

Court No. - 17

Case :- SALES/TRADE TAX REVISION No. - 125 of 2011

Revisionist :- M/S Hardwari Mall Nand Kishore Lko.Through Its Partner

Opposite Party :- Commissioner Of Commercial Tax U.P.Commercial Tax Bhawan

Counsel for Revisionist :- Pradeep Agrawal

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

Alongwith

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Hon'ble Alok Mathur,J.

1. Heard Sri Pradeep Agarwal, learned counsel for the revisionist as well as Sri Sanjay Sarin, learned Standing Counsel for the respondent.

2. By means of present revisions, the revisionist has challenged the order dated 26.02.2011 passed by the Trade Tax Tribunal, Bench-I, Lucknow (*hereinafter referred to as "the Tribunal"*) whereby the appeal preferred by the revisionist against assessment order dated 05.03.2008, pertaining to assessment year 2000-2001, has been rejected.

3. Brief facts of the case are that the revisionist is a registered dealer under the U.P. TradeTax Act, 1948 (*hereinafter referred to as "the Act, 1948"*). and is a dealer of 'Spices' and other food items. It has been submitted that the revisionist has obtained Form-31 numbered as F/FF 1390126 for import of 120 bags of "Mool Kand Dana" (sabudana) and Form-31 numbered as F/FF 1390125 was obtained, against which no goods were obtained by the revisionist.

4. It has further been submitted that the revisionist had obtained Form-31 bearing No. F/FF 139125 for importing coconut and 59 bags of "black pepper" (Kali Mirch) by Truck No. UP 32 - A 5916, were found to be transported without any papers or challan contrary to the provisions of the Act, 1948. The said truck was intercepted at "Chauphata Check Post on 12.05.2000 and the goods were ceased on 19.05.2000, on inspection of the

said truck it was found that the vehicle belongs to M/s Lucky Forwarding Agency, New Market, Charbagh, Lucknow and was carrying other goods including black pepper, copra (coconut) etc.

5. Notices were issued to the person incharge of goods and penalty of Rs.3,40,000/- was demanded. M/s Lucky Forwarding Agency moved an application under Sub Section 6 of Section 13-A of the Act, 1948 before the Assistant Commissioner (Enforcement) who rejected the application by means of order dated 24.06.2000. Against the order of Assistant Commissioner an appeal was filed. In the said appeal valuation of goods was reduced from Rs.3,40,000/- to Rs.2,80,000/- by means of order dated 19.08.2000. M/s Lucky Forwarding Agency preferred Trade Tax Revision before the High Court at Allahabad and this Court had interfered in the said order and directed that security be furnished other than Cash, Bank Guarantee and FDR, for release of goods. M/s Lucky Forwarding Agency had subsequently filed security bonds of two registered dealers and the goods were accordingly released.

6. Apart from the above, penal proceedings under Section 15-A (1)(O) of the Act, 1948 were initiated against M/s Lucky Forwarding Agency as it has carried the goods without any papers and accordingly the assessing authority held that there was clear intention to evade tax and consequently penalty of Rs.3,40,000/- was imposed upon the Agency by means of order dated 19.08.2000.

7. The revisionist was also subjected to penalty proceedings and notices under Section 15 of the Act, 1948 was issued by the Deputy Commissioner, Trade Tax, Lucknow to the revisionist on 19.12.2002. The revisionist filed his objections against the penalty order stating that firstly the Form-31 which was carried by the said truck no. UP 32 - A 5916 was merely a photo copy and secondly that the goods were never destined to the revisionist and he has no concern with the said goods and lastly it was submitted that penalty proceedings have already been culminated against M/s Lucky Forwarding Agency and consequently no such order can be passed against the revisionist.

8. The Assessing Authority rejected the contention of the revisionist and imposed penalty of Rs.2,80,000/- by means of order dated 31.07.2006.

9. It was further stated by the revisionist that Form-31 issued at his behest was infact forwarded to M/S Lucky Forwarding Agency, which in fact was a photocopy of the same which was possessed by the Forwarding Agency whose truck was intercepted and was found transporting the goods. The

revisionist is nowhere concerned with the goods transported by M/s Lucky Forwarding Agency and merely because Form-31 issued at the behest of the revisionist was found with the said truck and the revisionist has been illegally subjected to the penal proceedings under Section 15-A(I)(O) of the Act, 1948.

