the Act raises the presumption of sales inside the State of U.P. in the case of non-surrender of Transit Pass at the exit check post. Such presumption has been held rebuttable by the Apex Court in the case of Sodhi Transport Co. and Anr. etc. v. State of U.P. and Anr. etc. reported in 1986 UPTC 721. Apex Court held that Section 28-B of the Act is a machinery provision to check the evasion of tax and is not a charging section. The tax on the sale can only be levied when it is found that the goods have been sold inside the State of U.P.

8. In the present case, except saying that the alleged Transit Passes have been got passed at the exit check post by manipulation, no evidence has been adduced to prove it. Therefore, presumption u/s 28-B of the Act that the goods have been sold inside the State of U.P. can not be drawn. Tribunal held that on the similar ground, penalty u/s 15-A(1)(q) of the Act were levied have been quashed by the Tribunal in appeal. Learned Standing Counsel is not able to tell that whether any revisions against the said orders have been filed and what happened in such revisions. In the circumstances, I do not find any justification to interfere with the order of the Tribunal.

9. In the result, all the revisions fail and are accordingly, dismissed With cost of Rs. 10,000/-. Let the copy of this order be sent to the Principal Secretary Financial Institution, U.P. Government for necessary action through Learned Standing Counsel. Copy of the order may be provided to the Learned Standing Counsel free of cost.