
(2006) 03 AHC CK 0073
In the Allahabad High Court
Case No : Trade Tax Revision No. 626 of 1997

The Commissioner, Trade Tax

APPELLANT

Vs

S/S Raghunath Laxmi Narain

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 21

Citation : (2006) 03 AHC CK 0073

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : S.P. Kesarwani and S.C, for the Appellant; Kunwar Saxena and Alok Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal dated 05.12.1996 relating to assessment year 1986-87 under the U.P. Trade Tax Act.

2. Dealer/Opposite Party (hereinafter referred to as "the Dealer") was involved in the business of Condiments Spices and General Merchandize goods etc. During the year under consideration, dealer claimed to have made export of Spices for Rs. 14.39.348.20 to Nepal. During the course of assessment proceedings, dealer had produced books account, Custom Certificate and also Transport receipt. Assessing Authority after examining the books of account Transport receipt and Custom Certificate, accepted the claim of export and granted exemption thereon. Subsequently, a proceeding u/s 21 of the Act was initiated on the ground that the Custom Certificate furnished by the dealer, was found to be forged and that could not be issued by the Custom Authority of Nepal. In the proceedings u/s 21 of the Act, a Show-cause-notice was issued. In reply to the Show-cause-notice, it was stated that in pursuance of the order received from Nepal party, goods were dispatched and delivery of the goods were taken by the Agent/authorized representative of Nepal party at Indo-Nepal border and from there, goods were

carried to Nepal by such Agent/authorized representative. He submitted that the Truck, in which, the goods had been dispatched to Indo Nepal border could not go to Nepal. Copy of Form-B, Cess receipt, Transport receipt and the books of account etc. were produced before the Assessing Authority. The Assessing Authority rejected the claim of the dealer on the ground that in the statement, dealer stated that the delivery of the goods were given to the Agent/authorized representative at Nepal border and thereafter, goods were being transported by the Agent/authorized representative to Nepal. It was also stated that the date of issue of Form-B was much after the date of bills. It was also found that the Custom Certificates, which were filed in support of claim of export, were found forged. On these facts, it has been held that it was the case of sale for export and not in the course of export and accordingly, exemption had been refused and sale had been assessed to tax within the State of U. P. treating it as intrastate sale. Against the order passed u/s 21 of the Act, dealer filed appeal before the Deputy Commissioner (Appeals), Trade Tax, Varanasi. The Deputy Commissioner (Appeals), Trade Tax, Varanasi vide its order dated 04.5.1992, allowed the appeal. The Deputy Commissioner (Appeals), Trade Tax, Varanasi held that the dealer had submitted Form-B (Export Bill) obtained from the Custom Authority. Sonauli. Cess duty receipt and order of Nepali dealers. On these materials, the Deputy Commissioner (Appeals), Trade Tax, Varanasi held that even if the Custom Certificates were found forged, but it had been established that the goods had gone to Nepal in the course of export. The Deputy Commissioner (Appeals) has also accepted the claim of dealer that it had not stated that the delivery of the goods was given at the Shop to the Agent/authorized representative of Nepal party. Aggrieved by the order of Deputy Commissioner (Appeals), Trade Tax, Commissioner of Trade Tax filed appeal before the Tribunal. Tribunal by the impugned order, rejected the appeal and confirmed the order of the First Appellate Authority.

3. Heard learned Counsel for the parties.

4. Learned Standing Counsel submitted that the goods had not been dispatched by the dealer to Nepal and it was the Agent/authorized representative of Nepal who had carried away the goods to Nepal. Thus, it was a sale for export and not in the course of export, He further submitted that the Custom Certificate were found to be forged and not to have been issued by the Custom Authorities of Nepal, which also falsifies the case of export to Nepal. In support of his contention, he relied upon the decision of this Court in the case of Commissioner of Trade Tax U.P. Lucknow v. S/S Ishwari Prasad Moti Lal reported in NTN 2005 page 356. learned Counsel for the dealer submitted that in the original assessment proceedings, claim of export was accepted after examining the books of account and transport receipt, He submitted that even in the assessment proceedings u/s 21 of the Act, order of Nepal parties, Form-B issued by the Custom Authorities. Sonauli, Cess receipt and the transport receipt were produced. It was also claimed that in pursuance of the order of Nepal Party, goods were dispatched by the dealer to Indo Nepal border and thereafter, Agent/

authorized representative of Nepal party took the delivery of the goods and they have further taken away the goods inside the Nepal at their business destination. Thus, he submitted that the movement of the goods was in pursuance of prior contract of sale in the course of export. He submitted that u/s 21 of the Act, burden lies upon the revenue to prove that the goods had not moved to Nepal and even have been sold inside the State of U.P., which the revenue failed to prove it. In support of his contention, he relied upon the decision of this Court in the case of Commissioner of Trade Tax v. Bansal Trading Company, Gorakhpur reported in 2005 UPTC 734.

