IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Commercial Tax Revision No.32 of 2016

Commissioner, Commercial Tax, Uttarakhand, Dehradun

.....Revisionist

Vs.

M/s Kalindi Medicare Pvt. Ltd. .....Respondent

Ms. Puja Banga, learned brief holder for the revisionist.

30th December, 2020

Coram : Hon'ble Ravi Malimath, A.C.J.
Hon'ble Alok Kumar Verma, J.

Ravi Malimath, A.C.J. (Oral)

The firm is a registered firm at Vikasnagar, Dehradun dealing in medicine and medical related products. On 04.11.2012 at the check post Kulhal, the officer-in-charge intercepted the vehicle no. HP17B 7175. After checking, he found that Form No. 16 was empty and was not properly filled, and some additional products were also being carried, apart from the declared goods in Form 16.

2. A notice was served upon the driver of the vehicle/assessee. A reply was furnished. A seizure order

was passed and the goods were seized and later on the same was released after security deposit of Rs.41,382/- upon the estimated cost of the goods of Rs.3,03,470/-. An application was filed before the Deputy Commissioner (Vigilance) Tax, who rejected the same and directed to deposit the security to the tune of three times of prevailing tax rates.

3. Aggrieved by the same, the assessee preferred an appeal before the Joint Commissioner (Appeals). The authority, while considering the contentions, allowed the appeal on 04.05.2015 and set aside the penalty that was imposed on the assessee. Aggrieved by the same, a second appeal was preferred before the Tribunal, which dismissed the same on 24.07.2015. Hence, the present revision by the State.

4. Learned counsel for the revisionist contends that the orders passed by the first and the second appellate authorities are erroneous; and they have not properly adjudicated the facts of the case. The same is disputed by the learned counsel for the respondent.

5. The question that arises for consideration herein is since covered by a series of judgments of the Hon'ble Supreme Court. In the instant case, even though Form No.16 was not appropriate, all the relevant documents pertaining to the goods that had been carried were in the possession of the driver. Therefore, it cannot be said that there was any intention to evade the tax. This very question has been answered in a series of judgments by the Hon'ble Supreme Court starting from *State of Rajasthan and another vs. D.P. Metals* reported in *(2002)1*

SCC 279. Therefore, following the said judgment, both the authorities have passed the orders to set aside the penalty. Under these circumstances, we do not find any error committed by both the authorities much less that any substantial question of law arises for consideration in this revision. Hence, on these grounds, the revision, being devoid of merit, is dismissed.

6. In case, any pre-deposit or penalty has been paid by the assessee, the same shall be refunded to him within a period of four weeks from the date of receipt of a copy of this order.

(Alok Kumar Verma, J.) **(Ravi Malimath, A.C.J.)**

SK/JKJ