

कम्प्यूटर परिपत्र सं- 1617028 दिनांक 29.08.2016

संख्या- विधि-4(1)/ सामान्य निर्देश/16-17/ 1351 /वाणिज्य कर

कार्यालय कमिश्नर वाणिज्य कर, उत्तर प्रदेश
(विधि अनुभाग)

लखनऊ : दिनांक : 26 अगस्त , 2016

समस्त जोनल एडीशनल कमिश्नर /एडीशनल कमिश्नर ग्रेड-2 (वि0अनु0शा0)

समस्त ज्वाइन्ट कमिश्नर (कार्यपालक)/(वि0अनु0शा0) वाणिज्य कर, उत्तर प्रदेश ।

विषय : सर्वश्री ओम लौजिस्टिक लि0 बनाम् कमिश्नर वाणिज्य कर (टी0टी0आर0 सं0: 326/ 2011) में माननीय उच्च न्यायालय द्वारा दिये गये निर्णय के संदर्भ में ।

सर्वश्री ओम लौजिस्टिक लि0 बनाम् कमिश्नर वाणिज्य कर (टी0टी0आर0 संख्या 326/2011) के वाद में याची द्वारा अभिग्रहण की कार्यवाही को निम्न दो बिन्दुओं पर चुनौती दी गयी थी :-

- (1) कमिश्नर, व्यापार कर द्वारा परिपत्र दिनांक 31.1.1987 के संदर्भ में याची का कथन था कि माल गोदाम में पहुँचने से पूर्व "no mans land" में होने के कारण माल का अभिग्रहण नहीं किया जा सकता ।
- (2) " कारण बताओं नोटिस " के उत्तर में फार्म 38 दाखिल कर दिये जाने के आधार पर अभिग्रहण की कार्यवाही अपेक्षित नहीं थी ।

प्रथम बिन्दु के संबंध में माननीय उच्च न्यायालय द्वारा प्रश्नगत निर्णय में विस्तार से विचार किया गया तथा यह अभिमत व्यक्त किया गया कि कमिश्नर, वाणिज्य कर द्वारा जारी प्रश्नगत परिपत्र दिनांक 31.01.1987 किसी भी प्रकार से वाणिज्य कर विभाग के अधिकारियों को उत्तर प्रदेश राज्य की सीमा के अन्दर माल के अभिग्रहण से नहीं रोकता है । माननीय न्यायालय द्वारा यह भी अभिमत व्यक्त किया गया है कि उत्तर प्रदेश मूल्य संवर्धित कर अधिनियम 2008 में ऐसा कोई प्राविधान नहीं है जिसके आधार पर कमिश्नर, वाणिज्य कर को यह अधिकार प्राप्त हो कि वे अपने अधीनस्थ अधिकारियों को किसी क्षेत्र विशेष में अभिग्रहण की कार्यवाही करने रोक सकें । वाणिज्य कर विभाग के अधिकारियों को उत्तर प्रदेश राज्य के समस्त भू-भाग के अन्तर्गत माल को रोकने, जांच करने और उनका अभिग्रहण करने का अधिकार है तथा यह शक्तियाँ अधिनियम द्वारा प्रदत्त होने पर कमिश्नर वाणिज्य कर के परिपत्र द्वारा उन्हें बाधित नहीं किया जा सकता ।

माननीय उच्च न्यायालय के उक्त निर्णय से यह स्वतः स्पष्ट है कि कमिश्नर वाणिज्य कर के उक्त परिपत्र संख्या विधि-1-(2)-(सी-7)-86-87-3332/मुख्यालय दिनांक 31.01.1987 द्वारा किसी प्रकार से उत्तर प्रदेश के भू-भाग के अन्दर किसी भी स्थान पर जांच/अभिग्रहण की कार्यवाही से रोका नहीं गया है । तथा प्रदेश के भू-भाग के अन्तर्गत किसी भी क्षेत्र में धारा-45 एवं 48 के अन्तर्गत प्रदत्त अधिकारों द्वारा माल की जांच /अभिग्रहण की कार्यवाही की जा सकती है । वैसे भी प्रश्नगत परिपत्र तत्समय कार्यरत जांच चौकियों की भौगोलिक स्थिति के कारण हो रहे करापवंचन की प्रभावी जांच हेतु जारी किया गया था तथा वर्तमान में जांच चौकियाँ समाप्त हो जाने के कारण प्रश्नगत परिपत्र स्वतः निष्प्रयोज्य हो जाता है एवं तदनुसार निरस्त किया जाता है । माननीय उच्च न्यायालय के प्रश्नगत निर्णय की प्रति इस पत्र के साथ इस निर्देश के साथ संलग्न कर प्रेषित की जा रही है कि माननीय न्यायालय के उक्त निर्णय से अधीनस्थ अधिकारियों को अवगत कराते हुए उपरोक्तानुसार कार्यवाही करना सुनिश्चित करें ।

उक्त निर्देशों का कड़ाई से अनुपालन किया जाना सुनिश्चित किया जाये ।
संलग्नक उपरोक्तानुसार ।

(मुकेश कुमार मेथ्राम)

कमिश्नर वाणिज्य कर,

उत्तर प्रदेश ।

24/08/16

Court No. - 41

Case :- SALES/TRADE TAX REVISION No. - 326 of 2011

Applicant :- M/S Om Logistic Ltd.

Opposite Party :- Commissioner, Commercial Tax

Counsel for Applicant :- N.C. Gupta

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

Hon'ble Yashwant Varma,J.

Heard learned counsel for the revisionist and the learned Standing Counsel.