5. Having heard learned Counsel for the parties and perused the order of authorities below. It is settled principle of law that u/s 21 of the Act burden lies upon the revenue to prove its case. In the present case, revenue had assessed tax on the turnover of Rs. 14, 39,348.20 under the U.P. Trade Tax Act treating the transaction as intra-State sale. Thus, it was the duty of the revenue to prove that the dealer had made sales within the State of U. P., which revenue has failed to do so. In the original assessment proceedings, claim of export was accepted on the basis of entries found in the books of accounts, transport receipt and the Custom Certificates. In the assessment proceedings u/s 21 of the Act it was explained that in pursuance of the order of Nepal party, goods had been dispatched to Indo Nepal border, where the delivery of the goods was given to the Agent/authorized representative and they have further took away the goods to Nepal. In support of its case, books account, transport receipt copies of orders of Nepal parties, Form-B issued by the Custom Authorities Sonauli Check Post and Cess receipt were furnished. On the basis of the aforesaid evidences, the First Appellate Authority as well as the Tribunal concluded that the goods were dispatched by the dealer in pursuance of prior orders and there was no intra-State sale. In my opinion, finding of the Tribunal is the finding of fact. Learned Standing Counsel is not able to assail the findings recorded by the Tribunal. In my view, revenue has failed to prove that the sale was made within the State of U. P. and the goods had not gone to Nepal. In the circumstances, no interference is called for.

6. In the case of Commissioner of Trade Tax v. Bansal Trading Company, Gorakhpur (supra), this Court held as follows:

Tribunal further held that the dealer had paid the Cess at the Custom Station, Sonauli and merely because the entry in the record of the Custom Department of Nepal about the payment of Custom duty was not found, which may be with the view to avoid the payment of Custom duty but the movement of the goods to Nepal cannot be disputed and its sale inside the State of U. P. cannot be presumed. Finding of the Tribunal is finding of fact. Perusal of the order shows that in the original proceedings, the Assessing Authority had accepted the movement of goods to Nepal in pursuance of the order of the Nepal parties in the course of export. It is true that on the basis of the information that the Custom Certificate of Nepal was found incorrect, presumption can be drawn that the

goods had not reached to Nepal but in the proceedings u/s 21 tax cannot be levied on the basis of the presumption. It is not disputed that there was an order of the purchasing party and sales were made to the Nepal parties. The movement of the goods up to the Custom Frontier of India and the payment of Cess and issue of Form-B by the Custom Frontier of India are not in dispute. In the absence of the any specific material that the goods had been sold inside the State of U.P. and the goods had not gone to Nepal, only on the basis of presumption it cannot be treated as intra-State sales. There may be a possibility, that to avoid the Custom duty, goods may have been transported inside the Nepal through such route where there was no Custom Check Post. In the proceedings u/s 21 of the Act burden lies upon the revenue to prove that the goods had not gone to Nepal and have been sold inside the State of U.P. No such evidence had been produced. Therefore, mere on the ground that the Custom Certificates of Nepal, Custom Authority, was found wrong the presumption that the goods had not gone to Nepal and had been sold inside the State of U. P. could not be drawn and levy of tax is not justified. I do of find any error in the order of the Tribunal which is accordingly upheld.

7. In my opinion, the present case is squarely covered by the aforesaid decision in the case of Commissioner of Trade Tax v. Bansal Trading Company, Gorakhpur (supra). The case of Commissioner of Trade Tax U.P. Lucknow v. S/S Ishwari Prasad Moti Lal (supra), is not applicable to the present case. In the said case, it was found that the Nepali buyer had come to the shop of the dealer, purchased the goods, took the delivery and thereafter, claimed to have taken the goods to Nepal.

8. In the result, revision fails, and is, accordingly, dismissed.