

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.9745-9746 OF 2010

LAKHICHAND RAM KUMAR

Appellant(s)

Versus

COMMISSIONER OF COMMERCIAL TAX, U.P.

Respondent(s)

O R D E R

1. We have heard Mr. Rohit Amit Sthalekar, the learned counsel appearing for the appellant and Mr. Bhakti Vardhan Singh, the learned counsel appearing for the State of Uttar Pradesh. The question of law that fell for the consideration of the High Court while looking into the two Commercial Tax Revisions preferred by the Commissioner, Commercial Tax Uttar Pradesh is as under:-

“Whether under the facts and in the circumstances of the case, the Commercial Tax Tribunal was legally justified in treating the compounding fee deposited at checkpost as a security and further Tribunal was justified in directing the assessing authority to treat the compounding money as security and the benefit should be given to the dealer treating the amount of Rs.39,79,130/- as security?”

2. The High Court after due consideration came to the conclusion that the appellant herein had deposited the requisite

amount without filing Form 31 under the U.P. Trade Tax Act, 1948 (for short "the Act").

3. On the basis of the materials on record, the High Court recorded a finding of fact that the amount deposited by the appellant while importing coal was in the absence of Form 31 of the Act has to be treated as a composition fee and not security.

4. The case put up by the learned counsel appearing for the appellant herein is that the amount was deposited under the Circular dated 26.09.2002 and therefore the same should be treated as security. The circular dated 26.09.2002 more particularly clause (D) therein reads thus:-

"[D] If any person/trader imports coal without declaration form for import then on making declaration voluntarily by him, in case of registered traders @ Rs.150/- per ton and in case of non registered person/assessee due tax or @ Rs.150/- per metric ton whichever may be excess shall be accepted as penal amount by way of composition amount. In case of finding coal more than the quantity declared voluntarily, on surplus quantity of coal, the amount equal two times to above means in case of registered dealer penal sum of Rs.300/- per metric ton and Rs.240/- per metric ton when import is by railway and in case of non registered dealers, three times of due tax under section 15BB of Uttar Pradesh Trade Tax Act as per rule or 40% of price of goods, whichever may be excess shall be realized as composition amount. The assessment of tax on imported coal shall be done by the concerned tax assessment officer."

5. The circular referred to above makes it abundantly clear that if any amount is paid under the aforesaid circular the same

has to be accepted as penal amount by way of composition amount.

6. It was brought to our notice that the legality and validity of this very circular referred to above was challenged before the Allahabad High Court in the Writ Petition (Civil) No. 429 of 2003 and the challenge ultimately failed.

7. We are of the view that no question of law is involved in the present appeals warranting any interference at our end.

8. In view of the aforesaid, the appeals fail and are hereby dismissed.

9. Pending applications, if any, stand disposed of.

.....J.
[J.B. PARDIWALA]

.....J.
[R. MAHADEVAN]

New Delhi;
13th November, 2024

CD

ITEM NO.101

COURT NO.15

SECTION III-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 9745-9746/2010

LAKHICHAND RAM KUMAR

Appellant(s)

VERSUS

COMMISSIONER OF COMMERCIAL TAX UP

Respondent(s)

Date : 13-11-2024 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Appellant(s) Mr. Rohit Amit Sthalekar, AOR
Mr. Purnendu Bajpai, Adv.
Mr. Shashank Singh, Adv.

For Respondent(s) Mr. Bhakti Vardhan Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the Signed order.

Pending application(s), if any, stand disposed of.

(CHANDRESH)
COURT MASTER (SH)

(POOJA SHARMA)
COURT MASTER (NSH)

(Signed order is placed on the file)