

COMMERCIAL TAX REVISION NO.571 OF 2013

M/s Seema Enterprises, Canal Avenue,
Behind Bus Stand, Bargarh (Orissa).Applicant

Versus

The Commissioner, Commercial
Tax, U.P., LucknowRespondent

Hon'ble Rajes Kumar, J.

The applicant is carrying on the business of iron steel at Bargarh, Orissa and is registered under the respective VAT Act of State of Orissa with the registration no.2130170165. The applicant purchased iron goods, namely, iron sheet cutting and iron stamping weighing 15,200 kgs. from M/s Puran Traders, 8242G/D. Kharia Mohalla, Roahanara Road, Delhi against invoice no.26, dated 17.06.2013. M/s Pooran Traders is also registered dealer under the Delhi VAT Act with Tin registration no.07880460059. For the transport of the goods from Delhi to Orissa, the destination of the applicant, the goods have been booked with transporter, M/s Shiv Shankar Roadways, New Delhi. Such goods were loaded in truck bearing registration no.UP-84/F-9886. Since the goods were to be transported from Delhi to Orissa through State of U.P., as required under Section 52 of Value Added Tax Act (hereinafter referred to as the “*Act*”) read with Rule 58 of The U.P. Value Added Tax Rules, 2008 (hereinafter referred to as the “*Rules*”) the driver of the vehicle, who was incharge of the goods, on furnishing of complete details of the goods obtained Transit Declaration Form no.D20130600215600 by downloading the particulars of the goods, namely, the name of transporter, vehicle number., chassis number, engine number, route, date of entry inside the State of U.P. and the expected date for leaving the State of U.P., value of goods, nature of goods, weight of goods, name of purchaser with registration number, name of seller with registration number,

invoice number etc. The Transit Declaration Form obtained by downloading the details from the website is reproduced below:

“Department Of Commercial Taxes, Government of Uttar Pradesh Transit Declaration Form

Transit number D20130600215600

1	वाहन की यात्रा आरम्भ करने के स्थान का नाम	DELHI, NORTH EAST, DELHI
2	गंतव्य स्थान का नाम	BARGARH, BARGARH, ORISSA
3	वाहन संख्या	UP84F9886
4	वाहन का चेसिस नंबर	MB1CTDYC5AAVA8796
5	वाहन का इंजन नंबर	WAH612829
6	ट्रांसपोर्टर का नाम व पता	SHIV SHANKAR ROADWAYS, DELHI
7	वाहन का इंश्योरेंस पालिसी में अंकित वर्तमान पता	VISHANPURA SANAI MAINPURI
8	वाहन स्वामी का नाम व पता	SUKHVEER SINGH S/O A SINGH, VISHANPURA SANAI MAINPURI
9	प्रदेश के अंदर रूट का विवरण	
	1. प्रदेश के अंदर प्रवेश करने का स्थान	DELHI UP BORDER
	2. मार्ग के मध्य दो महत्वपूर्ण स्थानों के नाम	ALIGARH, ETAWAH, VARANASI
	3. प्रदेश से बाहर जाने का स्थान	NAUBATPUR
10	प्रदेश के अंदर प्रवेश का संभावित दिनांक	18/06/13
11	प्रदेश से बाहर जाने का संभावित दिनांक	22/06/13
12	कुल बिल्टियों की संख्या	1
13	कुल बिलों की संख्या	1
14	कुल नगों की संख्या	0
15	माल का मूल (अंको में)	552432
16	माल का मूल (शब्दों में)	RUPEES FIVE LAKH FIFTY TWO THOUSAND FOUR HUNDRED THIRTY TWO ONLY
17	माल का सामान्य विवरण	IRON GOODS
18	माल का वजन	15200 kilograms

19	Printing at (Source Provided by www.ip2location.com)	122.177.157.153, INDIA, DELHI, NEW DELHI.
----	---	---

Details for top 3 consignments:

S.No	Purchaser Tin	Purchaser Name	Seller Tin	Seller Name	Invoice No.	Value
1	21301701165	SEEMA ENTERPRISES	7880460059	PURAN TRADERS	26	552432/-

