

CASE NO.:
Appeal (civil) 1603 of 2008

PETITIONER:
Commissioner of Trade Tax, U.P.

RESPONDENT:
M/s. J.U. Pesticides & Chemical P. Ltd

DATE OF JUDGMENT: 26/02/2007

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CIVIL APPEAL No. 1603 OF 2008
(Arising out of SLP (C) No. 897 of 2007)

Dr. ARIJIT PASAYAT, J

1. Leave granted.

2. Challenge in this appeal is to the judgment and order dated 10.10.2006 passed by a learned Single Judge of the Allahabad High Court in Trade Tax Revision No. 694 of 2006. By the impugned order the learned Single Judge allowed the Revision Petition filed under Section 11 of the Uttar Pradesh Trade Tax Act, 1948 (in short the 'Act') and directed release of certain goods which were seized without security and Rs.20,000/- was imposed as costs.

3. The factual background in a nutshell is as follows:

The Check Post Officer posted at the Entry Check Post Tamkuhiraj, District Deoria, in the State of Uttar Pradesh issued transit Pass No.1006 dated 13.6.2005 in respect of the goods carried in Truck No. HR-55A-4687. The same was presented before the Check Post Officer, Exit Check Post, Transport Nagar, Ghaziabad on 15.6.2005. As per Transit Pass, 99 drums of Agro Chemicals valued at Rs.59,87,142.85 were recorded. These goods were shown to have been transported from Kapru in Assam to Bhatinda in the State of Punjab. A physical verification of the goods loaded in the truck was carried out by the Check Post Officer posted at the Exit Check Post and it was found that the goods relatable to the 99 drums of Agro Chemicals were different from those covered by the Transit Pass No. 1006. The officer posted at the check post issued show cause notice No. 553 dated 15.6.2005. According to the officer, on a perusal of the goods in question it was clearly established that the goods for which Trip Sheet No. 1006 dated 13.6.2005 was issued have been unloaded within the State of Uttar Pradesh and in its place different goods have been loaded within the State of Uttar Pradesh and such goods were being transported to a place outside the State of Uttar Pradesh. It was therefore concluded that there was a sale which is taxable under the Central Sales Tax Act, 1956 (in short the 'Central Tax'). But under the garb of the said Trip Sheet No. 1006 dated 13.6.2005 different goods were being carried. Goods loaded in the truck were

analysed in the Shri Ram Institute of Industrial Research Delhi. On receipt of the Analysis Report, part of the goods weighing 375 kg. and valued at Rs.37,50,000/- were seized on 31.12.2005 and security to the extent of 40% of the value of the seized goods i.e. Rs.15 lakhs was demanded for the release of the goods as seized by the Check Post Officer. The dealer was directed to disclose the identity of the remaining goods which were detained. There was no response to the query.

4. Being aggrieved by the aforesaid order dated 31.12.2005, the respondent filed an application in terms of Section 13A(6) of the Act for release of the goods without payment of security before Deputy Commissioner (Check Post) Trade Tax, Mohan Nagar, Ghaziabad. The said Authority by order dated 28.1.2006 rejected the application and affirmed the Seizure Order as well as the demand of security for release of goods. Order passed under Section 13A(6) by the Deputy Commissioner was challenged before the Tribunal, Trade Tax, Ghaziabad, Bench II (in short 'Tribunal'). Stand of the respondent before the Tribunal was the Transit Pass has been issued from the Entry Check Post on 13.6.2005 when the truck arrived at the Exit Check Post on 15.6.2005, after travelling the distance of about 700 k.m. and it was not possible during such short period for the truck driver to unload and sell the goods originally loaded in the truck at the time of entering the State through the Entry Check Post and thereafter to load other goods in the same vehicle from a place within the State of Uttar Pradesh before crossing the State through the Exit Check Post. Tribunal rejected the contention on the ground that the plea about possibility of unloading and selling the goods was not acceptable. The Tribunal observed that merely because the said vehicle had covered a distance of 700 k.m. it could not be ruled out that as a part of the pre-planned strategy, the original goods could be unloaded and in its place different goods could be loaded within a short period of one or two hours. The Tribunal observed that whether the goods loaded in the vehicles were those very goods which were available in the vehicle at the time of entry of the vehicle at the Check Post as a fact which could be ascertained only after the thorough examination of the documents presented at the Exit Check Post as well as the physical verification of the goods loaded in the vehicle at the time of inspection at the Exit Check Post.