The challenge in the present revision was to an order of seizure made in respect of goods which were being imported into the State and were apprehended at the U.P. border. It was the case of the revisionist that the goods had been consigned by M/S India Yamaha Motors Private Limited, Surajpur, Noida and M/s Madrsan Auto Motive Elesto Technology, Kanchipuram, both the entities being situate in the State of Tamil Nadu. It appears that the vehicle carrying the aforesaid goods was apprehended on 9 April 2011 when the inspection team found that they were not accompanied by Form - 38. Upon receipt of notices, the revisionist is stated to have submitted a reply of the same date along with which the relevant Form - 38's were also forwarded to the Assistant Commissioner. The Assistant Commissioner however did not accept the explanation submitted and

the goods would be liable to be released upon furnishing of security to the extent of 40 per cent. The challenge to this order before the first appellate authority as well as the Tribunal failed. On this revision by an interim order dated 11 May 2011 the goods were directed to be released upon furnishing of a bank guarantee in respect of the disputed amount instead of making a cash deposit. This bank guarantee, Sri Gupta informs has been duly submitted. Learned Standing Counsel apprised the Court that in respect of one consignment penalty proceedings have been dropped while in respect of the other, penalty proceedings have been confirmed. Sri Gupta has however submitted that the validity of the seizure may still be ruled upon by this Court and therefore prayed that this revision be decided on merits.

Two primary submissions have been advanced by Sri Gupta in his challenge to the order of seizure:

(A) It is his contention that the goods were apprehended in "no mans land" prior to they being received in the godown of the assessee. Referring to the circular of the Commissioner, Trade Tax dated 31 January 1987, he submits that no such seizure could have been effected.

(B) Sri Gupta further submits that in any view of the

Assistant Commissioner along with a reply of the assessee to the show cause notice and therefore there existed no circumstance warranting the seizure of the goods.

In support of his first submission, Sri Gupta has placed reliance upon a judgment rendered by a learned Single Judge of this Court in **Cheema Paper Ltd. Vs. Commissioner Trade Tax U.P. Lkn**¹ It is his submission that the judgment noted above is an authority for the proposition that no seizure can be effected in no man's land. Insofar as the second submission is concerned, Sri Gupta has placed reliance upon another judgment rendered by a learned Single Judge in **M/S Balaji Timbers & Paints Vs. The Commissioner, Commercial Tax, U.P. Lucknow**². Sri Gupta submits that once the Form 38's were forwarded along with the show cause notice, no ground warranted the seizure of goods.

Having heard learned counsel for the parties, this Court finds that neither of the two submissions noted above commend acceptance. Insofar as the submission in respect of "no mans land" is concerned, this Court notices that the circular of the Commissioner does not restrain the authorities of the Trade Tax Department from effecting seizures within a radial distance of the border of the State of U.P. The circular in fact highlights the

experience of the Department that various dubious transactions were in fact taking place in “no mans land” and that dealers were effecting transfers after the goods had entered the U.P. border and before they reached their godowns. This circular does not take the case of the revisionist any further. In any view of the matter, this Court does not find that the U.P. VAT Act, 2008 confers any jurisdiction upon the Commissioner to prescribe a particular area within which the authorities of the Department may be denuded of their jurisdiction to effect a seizure. Nor can the conferment of such a power be read into the jurisdiction of the Commissioner or be approved by this Court. The power to apprehend, inspect and seize goods is one that is exercisable throughout the length and breadth of the State. If that power exist and be exercisable statutorily throughout the State, surely a circular of the Commissioner cannot eclipse the same.

Insofar as the judgment in **Cheema Paper** is concerned, all that the learned Judge records is that no mans land though technically within the State of U.P. has been permitted by the revenue authorities to be used by transporters to facilitate their business. This judgment is not an authority for the proposition that the power to effect a seizure cannot be exercised in no mans

That takes us to the second submission of Sri Gupta, namely, that once Form -38's had been duly submitted, there was no justification in effecting a seizure of goods. It becomes relevant to note here that under sub-section (4), the officer authorized is empowered to undertake a search or inspection of goods which have been transported within the State and to apprehend them if he finds that they are not covered by proper and genuine documents. The Act then enjoins the authorized person to call upon the assessee to show cause before proceeding to record his satisfaction that an attempt has been made to evade assessment or payment of tax.

Now admittedly, in the facts of the present case the Form -38's did not accompany the goods in question. The assessing authority in the seizure order has recorded that the bills, invoices as well as the bills of transportation also did not carry any details of the Form -38's. In this view of the matter, at least the first part of sub-section (4), namely the requirement of the goods not being accompanied by proper and genuine documents, was satisfied.

That takes us to the second part of sub-section (4) to be tested and to answer whether the authority was justified in

submitted along with the reply to the show cause notice. The Form - 38 neither accompanied the goods nor were its details mentioned in the invoices or bills of transportation which were found with the consignment. This fact has been duly recorded in the order of the Assistant Commissioner. This, therefore, is perhaps an indication that these Forms were prepared subsequent to the seizure. At least this possibility cannot be ruled out. On this state of the record the Assistant Commissioner, in the opinion of this Court, was fully justified in recording his satisfaction that an attempt had been made to evade payment of tax. In this view of the matter, the Court is of the firm opinion that the satisfaction which stood recorded by the Assistant Commissioner does not merit any interference of this Court. Insofar as the judgment relied upon by Sri Gupta in **Balaji Timbers** is concerned, this Court finds that in the facts of that case the Court had recorded that the goods were duly entered in the Form-38 and the papers had been duly handed over to the driver of the vehicle. The judgment, therefore, is clearly distinguishable. The Court finds no infirmity in the seizure order.

The revision is accordingly **dismissed**.