मैं घोषणा करता हूँ कि उपयुक्त समस्त सूचनाएं मेरी जानकारी के अनुसार सत्य तथा प्रमाणित है।

वाहन चालक के हस्ताक्षर

ट्रांसपोर्टर के हस्ताक्षर

नोट:

1. प्रत्येक declaration form अपने प्रवेश दिनांक से 4 दिन तक ही मान्य रहेगा। इसके पश्चात वह declaration form स्वतः ही अमान्य हो जाएगा।
2. उत्तर प्रदेश में प्रवेश करने से पहले सभी सूचनाएं भरना अनिवार्य है।
3. अपरिहार्य परिस्थितियां उत्पन्न होने पर (यथा—दुर्घटना/प्राकृतिक आपदा बाढ़, पुल टूटना, मार्ग कटान आदि तथा कानून व्यवस्था की स्थिति उत्पन्न होने के कारण) यदि घोषित मार्ग में परिवर्तन किया जाता है तो ऐसी स्थिति में वाहन चालक निकटस्थ वाणिज्य कर कार्यालय में लिखित सूचना देगे तथा कार्यालय से प्राप्त रसीद साथ लेकर चलेगे।

When the goods were in transit, on 19.06.2013, the vehicle was intercepted by Commercial Tax, Mobile Squad, Unit-III, Aligarh. The driver of the vehicle produced Transit Declaration Form along with GR, invoice and other related documents. The Commercial Tax Officer detained the goods and issued the show cause notice on 19.06.2013 on the ground 1) that weighing parchi dated 21.05.2013 was found, which has been issued from Delhi Road, Hapur in respect of which a Transit Declaration Form

no.D20130500184425 dated 15.05.2013. In this way on 21.05.2013 the vehicle should be between U.P. Border-Orissa but was found at Hapur. This shows that the goods have not been taken outside the State of U.P.; 2) That driver, in his statement, has stated that he had gone Orissa fifteen days earlier and returned back to Delhi on 15.06.2013. On enquiry, it was found that on 09.06.2013 a Transit Declaration Form no.D-20130600104592 was downloaded and the expected date of exit was 13.06.213 and the destination was Bargarh, Orrisa while the driver has admitted that he was at Delhi on 15.06.2013, which is not possible; 3) The declaration form under the Orissa VAT Act, which is necessary for the import of the goods was not produced; 4) The discrepancy in the bill number and date of issue of certain bills from the bill book no.1 has been alleged.

The applicant filed reply to the show cause notice stating therein that the complete details have been furnished in the Transit Declaration Form, in which no discrepancy was found; it has been informed that no statement has been given by the driver; the minor discrepancy in some of the bills of the bill book relating to the date and bill number has been explained stating that some of the bills stucked together and earlier bills have been used subsequently, and it was submitted that the goods were accompanied Transit Declaration Form and other documents and were in transit. The period mentioned in the Transit Declaration Form for the exit from the State of U.P. was not expired and, therefore, there was no occasion for the detention of the goods.

The Commercial Tax Officer has not accepted the plea of the applicant and has seized the goods vide seizure order dated 22.06.2013 and demanded the security at Rs.2.24 lacs in the form of cash or bank guarantee. The applicant filed application under proviso to Section 48 (7) of the Act before Joint Commissioner (S.I.B.), Commercial Tax, Aligarh, which has been rejected vide order dated 26.06.2013.

Being aggrieved by the said order, the applicant filed appeal before the Tribunal. Tribunal by order dated 05.07.2013 allowed the appeal in part. Tribunal has confirmed the seizure of the goods but reduced the amount of security from 40% to 20% of the value of the goods.

