

Commissioner, Commercial Tax Vs Pramod Singh

Court: Allahabad High Court

Date of Decision: Aug. 6, 2010

Acts Referred: Uttar Pradesh Value Added Tax Act, 2008 " Section 48, 51(1), 52
Uttar Pradesh Value Added Tax Rules, 2008 " Rule 54

Citation: (2011) 40 VST 360

Hon'ble Judges: Pankaj Mithal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Pankaj Mithal, J.

The Commissioner, Commercial Tax, U. P., Lucknow has preferred this revision against the order of the Commercial

Tax Tribunal, Jhansi dated July 2, 2010 allowing the appeal of the opposite party against the order of seizure and its affirmation by the first

appellate authority.

2. On inspection of the vehicle by the mobile squad of the Commercial Tax, U. P., Lucknow on June 10/11, 2010 the goods were detained and

after issuance of show-cause notice and consideration of reply a seizure order u/s 48 of the U.P. Value Added Tax Act, 2008 (hereinafter referred

to as, "the Act") was passed on June 15, 2010 in the name of the opposite party. The representation of the opposite party u/s 48(7) of the VAT

Act was rejected by the Commissioner, Commercial Tax, Jhansi on June 25, 2010 whereupon the opposite party preferred an appeal before the

Tribunal which has been allowed. Hence, this revision.

3. I have heard Sri B. K. Pandey, learned standing counsel for the Department and Sri Piyush Agrawal for the Respondent. I have also perused

the pleadings exchanged between the parties and with their consent proceed to decide the matter finally.

4. The main ground of the seizure of the goods according to the Department was that the goods were loaded not from Niwari, Teekamgarh in

Madhya Pradesh but from Jhansi and the documents showing transit of goods from Madhya Pradesh to Himachal Pradesh were manipulated,

inasmuch as the consigner Manoj Trading Company of the Madhya Pradesh was not traceable ; the transporter Himi Road Lines, Jhansi was not

in existence and form XLIX alleged to have been issued by the Mandi Samiti, Niwari, Madhya Pradesh was not actually so issued.

5. The basic question which arises for consideration is whether inspite of the fact that all the documents which were required to be accompanied

with the goods being furnished by the opposite party, the Department was justified in passing the order of seizure on the aforesaid ground.

6. Section 48 of the Act provides for the power to seize goods and it stipulates that the goods can be seized from the dealer's place of business,

vehicle, vessel or any other building or place which are not accounted for by the dealer in his accounts, registers or other documents maintained in

the ordinary course of business or where the officer has reason to believe that the goods found are not traceable to any bona fide dealer.

7. Section 52 of the Act concerns transit of goods through the State of U. P. It provides that any vehicle carrying goods referred to in Section

51(1) of the Act coming from outside State of U. P. and bound for any other place outside U. P. shall obtain in the prescribed manner an

authorisation for transit of goods and deliver it to the officer in charge of the last check-post at the time exit from the State. Further Rule 54 of the

U. P. Value Added Tax Rules, 2008 provides for carrying a declaration in the prescribed form, in duplicate, duly filled and signed by the consignor

and consignee of the goods with status and addresses ; cash memo, bill, invoice or challan ; and authorisation for transit of goods referred to as trip

sheet in triplicate.

8. The scheme of the Act as such is to ensure that the goods in transit from outside U. P. and passing through the State of U. P. for a destination

situate outside U. P. are not sold in U. P. Therefore, while entering in U. P. a certificate in the prescribed form is required to be accompanied with

the goods which is to be submitted at the exist check-post. Now, as check-posts have been abolished the procedure for downloading of the forms

has been prescribed. In the case at hand undisputedly, all the documents required under the Act or as per the notifications/circulars issued from

time to time were duly produced at the time of seizure and were found to be in order. A valid certificate of transit was also there giving the name of

the consignor and consignee, their status and addresses. Thus, there was no discrepancy in the documents which were required to be accompanied

by the goods.

9. The contention of the learned standing counsel that that consignor is not traceable and that the goods were actually loaded from Jhansi and were

not coming from Madhya Pradesh is required to be considered. At the time of seizure the statement of the driver of the vehicle, i.e., opposite party

was recorded and he had clearly stated in unequivocal terms that the goods were loaded from the premises of the Manoj Trading Company,

Niwari, Madhya Pradesh and he is carrying the goods to Gwalior from where they will proceed by another vehicle to Himachal Pradesh. He also

proved the letter of the consignor Manoj Trading Company, Niwari, Madhya Pradesh, the bill issued by the consignor and other documents

including the declaration form. He had also filed his affidavit to the above effect. Manoj Kumar, the proprietor of the firm Manoj Trading

Company, Niwari, Madhya Pradesh had also filed his affidavit stating that he had consigned 213 bags of ""soha"" from his place of business in

Niwari, Madhya Pradesh against form XLIX of the Mandi Samiti and both the consignor and the consignee are registered dealers. These two

affidavits remained uncontroverted.

10. Apart from the above, in order to prove that the goods were actually not loaded from Niwari, Madhya Pradesh but from Jhansi no material

was produced ; not even in the shape of any report of any competent officer of the Department to the effect that any oral or written information

was received about the goods being loaded from Jhansi for exporting outside U. P. whereupon on vigilance the vehicle was detained or to show

that any enquiry was conducted by the Department with regard to the genuineness of form XLIX alleged to have been issued by the Mandi Samiti,

Niwari, Madhya Pradesh or with regard to the bona fides of the consignor.

11. In the above circumstances, as all the necessary documents accompanying the goods were duly produced and no discrepancy was found

therein coupled with the fact that the two affidavits remained uncontroverted with no positive or constructive evidence to prove that the goods

were actually loaded from Jhansi or that the consignor was fake and the goods were not traceable to him, I am of the opinion that no ground for

seizure of the goods existed and the Tribunal as such committed no error of law or jurisdiction in passing the impugned order setting aside the

order of seizure dated June 15, 2010 passed u/s 48 of the Act and the order dated June 25, 2010 affirming the same passed by the first appellate

authority.

12. No other point was raised or pressed.

13. In view of above, I find no merit in the revision and it is accordingly dismissed.