
(2014) 04 AHC CK 0270

Allahabad High Court

Case No: Sales/Trade Tax Revision No. 332 of 2014

Shree Balaji Freight
Carriers

APPELLANT

Vs

Commissioner of
Commercial Tax

RESPONDENT

Date of Decision: April 23, 2014

Acts Referred:

Uttar Pradesh Value Added Tax Act, 2008 " Section 48, 50, 52

Citation: (2014) 04 AHC CK 0270

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Advocate: Harsh Vardhan Gupta and S.D. Singh, Advocate for the Appellant

Judgement

Sudhir Agarwal, J.

Heard Sri S.D. Singh, Senior Advocate assisted by Sri Harsh Vardhan Gupta, learned counsel for the revisionist and

learned Standing Counsel for the respondents.

2. The revisionist's goods carrier i.e. Truck bearing Registration No. U.P. 25G 9484 was intercepted by Assistant Commissioner/Commercial

Tax, Mobile Squad, 3rd Unit, Ghaziabad at Mohan Nagar on 22.3.2014 and he found several inconsistency in the document, as alleged, loaded in

the Truck. The number of items was mentioned in transit declaration form as "1" whereas total number of items found loaded actually are "88".

The seller firm, whose invoices were relied, in enquiry, was found nonest/non bona fide and therefore appeal was rejected.

3. There was no mention of weighment of truck in Column 19 of TDF-1 having been done at the Boarder. The nature of goods was mentioned in

the invoice as ""plastic toys"" while many cartons were found containing ""electronic LED toys"". The assessing authority formed opinion on the basis

of incorrect information that goods were imported in the State of U.P. with an intention to sell therein and evade payment of tax, therefore, he

proceeded u/s 50 read with 52 of U.P. Value Added Tax Act, 2008 (hereinafter referred to as ""Act, 2008""). A notice was issued to the revisionist

and after receiving reply, an order was passed seizing the goods. The revisionist was directed to deposit 40% of the value of the goods, as

security, for release thereof. Thereagainst, the matter was taken before Joint Commissioner u/s 48 of Act, 2008 but Joint Commissioner confirmed

order of Assessing Authority and revisionist's second appeal has also been dismissed by Tribunal vide judgment and order dated 4.4.2014.

4. It is contended that mere discrepancies in the form will not justify seizure of the goods.

5. It is no doubt true that mere discrepancy in a form like Form 38 or any other document may not justify seizure and penalty proceedings but

when there are several other discrepancies also, it is cumulative effect of all, which has to be looked into. The opinion has been formed by Revenue

after taking wholesome consideration of all such discrepancies, omissions etc. on the part of dealer. In these facts and circumstances, it has formed

an opinion that there is an attempt on the part of dealer to evade payment of tax and if such an opinion on objective consideration has been

formed, it will not be open for this Court to sit in appeal and to decide whether such opinion has been formed correctly or not. Each and every

discrepancy on its own is not to be taken separately by process of elimination but it is a cumulative effect of all which has to be seen. It is true that

flimsy, artificial and so called artificial discrepancies ought/would not justify seizure and penalty proceedings but substantial, actual and material

discrepancies must exist therein.

6. In the case in hand, I find that not only serious discrepancy was found in the TDF Form but on actual verification from the goods loaded in the

truck, many other discrepancies, which are of sufficiently serious in nature, have been noticed. The authorities below having considered all these

aspects, have formed an opinion that there was an attempt on the part of dealer to evade tax. It cannot be said that opinion formed by Revenue is

without any basis whatsoever, or wholly imaginary or founded on no substantial material. In these facts and circumstances, in my view, no question

of law has arisen and this Court cannot convert revisional jurisdiction of this Court in appellate forum so as to exercise a coordinate appellate

jurisdiction over the orders in dispute.

7. The revision, therefore, is dismissed summarily.