Tribunal has confirmed the seizure of the goods on the ground that the past history of the transporter reveals that the Transit Declaration Form had been obtained but the goods in respect of such Transit Declaration Form had not crossed the State of U.P. It is referred that the earlier Transit Declaration Form was obtained on 09.06.2013 in which the expected date of exit from State of U.P. was shown as 13.06.2013 while the driver in the statement has stated that he had reached Delhi on 15.06.2013, which was impossible, which leads to prima facie inference that within two days, the driver could not travel from Orissa to Delhi. The driver in his statement has stated that normally going and coming from Orissa to Delhi, 13-14 days takes place and thus, second Transit Declaration Form obtained within nine days establishes that the goods of the earlier consignment could not cross the State of U.P. It has been observed that the department has examined the transaction minutely and prima facie established that the documents furnished are not beyond doubt and is not mere presumption but established. It has also been observed that it came to notice that the goods in respect of which transit declaration form was obtained, the dealer was not registered in respect of the said goods under the respective VAT Act.

Being aggrieved by the order of the Tribunal, the present revision is being filed.

Heard Sri Alope Kumar, learned counsel for the revisionist and Sri U.K.Pandey, learned Standing Counsel.

Learned counsel for the applicant submitted that when the

goods was in transit from Delhi to Orissa, it was intercepted at Aligarh almost near the entry point by the Assistant Commissioner, (Mobile Squad), Aligarh on 19.06.2013. Necessary documents relating to the goods, namely, invoice, GR, transit declaration form no.D20130600215600 have been produced before Assistant Commissioner, (Mobile Squad), Aligarh. No defect has been pointed out in such documents. Both purchaser and seller are registered dealers in their respective States. The goods have been detained and subsequently, seized merely on presumption that the same may be unloaded inside the State of U.P. and may not be sent to State of Orissa. The seizure has been made mainly on the ground that the previous history of the transporter is not good and on the basis of the statement of the driver, it is not possible that he could load the goods on 18.06.2013 and this raises doubt, which is wholly unjustified. He submitted that each and every transaction has to be examined on its own merit. It is not in dispute that the goods were found loaded in truck bearing registration no.UP-84-F-9886. He submitted that the presumption that the driver could not be able to reach Delhi on 18.06.2013 from Orissa after the transportation of the earlier consignment, is wholly baseless and inasmuch as irrelevant. The fact is that the driver was carrying on the goods in vehicle and the goods were accompanied by proper documents.

Learned Standing Counsel very fairly submitted that he is not able to support the order of the authorities below and is not able to point out any defect in the transaction and to justify the seizure of the goods.

I have considered the rivals submissions and perused the impugned order.

It would be appropriate to refer Section 52 of the Act and Rule 58 of the Rule and Circular dated 12.12.2012:

“Section 52. Provision for goods passing through the State.--

When a vehicle coming from any place outside the State and bound for any other place outside the State and carrying goods referred to in sub-section (1) of section 50, passes through the State, the driver or other person in charge of such vehicle shall carry such documents as may be prescribed failing which it shall be presumed that the goods carried thereby are meant for sale within the State by the owner or person in charge of the vehicle.

Rule 58. The transit of goods by road through the State.--

The driver or person-in-charge of a vehicle carrying goods referred to in sub-section (1) of section 50, coming from a place outside the State and destined for a place outside the State, passes through the State, the driver or person-incharge of a vehicle shall carry such documents and follow such procedures as may be determined by general or special order issued by the Commissioner from time to time, failing which it shall be presumed that the goods carried thereby are meant for sale within the State by the owner or person-in-charge of the vehicle.”

Circular dated 12.12.2012 issued by Commissioner, Commercial Tax, U.P., Lucknow is reproduced below:

1213075 / 17-12-12
पत्र सं०-सचल दल ट्रांजिट पास-2012-13 /

1656 / वाणिज्य कर
कार्यालय कमिश्नर वाणिज्य कर
(सचलदल-अनुभाग)
उत्तर प्रदेश, लखनऊ
दिनांक: 12 दिसम्बर 2012