10. The Joint Commissioner (Appeals) rejected the contentions of the revisionist merely on the ground that the truck was carrying copy of Form-31 which was issued to the revisionist. Despite the fact that without considering the fact that the said Form-31 was being unauthorisidly carried by the said transporter. The petitioner preferred an appeal against the penalty order dated 31.07.2002. The Tribunal had considered in detail all the facts and also the facts with regard to the litigation having been conducted prior to the penalty proceedings. The Tribunal also rejected the appeal and confirmed the findings of the Assessing Authority.

11. Learned counsel for the revisionist while assailing the impugned order dated 26.02.2011 submitted that the present dispute relates to assessment year 2000-2001, where the revisionist had given two Form - 31 bearing Nos. F/FF 1390125 and F/FF 1390126 to the agent of M/S South Eastern Trading Agency on 10.10.1999, whose head office is situated in Nagpur in normal course of business. It is contented that Form-31 No. F/FF 1390126 was used by the revisionist, but the present controversy refers to utilisation of Form-31 No. 1390125. Notice was received by the revisionist on 22.12.2000 from the Assistant Commissioner (Assessment), Lucknow under Section 15A (1)(o) of the Trade Tax Act, 1948 (*hereinafter referred to as "the Act, 1948"*) stating that Form-31 No. F/FF 1390125 has been issued for importing 59 bags of 'Kali Mirch' (black pepper) by Truck No. UP 32 - A 5916, which was detained at "Chauphata Check Post" on 12.05.2000 and consequently the goods were ceased on 19.05.2000 on the ground that M/s Swastik Enterprises, Calicut through Form -31 No. F/FF 2744076 had sent 180 bags of Copra (Nariyal Gola) to M/s Shiv Shanker Ram Shanker by Truck No. UP 32-A 5916 and in between the Copra, 59 bags of kali mirch was also found, which was not covered by any Form-31 and there were no documents pertaining to the said goods. The truck No. UP 32-A 5916 belong to M/s Lucky Forwarding Agency, Lucknow and hence notice was served on the person incharge of the goods and Security of Rs.3,40,000/- was demanded. M/s Lucky Forwarding Agency preferred an application under sub-section (6) of Section 13-A of the Act, 1948 which was rejected on 24.06.2000, against which an appeal was filed beofre the Trade Tax Tribunal, Allahabad for release of goods.

12. It was stated that no documents were produced and only Fax copy of Form-31 No. 139125 and bill and bilty of M/s M..P. Road Lines were produced and as valuation of goods was done on higher side, security was reduced from Rs.3,40,000/- to 2,80,000/-. Subsequently, the matter was further carried till the High Court by means of Trade Tax Revision No. 878 of 2000 and this Court by means of order dated 12.09.2000 directed that the security be furnished other than cash, bank guarantee and FDR for release of goods. In pursuance to the directions of this Court goods were released in favour of M/s Lucky Forwarding Agency.

13. In the meanwhile, in the penalty proceedings under Section 15-A(1)(o) of the Act, 1948, penalty of Rs.3,40,000/- was imposed upon M/S Lucky Forwarding Agency on the ground that goods were imported without any Form-31, due to the fact that the Transport Agency had produced a fax copy of Form-31 bearing No. 1390125, issued to the revisionist. Penalty was also imposed upon the revisionist on 17.08.2006.

14. The revisionist being aggrieved by the order of penalty, preferred an appeal before the first Appellate Authority which was partly allowed on 05.03.2008 and the matter was further agitated by the revisionist before the Commissioner Tax Tribunal, which appeal has also been rejected by impugned order dated 19.03.2000.

15. In the present revisions, it has been submitted that proceedings initiated against the revisionist are illegal and arbitrary inasmuch as there is no material linking the transaction of 59 bags of Black Pepper to the revisionist. It is further submitted that only link on the basis of which the revisionist is held to be responsible is the Fax Copy of Form-31 No. F/FF 1390125. Admittedly, the original copy of Form-31 was never produced at any stage before the authorities and from the very inception the revisionist has denied the fact of having over Form-31 for transport of the ceased goods i.e. Black Pepper. The Assessing Authority as well as the Tribunal have held the revisionist liable for the said penalty merely on the ground that his name has occurred on Form-31 which was found with the driver of the said truck. Admittedly, there was no material linking the revisionist to the said goods.