5. Tribunal noticed that the driver or the person in charge of the goods loaded in the vehicles is required to stop the vehicle at the Exit Check Post, surrender one copy of the Trip Sheet and allowed the officer posted at Exit Check Post to ensure that the goods loaded in the vehicle are those very goods which are covered by the Trip Sheet and for the said purposes, the relevant account Books connected with the goods and its transportation shall, if necessary, be required to be produced for examination by the officer. Reference was made to Rule 87(3) of the Uttar Pradesh Trade Tax Rules, 1948 (in short the 'Rules') to observe that the officer posted at the Check Post is not only supposed to count the number of drums as disclosed in the Trip Sheet, but is supposed to satisfy himself after examining the relevant documents, consignment and the goods that the goods being transported outside the State of U.P. are those very goods which were loaded in the truck at the time of its entry at the Entry Check Post and as mentioned in the Trip Sheet.

6. A categorical finding was recorded that on a physical verification although 99 drums of agro Chemicals as per goods

receipt were found in the vehicle, but on comparing these goods with the goods mentioned in the Invoice No. 33 dated 3.6.2005 and Delivery Note No. 034 dated 3.6.2005, different goods were found in the vehicle. The description of the goods as mentioned in the Trip Sheets were found not to be matching with those goods because of the following factors:

(i) The goods receipt was originally made for dispatch of 126 drums as is shown in the invoice No. 33 dated 03.06.2005 comprising of Immida Cloprid contained in 60 cases of 50 liters each and Acetamiprid contained in 66 cases of 50 kg each. The total of these drums thus comes to 126 as shown in the goods receipt.

(ii) Not only this, the weight of these 126 drums also comes to 6300 kg as was originally shown in the goods receipt.

(iii) Out of these 126 drums only 99 drums are said to have been actually dispatched subsequently. The weight of the chemicals @ 50 kg per case in these 99 cases comes to 4950 kg and if the weight of the containers itself is added to it, the weight of these 99 drums comes to 5100 kg as has been subsequently mentioned in the goods receipt itself.

(iv) There is a reference of goods receipt No. 6401589 on the Delivery Note No. 034 dated 03.06.2005 itself and as such the said delivery note cannot be held to be related with some other goods receipt.

(v) The said goods receipt No. 6401589 is clearly mentioned in the Trip Sheet No. 1006 dated 13.06.2005.

(vi) In the column of Private Mark in the goods receipt No. 6401589, there is a reference of 034 which is the number of Delivery Note itself.

(vii) There is, it is true, no reference of invoice number and date on the Trip Sheet no. 1006 dated 13.6.2005, but the simple reason for it is that there is no column provided in the Trip Sheet for this purpose.

7. The Tribunal also noted that transportation of 126 drums against Goods Receipt No. 6401589 has been shown in Trip Sheet was obtained in respect of 99 drums from Entry Check Post Tamkuhiraj and the same refers to Delivery Note no.034 dated 3.6.2005 and on a physical verification, the goods which were found were different from those covered by the Delivery Note. It was also noted that the respondents were not prepared to disclose the identity of goods in spite of grant of opportunity.

8. Respondent challenged the findings of the Tribunal in the Revision filed before the High Court, which as noted above, allowed it.

9. The basic stand of the appellant is that the scope of interference in a proceeding under the Act is very limited; it can only interfere in the question of law and should not normally interfere with the concurrent findings of fact.

10. There is no appearance on behalf of the respondent in spite of service of notice.

11. The factual findings recorded by the High Court have been noted above. Additionally, the High Court does not appear to have appreciated that in the goods Receipt no. 6401589 dated 9.6.2005 in the Column of "Private Mark", the Entry is 034 and in the Column of "Value", the entry is Rs.76,20,000/-. The figures "034" and "Rs.76,20,000" are the

Delivery Note No.34 and the value of the goods is Rs.76,20,000/-, as mentioned in the Delivery Note.

12. Above being the factual position the High Court ought not to have interfered with the orders of the departmental authorities and the Tribunal, that too on the question of appreciation of the factual aspects. The High Court has not analyzed as to how the conclusions of the Tribunal as noted above suffer from any infirmity. If fact finding authority comes to certain conclusions honestly and bonafide the mere fact that Court may have a different perspective of that question, cannot be a ground to interfere with the finding even though another view may be possible. Considering the limited jurisdiction exercisable under Section 11 of the Act, such a course is not available. As noted by this Court in Commissioner of Sales Tax, U.P. v. Kumaon Tractors & Motors (2002 (9) SCC 379), Section 11 of the Act confers limited jurisdiction to interfere with the order of the Tribunal only on the question of law, which is required to be precisely stated and formulated. In the instant case, even that has not been done.

13. The High Court's order, which is clearly indefensible, is set aside.

14. The appeal is allowed without any order as to costs.