आदेश

उ०प्र० मूल्य संवर्धित कर अधिनियम, 2008 की धारा-49 के उपबन्धों के अधीन स्थापित वाणिज्य कर विभाग की समस्त जॉच चौकियों/रेलवे जॉच चौकियों को दिनांक 30/31 जुलाई, 2009 की अर्द्धरात्रि से शासन द्वारा समाप्त किया जा चुका है। इसी के प्रतिफलन में सड़क मार्ग से माल के पारगमन हेतु प्राधिकार पत्र की व्यवस्था भी समाप्त करते हुए ऐसे माल के पारगमन हेतु संशोधित व्यवस्था हेतु प्रक्रिया इस कार्यालय के आदेश सं०-चे०पो० समाप्ति/बहती समाप्ति 09-10/552/वाणिज्य कर दिनांक 30.07.2009 द्वारा निर्गत की जा चुकी है। इसी क्रम में उ०प्र० मूल्य संवर्धित कर अधिनियम 2008 की धारा 50 तथा उ०प्र० मूल्य संवर्धित कर नियमावली 2008 के नियम 58 के अधीन उनमें निहित शक्तियों का प्रयोग करते हुये अनुसूची एक के अतिरिक्त समस्त कर योग्य माल के प्रदेश में

आयात एवं परिदान तथा प्रदेश की सीमा से होकर पारगमन हेतु परिवहित होने वाले माल के संबंध में निम्न निर्देश निर्गत किये जाते हैं:-

1. समस्त जांच चौकियों/रेलवे जांच चौकियों की समाप्ति के फलस्वरूप आयात घोषणा पत्र (प्रपत्र 38) के आधार पर आयात किये जाने वाले माल के संबंध में वर्तमान में प्रचलित व्यवस्था ही प्रभावी रहेगी। यदि शासन द्वारा प्रपत्र 38 के निर्गमन/प्रयोग आदि के संबंध में अन्यथा निर्देश दिये जाते हैं तो तदनुसार अनुपालन किया जायेगा।

2. जिन वस्तुओं में अग्रिम राजस्व जमा करने की व्यवस्था है, वह यथावत प्रभावी रहेगी। यदि कोई माल बिना आयात घोषणा पत्र के परिवहन करते हुये पाया जाता है, तो उस पर नियमानुसार कारण बताओ नोटिस अभिग्रहण आदेश निर्गत करते हुये जमानत/अर्थदण्ड की कार्यवाही की जायेगी।

3. प्रदेश के बाहर से माल लेकर प्रदेश से होते हुये प्रदेश के बाहर जाने वाले माल के साथ माल से संबंधित प्रपत्रों या बिल/बिल्टी आदि के अतिरिक्त पारगमन घोषणा पत्र के रूप में एक फार्म रखना आवश्यक होगा जो विभागीय वेबसाइट comtax.up.nic.in पर उपलब्ध प्रारूप से डाउनलोड किया जायेगा। इसे प्रान्त के अन्दर प्रवेश के पूर्व उक्त फार्म की सभी प्रविष्टियाँ भर कर डाउनलोड करना होगा। पारगमन घोषणा पत्र में परिवहन के रूट की भी घोषणा करनी होगी। जिसमें प्रदेश में प्रवेश एवं निकासी स्थान के साथ साथ दो महत्वपूर्ण स्थानों की घोषणा करना होगा। प्रान्त से होकर जाने वाले माल को प्रान्त के अन्दर घोषित स्थानों पर पल्टी किया जा सकेगा। पल्टी करने के बाद उस माल का परिवहन करते समय उसी पारगमन घोषणा पत्र में नये ट्रक संख्या का अंकन करते हुये माल का परिवहन किया जा सकेगा। प्रदेश के अन्दर से गुजरने वाला माल यदि पारगमन घोषणा पत्र में उल्लिखित रूट से भिन्न रूट में पाया जायेगा तो प्रथमदृष्टया यह विश्वास करने का आधार होगा कि करापवंचन के उद्देश्य से ऐसे माल को प्रान्त बाहर से आयात करने का प्रयास किया जा रहा है, जिसके संबंध में कारण बताओ नोटिस देते हुये विधिक कार्यवाही की जायेगी। पारगमन घोषणा पत्र प्रदेश के अन्दर प्रवेश की घोषित तिथि से अधिकतम 4 दिनों के लिये वैध होगा।

