

Court No. - 1

Case :- SALES/TRADE TAX REVISION No. - 191 of 2009

Revisionist :- M/S Colgagte Palmolive India Ltd.

Opposite Party :- Commissioner Of Commercial/Entry Tax Lucknow

Counsel for Revisionist :- S.D. Singh, Aditya Pandey

Counsel for Opposite Party :- C.S.C.

Hon'ble Piyush Agrawal, J.

1. Heard Sri Aditya Pandey, counsel for the revisionist and Sri Manu Ghildyal, Standing Counsel for the State.

2. The present revision has been filed against the order dated 7.11.2008 passed by Commercial Tax Tribunal, Kanpur Bench 1, Kanpur in Second Appeal No. 238 of 2006 (M/s Colgate Palmolive India Ltd. Vs. Commissioner Trade Tax, Kanpur) for the assessment year 2004-2005 arising out of penalty proceedings initiated under Section 15-A(1)(o) of U.P. Trade Tax Act, 1948 (hereinafter referred to as "Act, 1948") in which following questions of law have been raised :

"(1) Whether, the penalty of Rs. 4.00 lacs imposed and sustained against the applicant is wholly illegal and contrary to the provisions of Section 15-A(1)(o) of the Act, 1948 ?

(2) Whether, the penalty imposed on the applicant under Section 15-A(1)(o) of the Act, 1948 is wholly perverse, arbitrary and excessive ?"

3. Sri Aditya Pandey, counsel for the revisionist submits that the revisionist is a Public Limited

Company and engaged in the business of manufacturing and trading of tooth paste, tooth powder, tooth brush and cosmetics etc. The revisionist used to send its goods from the place of factory to its various branches situated all over the country. He further submits that 926 cartoons of colgate tooth powder were dispatched from Aurangabad Warehouse to its Kanpur Warehouse as a stock transfer along with which all requisite documents were accompanied. The goods while coming to Kanpur passed through various States and before passing the State of Madhya Pradesh all documents were produced at the entry exit check-post and were duly endorsed. When the goods reached the State of Uttar Pradesh at Raksa check-post at Jhansi, the driver of the truck in question handed over all the documents for filling up the trip-sheet (Behti) in accordance with Section 28-A of the Act, 1948 to the agent. In the truck, some goods of M/s LML Limited, Kanpur was also there. Due to the inadvertent mistake of the broker/munshi/dalal at the check-post only details of goods of M/s LML Limited, Kanpur was filled. On the said basis, the check post authorities detained the goods and issued the show cause notice. Immediately on being noticed all documents of the revisionist goods such as Invoice, Form 31, Transport G.R., Way Bill etc. were produced before passing of seizure / penalty order but the same was not accepted and the seizure order was passed estimating the value of goods of Rs. 10 lacs and demanded the security for the release of

the goods of Rs. 3 lacs. The security amount was reduced to Rs. 1.5 lacs by order dated 10.02.2005. Thereafter, the penalty proceedings were initiated against the revisionist under Section 15-A(1)(o) of the Act, 1948 and by order dated 4.8.2005, the penalty of Rs. 4 lacs was imposed. Against the said order, the revisionist preferred a first appeal and by order dated 21.06.2006, the same was confirmed and the same was affirmed by the impugned tribunal order.

4. Sri Aditya Pandey, counsel for the revisionist submits that action to impose penalty is not justified as the goods in question were duly accompanying all relevant documents as mentioned in Section 28-A of the Act, 1948. Moreover, the same was produced before passing of the seizure order along with the reply to the show cause notice. He further submits that if the documents are produced before passing of the seizure, there was no contravention of the provision of Section 28A of the Act. Hence the prayers for quashing of the penalty.

5. Learned Standing Counsel supports the order passed by the authorities below. He further submits that at the time of submission of trip-sheet (Behti), no documents whatsoever were produced. On the physical verification, the goods of the revisionist were found in Truck No. HR/55B7590 and in the trip-sheet (Behti) only goods of M/s LML Limited, Kanpur were disclosed and therefore the seizure as well as penalty order

were justified.

6. The Court has perused the record.

7. Admittedly, the goods in question were coming as a stock transfer from Aurangabad to Kanpur. On its journey to Kanpur, the goods have passed through the State of Madhya Pradesh and the Sales Tax check-post at Saidhna, M.P. checked all the papers produced by the revisionist and was duly stamped. Thereafter, when the goods reached at the entry check post of State of U.P. (Raksha) (Jhansi), the driver produced all documents of the revisionist as well as of M/s LML Limited, Kanpur only for filling up the trip-sheet (Behti). When the trip-sheet (Behti) was produced only documents of M/s LML Limited, Kanpur was found and on physical verification of the truck in question, the goods of the revisionist-company i.e. 926 cartoons of colgate tooth powder were also found. On coming to the discrepancy found, a show cause notice was issued. On the receipt of the show cause notice, a reply was submitted along with the documents such as Invoice, Form 31, Transport G.R. and Way Bill but the same was rejected as an after thought and the seizure order was passed and demanded security of Rs. 3 lacs for release of the goods that was modified by the order dated 10.02.2005 and was reduced to Rs. 1.5 lacs.

