IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

Commercial Tax Revision No. 33 of 2018

The Chief Commissioner of
Commercial Tax, Uttarakhand
Dehradun and another .....Revisionists

Vs.

M/S Savitri Devi Industries
Rudrapur .....Respondent

Shri Mohit Maulekhi, learned brief holder for the State of Uttarakhand/revisionists.

29th December, 2020

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

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

There is a delay of 252 days in filing the revision. However, we have heard the learned counsel on merits.

2. The brief facts of the case are that on 10.07.2015, vehicle bearing no.UP27T/3686 was checked by the mobile unit officer, Kichha. It was found that paddy was being imported from Shahjahanpur, Uttar Pradesh to Rudrapur along with the goods bill no.20 dated 09.07.2015 of M/S Bihari Ji Traders, Shahjahanpur, Uttar Pradesh. Bilty no.1480 dated 09.07.2015 of M/S Bala Ji Flight Brokers, Shahjahanpur, Mandi Samiti Gate pass no.0933 and 9R no.0991 were found. The dealer was importing goods without Form-16. A show cause notice was issued. The dealer filed his

written reply. The same was rejected by the Investigation Officer. He passed an order for seizure of the goods with respect to security amount of Rs.83,690/- @ 40% upon the estimated value of the goods of Rs.2,09,051/-. The goods were released upon such deposit. A notice was issued to the dealer. A learned counsel appeared and submitted his written submissions that 650 bags of paddy were being imported from M/S Bihari Ji Traders, Shahjahanpur, Uttar Pradesh. Along with the goods, the bills, bilty, mandi gate pass, etc. were found. The authority found that there is an intention to evade the tax and only an afterthought to hide the mala fide intention of avoiding the taxes various reasons were assigned. The reason that the driver took a different route instead of his original assigned route was not accepted. It was stated that it was the responsibility of the dealer to ensure that completely filled Form-16 is accompanied with the goods. Thereafter, the penalty of Rs.83,690/- @ 40% of the estimated value of the goods was imposed on the assessee.

3. Aggrieved by the penalty order, the dealer filed an appeal before the first appellate authority. The first appellate authority dismissed the appeal on 23.05.2017 and upheld the order of penalty dated 26.02.2016 passed by Assistant Commissioner, Commercial Tax, Kichha. Aggrieved by the same, a second appeal was filed by the dealer before the Tribunal. By the impugned order dated 26.08.2017 the second appeal was allowed and the order of the first appellate authority dated 23.05.2017 and the penalty

order passed by the tax assessing officer dated 26.02.2016 were set aside. The amount deposited as regards the penalty was directed to be refunded to the assessee. Questioning the same, the instant revision is filed.

4. Shri Mohit Maulakhi, learned brief holder for the revisionist/State, contends that the Tribunal failed to consider the evidence on record.

5. On considering the evidence, we are of the considered view that there is no error committed by the Tribunal that calls for any interference. The Tribunal came to the view that, based on the facts and material and the fact that the driver took a different route even though he was assigned a separate route to follow, cannot be said to amount to an intention to evade the tax. The appreciation of the evidence by the Tribunal is just an appropriate. It cannot be said to be perverse. Even otherwise the amount is only Rs.83,690/-, which is a very paltry sum. We do not find any substantial question of law that arises for consideration. Hence, the revision is dismissed.

6. Pending application, if any, stands disposed off accordingly.

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

SK/PP