
(2010) 05 AHC CK 0349

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 731 of 2010

Jai Karan Chaurasia

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: May 13, 2010

Acts Referred:

- Uttar Pradesh Value Added Tax Act, 2008 - Section 48(7), 57

Citation: (2011) 40 VST 393

Hon'ble Judges: Rajes Kumar, J; Bharati Sapru, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Heard Sri Ashok Kumar, learned Counsel for the Petitioner and Sri U. K. Pandey, learned Standing Counsel.
2. By means of the present writ petition, the Petitioner is challenging the order passed u/s 48(7) of the U. P. Value Added Tax Act, 2008 (hereinafter referred to as, "the VAT Act") passed by Respondent No. 2, annexure 9 to the writ petition, and further direction for the release of the seized goods.
3. The Petitioner claims to be the owner of the goods, which have been seized by the Assistant Commissioner (Prabhari), Trade Tax, Mobile Squad, Fatehpur vide order dated April 16, 2010. Being aggrieved by the seizure order, the Petitioner filed an application under the proviso to Section 48(7) of the VAT Act before the Joint Commissioner (SIB), Commercial Tax, Mobile Squad, Allahabad on April 22, 2010. When the said application was pending, the Petitioner filed a Writ Petition No. 660 of 2010. When the aforesaid writ petition came up for consideration before the Bench on April 28, 2010, Sri Ashok Kumar, learned Counsel for the Petitioner, submitted that the Joint Commissioner (SIB), Commercial Tax, Mobile Squad, Allahabad was not entertaining the application on the ground that the seizure order was not in the name of the Petitioner. On the aforesaid submission, the writ petition was disposed

of on April 28, 2010 directing the Joint Commissioner (SIB), Commercial Tax, Mobile Squad, Allahabad, to entertain the application filed by the Petitioner and decide the same in accordance with law expeditiously preferably within a period of one week from the date of furnishing of the certified copy of the order.

4. The impugned order which is being challenged in the present writ petition is dated April 24, 2010 passed by the Joint Commissioner (SIB), Commercial Tax, Mobile Squad, Allahabad on the merits. The writ petition came up for consideration on May 12, 2010. The learned Counsel for the Petitioner vehemently argued that the impugned order is patently arbitrary and full of mala fide without giving opportunity of hearing. He submitted that the impugned order was signed on April 24, 2010 at the last page, however, on the top of the first page April 26, 2010 is mentioned.

5. On the submission of learned Counsel for the Petitioner, learned Standing Counsel was asked to produce the record after lunch. The record was produced. On the basis of the record, Sri U. K. Pandey, learned standing counsel submitted that it is not correct that the application of the Petitioner has not been entertained. He submitted that on April 22, 2010 itself the application was entertained and an order was passed to call upon the Petitioner to appear on April 23, 2010. On April 23, 2010, Shri Durga Prasad, advocate counsel for the Petitioner, appeared and made the submission and, thereafter, on April 24, 2010 the impugned order was passed rejecting the application which has been despatched on April 26, 2010. He further submitted that on the receipt of the order passed by this Court dated April 28, 2010, the Joint Commissioner (SIB), Commercial Tax, Mobile Squad, Allahabad, has further provided an opportunity of hearing to the Petitioner on May 10, 2010 but the same has not been availed.

6. On the aforesaid submission, Shri Ashok Kumar, learned Counsel for the Petitioner, requested the Bench to take up the matter on May 13, 2010. When the matter was taken up, he submitted that the photostat copy of the order, which is annexed along with the writ petition, and copy of the order available on the file are different. He pointed out that in the order available in the record, the signature of the officer and the seal are placed at the different places than the signature and seal available in the order provided to the Petitioner which is annexed along with the writ petition. However, he is not able to show any difference in the contents of the order. He further submitted that the order has been passed without giving proper opportunity. Therefore, it is liable to be set aside.

7. We have considered the rival submissions and perused the record.

8. We are of the view that the order dated April 28, 2010 has been obtained by concealing the facts. The record reveals that the application u/s 48(7) of the VAT Act was entertained by the Joint Commissioner (SIB), Commercial Tax, Mobile Squad, Allahabad on April 22, 2010 itself and the Petitioner was called upon to appear on April 23, 2010. Shri Durga Prasad, advocate counsel for the Petitioner, appeared on

April 23, 2010 before the Joint Commissioner (SIB), Commercial Tax, Mobile Squad, Allahabad and made the submissions on the merits. The signature of Shri Durga Prasad, Advocate is available on the order-sheet dated April 23, 2010. Thereafter, the order was passed on April 24, 2010 on the merits.

9. Therefore, when the Writ Petition No. 660 of 2010 was filed and order was passed on April 28, 2010 the application has already been entertained on April 22, 2010 ; the counsel for the Petitioner has been heard on April 23, 2010 and application has been decided on April 24, 2010 still the learned Counsel for the Petitioner has argued that the application has not been entertained while there was no occasion to make such submission. The submission of the Petitioner that the order has been passed without giving proper opportunity is without any substance. The order-sheet reveals that the learned Counsel for the Petitioner appeared on April 23, 2010 and argued the matter. His submission was duly recorded in the order-sheet. The contention of the Petitioner that there is difference in the signature and the seal available in the order provided to the Petitioner and in the copy of the order available in the record has also no substance. Several copies of the Judgments are being prepared, which are being signed and seal are affixed separately. Variation in the place of signature and seal is obvious. It is not the case of the Petitioner that the contents of the order available in the file and the order provided to the Petitioner are different. Therefore, the submission is baseless and without any substance.

10. Against the impugned order the Petitioner has an alternative remedy by way of appeal u/s 57 of the U. P. Value Added Tax Act before the Tribunal.

11. For the aforesaid reason, the writ petition is dismissed with cost of Rs. 5,000 which the Petitioner shall pay within 30 days. In case if the amount is not paid, the same shall be recovered as arrears of land revenue.