(2009) 10 AHC CK 0029

In the Allahabad High Court

Utsav Oil Traders APPELLANT

Vs

Commissioner, Commercial Tax RESPONDENT

Date of Decision : 06-10-2009

Acts Referred:

Citation : (2010) 30 VST 597

Hon'ble Judges : Abhinava Upadhya, J

Bench : Single Bench

Judgement

Abhinava Upadhya, J.—The present revision is directed against the order of the Tribunal dated June 27, 2009 for the assessment year 2008-09 relating to the seizure of the goods. The applicant claims to be a registered dealer. The applicant claimed that goods were sold to one M/s. Shri Ram Oil Trading Company, Darashi No. 3, Agra, against invoice No. 02/071 dated March 20, 2009. While the goods were in transit at Mathura it was intercepted by the Mobil Squad, Mathura. The driver of the vehicle has produced the invoice. However, no bilty was produced. It is the case of the Commercial Tax Officer that they have received certain informations that the goods were coming from Delhi and on the basis of the said information, the vehicle was checked. In the absence of the bilty, a doubt has been raised that the goods were coming from Delhi and not from NOIDA. The statement of the driver appears to have been recorded in which he has stated that the goods were coming from Delhi. On these discrepancies, a show-cause notice was issued to the applicant. It appears that the applicant has not produced the books of account for verification about the entry of invoice which was found along with the goods. Meanwhile, other various materials have also been collected by the Commercial Tax Officer regarding other activities of the applicant and on the basis of those materials, the seizure order was passed, seizing the goods. For the release of the goods, the value of the goods were estimated at Rs. 5,49,984 and 40 per cent of the value of the goods was demanded towards security. The applicant filed a representation u/s 48(7) of the Act which was allowed in part. The Joint Commissioner (SIB) upheld the seizure but has reduced the value of the goods to Rs. 4,74,984 and demanded security at three times of the tax which comes to 37.5 per cent. The amount of security, therefore, comes to Rs. 1,78,119.

2. Being aggrieved by the order of the Joint Commissioner (SIB), the applicant filed an appeal before the Tribunal which has been dismissed by the impugned order.

3. Heard Sri Suyash Agrawal, learned Counsel for the applicant and Sri B.K. Pandey, learned standing counsel.

4. The learned Counsel for the applicant though submitted that the inference drawn by all the authorities that the goods were coming from Delhi is wholly unjustified. He submitted that various documents which were produced before the authorities below establish that the goods have been loaded from NOIDA and not from Delhi. He further submitted that the estimate of the value of the goods and demand of the security at three times of the tax is not justified. He submitted that the circular issued by the Commissioner clearly states that if the movement of the goods are within the State of U.P. by a registered dealer the security should not be more than two times of the tax.

5. The learned standing Counsel submitted that along with the goods, bilty was not available and when the show-cause notice was issued the applicant had not produced the books of account for verification. Therefore, the seizure is justified.

6. I have perused the impugned order and the order of the authorities below and the submissions made by learned Counsel for the parties.

7. On the facts and circumstances of the case, it appears that, prima facie, a case of seizure has been made out and, therefore, no interference is called for in this regard. However, it appears that the demand of cash security to the extent of three times of the tax appears to be excessive and it requires modification. In this view of the matter, the order of the Tribunal is modified to the extent that on the deposit of two times of the tax and furnishing of security in the form of other than cash or bank guarantee for the balance amount, the goods shall be released forthwith.

8. The revision is allowed in part.