4. यदि किसी वाहन में केवल प्रान्त बाहर जाने योग्य माल घोषित है तो ऐसे वाहन का प्रथम बार सचल दल द्वारा भौतिक सत्यापन किये जाने पर पारगमन घोषणा पत्र पर अपनी सील सहित हस्ताक्षर कर दिया जायेगा और रास्ते में अन्य सचल दल

इकाईयों द्वारा भी वाहन/माल की चेकिंग की जायेगी किन्तु सामान्य रूप से दो बार से अधिक भौतिक सत्यापन नहीं किया जायेगा और दो बार भौतिक सत्यापन कराये जाने की स्थिति में डिटेन्शन मेमो/कारण बताओ नोटिस में इसके कारणों का उल्लेख किया जायेगा।

5. आन लाइन पारगमन घोषणा पत्र को डाउनलोड करते समय ट्रांसपोर्टर को सबसे अधिक तीन मूल्य वाली इन्वाइस/बिल के सापेक्ष मूल्य के घटते हुए कम में केता तथा विक्रेता का नाम, टिन नम्बर, सम्बंधित इन्वाइस/बिल का क्रमांक व दिनांक तथा मूल्य अंकित करना होगा। यदि केता अथवा विक्रेता अपंजीकृत है तो टिन के स्थान पर इस फील्ड में 09 लिखकर इसके बाद नौ बार शून्य टाइप करना होगा।

तदनुसार कार्यवाही निष्पादित की जाए।

ह0 अपठनीय
(हिमांशु कुमार)
कमिश्नर वाणिज्य कर
उत्तर प्रदेश

Section 52 of the Act is enabling provision gives right to any person to transport the goods from outside the State of U.P. to another State. It provides that the driver or other person in charge of such vehicle, shall carry such documents as may be prescribed failing which it shall be presumed that the goods carried thereby are meant for sale within the State by the owner or person in charge of the vehicle. Rule 58 of the Rules provides that the driver or person-in-charge of a vehicle carrying goods referred to in sub-section (1) of section 50, coming from a place outside the State of destined for a place outside the State, passes through the State, the driver or person-in-charge of a vehicle shall carry such documents and follow such procedures as may be determined by general or special order issued by the Commissioner from time to time failing which it shall be presumed that the goods carried thereby are meant for sale within the State by the owner or person-in-charge of the vehicle.

It appears that by circular, issued time to time the procedure is prescribed. The latest circular is dated 12.12.2012, issued by the Commissioner, Commercial Tax, referred hereinabove provides that in respect of the goods carrying from outside the State of U.P. and going outside the State of U.P. apart from the bill and built, Transit Declaration Form is required to be kept which is being obtained by downloading from the departmental website, while entering inside the State of U.P.

The aforesaid provision only raises presumption of sale inside the State of U.P. in case, if the driver does not carry the documents relating to the goods and the Transit Declaration Form. There is nothing under the Act which provides that while leaving the State of U.P. Such Transit Declaration Form, is to be surrendered anywhere at the border. In case, the driver does not carry the documents and the Transit Declaration Form, then only the presumption of the sale of goods inside the State of U.P. arises and on the basis of such presumption the Commercial Tax Officer only vests with the jurisdiction, in respect of such goods, to invoke other provisions of the Act and Rules.

Section 48 of the Act gives power to the officer to seize the goods found in the vehicle in case if the goods are not traceable to bonafide dealer and is doubtful that they are accounted for in books of account, register or documents.

In my view each and every transaction has to be examined independently on its own merit and past conduct is wholly irrelevant.