8. Thereafter the penalty proceedings under Section 15-A(1)(o) of the Act, 1948 was initiated against the revisionist which was confirmed upto

the tribunal. The penalty proceedings have been initiated only on the ground that the revisionist have contravened the provision of Section 28-A of the Act, 1948 who intends to import goods in the State of U.P. from outside the State of U.P. without obtaining prescribed form of declaration and with the intention to evade payment of tax. The record reveals that before passing of the seizure order all the relevant documents were produced i.e. Invoice, Form 31, Transport G.R. as well as the documents also stamped of Madhya Pradesh.

9. This Hon'ble Court in the case of **Sarvashri Ramesh Chand Santosh Kumar Vs. Commissioner of Trade Tax, U.P. Lucknow (2010 U.P.T.C.-1113)** held that the penalty under Section 15-A(1)(o) of the Act, 1948 could not be imposed if the dealer not found to have contravened the provision of Section 28-A of the Act, 1948. The Court has further held that if the documents have produced along with the reply to the show cause notice, there is no attempt to evade tax and imposed the penalty is bad. Paragraph 9 to 17 are being reproduced herein below:

"9. The penalty provision of Section 15-A(1)(o) of the Act is attracted where the assessing officer is satisfied that the dealer has imported or transported or has attempted to import or transport any goods in contravention of the provisions of Section 28-A of the Act with an attempt to evade tax.

10. In M/s. Ashish Trading Company, Agra Vs. Commissioner of Trade Tax, U.P., Lucknow (2007) 45 STR 294 this Court in

considering penalty provisions of Section 15-A(1)(o) read with Section 28-A of the Act vis-a-vis non obtaining the declaration in Form - 31, held that levy of penalty merely because no declaration form was produced cannot be sustained.

11. In ITI Limited Vs. The Commissioner of Trade Tax, U.P. Lucknow 2010 UPTC 643 the Court has laid down that where Form - 31 was not initially produced but was subsequently furnished before the seizure the imposition of penalty under Section 15-A(1) (o) of the Act is not justified.

12. A similar view was expressed in another decision of this Court reported in 2010 UPTC 503 M/s Interarch Building Produce Ltd. Vs. The Commissioner of Trade Tax. In this case the Form - 31 was produced by assessee/dealer before passing seizure order and the Court held, in the circumstances, that intention to evade tax was not reflected so as to attract the penalty provision.

13. In 2009 NTN (40) 389 Multitex Filtration Engineering Ltd. Vs. Commissioner of Commercial Tax, U.P. Lucknow his Lordship of this Court relying upon a Division Bench decision in Jain Shudh Vanaspati Ltd. Ghaziabad and others Vs. State of U.P. and others 1983 UPTC 183, held that the attempt to evade tax is a mandatory pre-condition for seizure of goods and for levy of penalty and the intention to evade tax cannot be inferred merely for the reason that the goods are not accompanied by the requisite declaration or that certain columns in the form have not been filled up.

14. In the case in hand the basic ground for levying penalty is that the Form - 31 was not available with the goods and in the bilti the name of the parties were subsequently filled up. It was on the basis of the aforesaid that an inference was drawn that the assessee/dealer attempted to evade tax. It is admitted on record that before the seizure, when the show cause notice was given, Form - 31 was produced by the assessee/dealer along with the reply. The said production of Form - 31 and other documents was voluntarily. Therefore, when such documents were produced voluntarily before actual order of seizure being passed it cannot be inferred that the assessee/dealer attempted to evade the tax.

15. Accordingly, the inference so drawn and the finding that there was an attempt to evade tax has no legs to stand, specially in the light of above referred various decisions.

16. In view of aforesaid facts and circumstances, the question raised in this revision as to whether the levy of penalty under Section 15-A(1)(o) was justified, is answered in favour of the assessee/dealer and against the revenue and it is held that as there was no attempt to evade payment of tax, the penalty could not have been imposed.

17. Accordingly, the revision is allowed. The impugned orders dated 3.3.2003 passed by the tribunal, 21.9.2002 passed by Deputy Commissioner (Appeals) and 22.3.2002 passed by Assistant Commissioner (Assessment) are set aside."

10. The case in hand, revisionist along with reply to show cause notice has filed the documents but no weightage was given to it and the seizure order was passed. Once the documents were produced before passing of the seizure order, it cannot be said that the revisionist had any intention to evade payment of tax or made any contravention of the Act.

11. Therefore, in view of the above facts, the revision is allowed and the impugned order is hereby set aside and the questions of law are answered accordingly in favour of revisionist.

12. It is made clear that if any amount has been deposited in compliance with the penalty order, the same shall be refunded in accordance with law within a period of two months from the date of production of a copy of this order.

Order Date :- 22.10.2021/SA