16. It is submitted by learned counsel for the revisionist that the issue which arises for consideration is as to whether the order passed by the Tribunal is illegal and arbitrary as it has not considered the case of the revisionist and merely on the basis of the fact that the goods were being carried by the Transporting Agency which was owned by the revisionist and also that they

were carrying photo copy of Form-31. It has been further submitted that the said goods were not being imported by the revisionist and no document in this regard was found with the transporter and hence the Tribunal as well as the Assessing Authority have wrongly levied penalty on the revisionist.

17. Considering the aforesaid submissions of the revisionist it is noticed that the revisionist had obtained Form-31 for importing Copra and forwarded the same to the South Eastern India Trading Agency. It seems that copy of Form-31 was handed over to M/s Lucky Forwarding Agency, who were owners of Truck No UP 32 - A 5916 which vehicle was intercepted on 12.05.2000 and the goods were found to be transported without proper papers.

18. There is no doubt that only photocopy of Form-31 was found when the vehicle in question which was intercepted on 12.05.2000. Despite the fact that the revisionist has distanced himself from the said transaction by stating that Form-31 was illegal as a copy of which was being carried by the vehicle which was intercepted and the revisionist had never engaged M/s Lucky Forwarding Agency for transporting the said goods nor handed over the Form-31 and merely because copy of Form-31 issued at the behest of revisionist was being used, penalty has been imposed on him in the most arbitrary manner.

19. In order to return finding with regard to liability of revisionist, the authorities below should have examined either the driver of the vehicle on which the goods were being transported at the behest of revisionist against Form-31 No. F/FF 1390125 or any other person who was asserting that the goods were being carried at the behest of the revisionist. In view of the fact that the revisionist had distanced himself from the said transaction, it was the responsibility of the respondents to have dwelled deeper into the matter to fix responsibility on the revisionist so as to link him with the said transaction of goods which were seized by the mobile squad.

20. Merely on the basis of copy of Form-31 being produced after seizure of the goods does not indicate that there was sufficient material linking the revisionist to the transaction necessary for imposing penalty upon the revisionist. This Court is of the considered view that in order to fix responsibility there should be cogent and sufficient material indicating the transport of the goods to the assessee and had that been the case, the proceedings might have been justified but merely fastening liability of penalty on the ground of photo copy of Form-31 without there being any other material is not adequate or sufficient for imposing penalty under Section 15-A(1)(o) of the Act, 1948. Section 15-A(1)(o) provides as under :-

"Section 15-A(1)(o) – If the Assessing Authority is satisfied that any dealer or other person-

(a)

(o) imports or transports, or attempts to import or transport, or abets the import or transport of any goods in contravention of the provisions of Section 28-A; or

(p)

it may, after such inquiry, if any, as it may deem necessary, direct that such dealer or person shall pay, by way of penalty, in addition to the tax, if any, payable by him,-"

21. In order to impose penalty under Section 15-A(1)(o), the penalty has to be imposed only after the Assessing Authority is satisfied that the dealer or any other person has imported/transported or attempted to import/transport any goods in contravention of provisions of Section 28-A. In the present case the assessee has denied transaction, hence, the Assessing Authority was duty bound to return a finding that the goods were being transported in contravention of provisions of Section 28-A of the Act, 1948 for which purpose he ought to have examined and considered whether in fact the goods were being transported at the behest of the revisionist. The Assessing Authority having failed to examine the matter in this regard has committed manifest error rendering the impugned order illegal and arbitrary. Without there being any other material this Court is of the considered view that satisfaction recorded by the Assessing Authority is clearly arbitrary and due to the fact that there is no sufficient material on record to link the transaction to the revisionist, the impugned order is liable to be set aside.

22. In the present case only material to arrive at the conclusion by the authorities below was the copy of Form-31 which was found with the said vehicle which was carrying the said goods and which was intercepted on 12.05.2000. This Court is of the considered view that neither there was sufficient material for levying penalty and recording the finding that the revisionist was responsible for having intention to evade tax and nor there is any material to link transport of said goods at the behest of revisionist.

23. In the light of above, this Court is of the considered view that the penalty proceedings are arbitrary and illegal and hence cannot be sustained, therefore, the impugned order dated 26.02.2011 passed by the Tribunal for assessment year 2000-2001 is infirm and is accordingly set aside. The revisions are accordingly **allowed**.

Order Date :- 13.12.2023/A. Verma

(Alok Mathur, J.)