In the present case, admittedly, the driver of the vehicle possessed the documents relating to the goods and the Transit Declaration Form and the same were produced before the Commercial Tax Officer at the time of checking. Neither such Transit Declaration Form was found non-genuine or improper nor any details relating to the goods furnished in the Transit Declaration Form were found incorrect. No such finding has been

recorded by any authority in this regard. There is absolutely no material on record to presume that the goods may be unloaded inside the State of U.P. and may not cross the State of U.P. The reasons given by the authorities for the seizure of the goods is hopeless, baseless and beyond the reasonable thoughts. The authority concerned has acted illegally and arbitrary manner, without any reason or basis merely on presumption, surmises and conjectures, appears to be with ulterior motive.

In case, if there is any discrepancy in respect of the earlier transaction, it is always open to the authority concerned to take necessary action in respect of such transaction. However, prima facie it appears that even in respect of earlier transaction also there is no material that the goods have been unloaded inside the State of U.P and did not cross the State of U.P. The inference is merely based on presumption, surmises and conjectures. In reply to the show cause notice, the applicant has categorically stated that no such statement has been given by the driver. In the seizure order nothing has been stated about such plea. Therefore, the reliance placed on the statement of the driver, is wholly unjustified. Further the presumption that the driver can not go and come from Delhi to Orissa within nine days, is merely based on presumption and inasmuch as has no relevance to the present transaction. No reason has been given by the Tribunal for saying that the applicant was not registered in respect of the goods. No such ground has been taken by the authorities below and there is no basis for the same. Even otherwise it has no relevance.

It is also relevant to note that in the Transit Declaration Form, 22.06.2013 was the date mentioned, by which the vehicle had to leave the State of U.P. and that period had not been expired and the goods have been detained on 19.06.2013. In such situation the question of drawing the inference of sale of goods inside the State of U.P. does not arise.

In the case of M/s New Indore Delhi Road Lines Vs.

Commissioner, Commercial Tax, reported in 2012 NTN (Vol.49), 19 this Court observed that “admittedly in the present case the goods were seized immediately on their entry in the State of U.P. without allowing the time for its exit to expire. In such situation, it is wrong to presume that the goods have been retained for the purposes of sale. Apart from the above, as the goods were duly accompanied by the requisite documents, no presumption arises under law that they were likely to be sold within the State of U.P.”

Similar view has been taken in the case of **Commissioner, Commercial Tax Vs. M/s Gautam Pandey, reported in 2012 NTN (Vol.48), 194**, wherein it has been held that the stage of inquiry or any investigation as to whether the goods have been imported in U.P. or are on the transit only, had not arrived as the detention was made prior to the time stipulated for the exit of goods mentioned in the transit declaration form.

Rbbri Contractors And Another Vs. Commissioner, Commercial Tax, U.P., Lucknow, (Supra), this Court has held that the past conduct of the transport or the driver in obtaining transit declaration form and the doubt expressed about the possibility of the said vehicle being against used within a short span for transporting goods from Delhi to Patna is not the relevant criteria for inferring that the present goods are likely to be sold in U.P.

In the case of **Sahara Quick Transport Service Vs. State of U.P. And others, in Writ Petition (Tax) No.637 of 2013**, the Division Bench of this Court has held as follows:

“Prima facie we find that the Asstt. Commissioner, Mobile Squad, Commercial Tax has not given any findings with regard to validity of the transaction in question. He has relied upon some previous transportation of the goods by the same carrier for a different owner of the goods, which was not relevant for the purposes of exercising powers for seizure of the goods.”

In the case of **New Indore Delhi Road Lines Vs. Commissioner, Commercial tax, reported in 2012 NTN (Vol.49), 19** while dealing with Section 52 and seizure of the goods this Court has held as follows:

“It may be relevant to note that seizure of the goods in transit through U.P. Can be made only on the grounds mentioned under section 48 of the Act and the presumption that the goods are meant for sale in U.P. would only be available when they are not accompanied by the requisite documents, i.e. bills and bilties and the transit declaration form.

It is not the case of the department that the goods were not accompanied by the relevant bills, bilties and transit declaration form. It is not even the case that the good have entered from the wrong place or were likely to be taken out from a different place or was not following the disclosed route as contained in the transit declaration form. There is no whisper that toe goods have over stayed in U.P., which may be a reason for the authorities to believe that they were meant for sale in U.P.”

In the case of **Commissioner of Trade Tax, U.P. Lucknow Vs. S/s Sagir Khan and Zahir Khan, Rampur, reported in 2005 NTN (28) 129** the learned Single Judge of this court observed as under:-

"The provision to issue transit pass at the entry check post and to surrender at the exit check post is to ensure that the goods, which entered inside the State of U.P. had gone outside the State of U.P. and has not been sold inside the State of U.P. The power to seize the goods is only available at the exit check post when it is found that the transporter is trying to import different goods. Under aforesaid provisions there is no power to seize the goods at the entry check post. At the entry check post if driver of the vehicle applied for transit pass, authority has to verify the goods loaded in the vehicle and mention the name and quantity of the goods sought to be transported through the State of U.P. in the transit pass to that at the entry check post, the same may be verified at the time of surrendering the transit pass.”

In another case reported in **2003 NTN (23) 1009 Madhya Bharat Transport Carrier, Agra Vs. Commissioner of Trade**

Tax, U.P. Lucknow this court was dealing with the question whether the goods can be seized before the expiry of time allowed in transit pass. His Lordship after considering the various provisions came to the conclusion that the stage of seizure arises only at the exit point and the goods cannot be seized before the expiry time allowed in the transit pass.

In the case of **M/s New Mahavir Transport Company of Bharat Vs. The Commissioner, Commercial Tax, U.P. Lucknow, reported in 2009 NTN (41) 224** which was also a case of seizure under Section 52 of the U.P. Value Added Tax Act, it was held that the goods cannot be seized on minor technical defect and should be allowed to be released without security.

It is settled principle of law that seizure can not be made merely on presumption. There must be a material to show that the Section 52 Rule 58 or the procedure prescribed in the circular issued by the Commissioner has been violated.

The Apex Court in the case of **State of Kerala Vs. M.M.Mathew and another, reported in 42 STC, 348** has held that the presumption may be very strong but it can not take the place of evidence. It has been held that strong suspicion, strange coincidences, and grave doubts cannot take the place of legal proof. This is also the case of seizure of account books.

Reliance is also placed on the decision of this Court in the case of **S/S Ram Gopal Agarwal Galla Vyapari Att, Jalaun Vs. Commissioner of Trade Tax, reported in 2007 NTN (Vol.35), 39, M/s Rathi Industries Ltd. Vs. Commissioner of Commercial Tax, reported in 2009 (Vol.39), 279, M/s Jain Irrigation System Limited Vs. The Commissioner, Commercial Tax, U.P., Lucknow, reported in 2009 (Vol.39), 279, M/s New Mahavir Transport Company of Bharat Vs. The Commissioner, Commercial Tax, U.P., Lucknow, reported in**

2009 NTN (Vol.41) 224, Balaji Timber Paint Vs. Commissioner, Commercial Tax, U.P., Lucknow, reported in 2010 NTN (Vol.43), 53, Rbbri Contractors And Another Vs. Commissioner, Commercial Tax, U.P., Lucknow, reported in 2011 NTN (Vol.46) 26.

In the present case, no case has been made out that Section 52 of the Act or Rule 58 or circular of the Commissioner has been violated. No case has been made out that the goods were not traceable to bonafide dealer and are not recorded in the books of accounts, document or register. The inference that the goods may likely to be unloaded inside the State of U.P. And may not be taken to other State, while the goods were in transit and vehicle was on declared route is merely based on presumption, suspicion and doubts, which is not sustainable in law.

The goods have been detained illegally, arbitrarily and without any basis and merely on surmises and conjectures and whims of the authorities concerned despite the settled principle of law laid down by the Court referred hereinabove.

The goods have been seized despite the settled principle of law referred hereinabove, on 19.06.2013 and since then goods are in the custody of department. The applicant has suffered huge substantial loss for no fault on his part and subjected to harassment.

It is unfortunate that the Joint Commissioner (S.I.B.) and Tribunal have affirmed the seizure of the goods.

In view of the aforesaid facts and circumstances, in my view the applicant is entitled for the exemplary cost, which I assess at Rs.1 lac. I also direct the Commissioner, Commercial Tax to look into the matter and take the appropriate action against the officials in accordance to law, who have seized the goods. It will be open to the department to realise the amount of cost from

the concerned officials.

Before parting with the case, it is important to notice one more aspect of the matter. Prior to the introduction of the Value Added Tax Act, 2008, U.P. Trade Tax Act was enforced. Under the U.P. Trade Tax Act there was provision for the establishment of the check post at the border of two States. The check posts were established and were functional very effectively. Under the U.P. Trade Tax Act for the goods coming from outside the State of U.P. and going outside the State of U.P. enabling provisions, Section 28-B of the Act was available, which is reproduced below:

28-B. Transit of goods by road through the State and issue of authorization for transit of goods--- When a vehicle coming from any place outside the State and bound for any other place outside the State, and carrying goods referred to in sub-section (1) of Section 28-A, passes through the state, the driver or other person-in-charge of such vehicle shall obtain in the prescribed manner an authorization for transit of goods from the officer-in-charge of the first check-post or barrier after his entry into the State and deliver it to the officer-in-charge of the last check-post or barrier before his exit from the State, failing which it shall be presumed that the goods carried thereby have been sold within the State by the owner or person-in-charge of the vehicle;

Provided that that where the goods carried by such vehicle are, after their entry into the State, transported outside the State by any other vehicle or conveyance, the onus of proving that the goods have actually moved out of the State shall be on the owner or person-in-charge of the vehicle.”

Apex Court in the case of **M/s Sodhi Transport Company and another Vs. State of U.P. and another, reported in 1986 UPTC, 721**, has upheld the validity of the said provision and has held that the Section 28-B of the Act is enabling provision to check the evasion of the tax. Under the said provision there was provision for obtaining the transit form from the entry check post and for the surrender of the same at the exit

check post and in case of non-surrender it was open to the revenue authorities to raise the presumption. The revenue authority had complete record of the issue of transit form and had mechanism to get the information and to verify from the exit check post about their surrender. The mechanism was very much workable and successful in putting the check on the evasion of tax.

Now under Section 52 of the Act read with Rule 48 of the Rules and circular there is a provision for obtaining the Transit Declaration Form by downloading the details of the goods in the departmental website but no mechanism is provided for the surrender of the said transit declaration form. It is very ridiculous. The check posts have been abolished and now the officials sitting in the mobile squad checks the vehicles in route. Everything has been left open on the discretion and the whims of the commercial tax officers of the mobile squad. They have been allowed to act as uncrowned king to operate in any manner in which they may like. It is open to the Mobile Squad to check the vehicle or not and even allow the vehicle to go unnoticed with the unethical understanding and collusion between the transporter/trader and Commercial Tax authorities or for any other reason. There is no mechanism provided under the Act and Rules to verify after the issue of Transit Declaration Form as to whether the goods had crossed the State or not. In such situation, after the issue of Transit Declaration Form, it would be difficult to raise presumption that the goods have been sold inside the State except in cases where the driver is caught unloading the goods inside the State.

In my opinion, this mechanism has left the scope of large scale tax evasion and the scope of corrupt practices.

In view of the above, I direct the Principal Secretary, Financial Institutions to look into the matter and review the mechanism provided under the Act and take steps to provide such

mechanism to check evasion and corrupt practices and may think to revive the earlier provision as was available under the U.P. Trade Tax Act.

In the result, the revision is allowed. The seizure order passed by Commercial Tax, Mobile Squad, Unit-III, Aligarh and the order of Tribunal are set aside. The Commercial Tax Officer is directed to release the goods forthwith without any security and also pay the exemplary cost imposed hereinabove within a period of one month.

Learned Standing Counsel is directed to provide the certified copy of this order to the Principal Secretary, Financial Institutions and Commissioner, Commercial Tax for necessary action and report within two months.

Dt.12.07.2013.

R./