

**K.A.S. Zainul Abdeen and Co. Vs. Commissioner, Commercial Tax**

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**SooperKanoon Citation :** [sooperkanoon.com/493198](http://sooperkanoon.com/493198)

**Court :** Allahabad

**Decided On :** Jun-30-2008

**Reported in :** (2009)23VST212(All)

**Judge :** Prakash Krishna, J.

**Appellant :** K.A.S. Zainul Abdeen and Co.

**Respondent :** Commissioner, Commercial Tax

**Judgement :**

Prakash Krishna, J.

1. With the consent of the Counsel for the parties, the matter was heard and is being disposed of finally.
2. Raising a short controversy, the present revision has been filed under Section 58 of the U.P. Value Added Tax Act, 2008. The facts are not much in dispute. The case of the applicant is that he has despatched cotton lungis from Delhi to unregistered dealers, namely, Mahabir Hand Loom, Alankar Lungi Center and Crescent Lungi Company, Manuath Bhanjan, District Azamgarh, U.P. through G.R. No. 8765154, GR No. 8765240 and G.R. No. 8765239, all dated January 12, 2008 of a total of four bales of cotton lungis. The Assistant Commissioner, Commercial Tax, Sahayata Kendra, Ghaziabad, issued a notice under Section 50 of the U.P. Value Added Tax Act, 2008 (hereinafter called as, 'the Act') when the goods reached Mohan Nagar Check-post, Ghaziabad, to show cause as to why the goods sought to be imported in the State of U.P. should not be treated as 'other textiles' taxable at the rate of four per cent under the said Act. In response to the aforesaid show-cause notice, the applicant came out with the case that the said goods are not taxable under the aforesaid Act. Hence no import declaration is required. The said plea was not found favour with by the authority concerned who passed the order for seizing the goods on January 23, 2008. Feeling aggrieved by the said order, the applicant approached the Deputy Commissioner, Sahayata Kendra, Commercial Tax, for releasing the goods. The application filed before the Deputy Commissioner, Sahayata Kendra, Commercial Tax was rejected by order dated February 5, 2008 and the said order has been confirmed in further appeal by the Commercial Tax Tribunal, Ghaziabad which is challenged in the present revision.
3. In the memo of revision, the following questions of law have been sought to be raised:
  1. Whether, on the facts and in the circumstances of the case, the Tribunal is legally justified in confirming the seizure and demanding security at six per cent of the value of the goods for release of the goods in question?
  2. Whether, on the facts and in the circumstances of the case, the Tribunal is legally justified in ignoring the decision given by the Commissioner of Commercial Tax under Section 59 of the U.P. Value Added Tax Act?
  3. Whether, on the facts and in the circumstances of the case, the Tribunal is legally justified in demanding security for release of the goods when the goods are not taxable at all under the U.P. Value Added Tax Act?

4. The contention of the learned Counsel for the applicant is that the commodity in question is not taxable under the said Act and it was found so by the Deputy Commissioner, Sahayata Kendra Commercial Tax, Mohan Nagar, Ghaziabad earlier under order dated March 17, 2008, annexure 8 to the affidavit. In the said order it has been held that under the entry 'textiles made-up', sari, dhoti, lungi, gamchha, suitings and shirtings are not covered. The said decision was given by the authority concerned in the case of the applicant itself under similar facts and circumstances.
5. The learned Standing Counsel, on the other hand, supports the impugned order.
6. Considered the respective submissions of the learned Counsel for the parties and perused the order.
7. The question of taxability of commodity in question is involved in the present revision. The said question can be more appropriately adjudicated upon by the authority concerned at the time of assessment. The Tribunal has found that there was no justification demanding 40 per cent cash security of the value of the goods and it has ordered six per cent cash security instead. The rate of tax is four per cent.
8. The learned Counsel for the applicant has placed reliance upon an order of the Commissioner of Commercial Tax given under Section 59 of the Act wherein the Commissioner has opined that power-loom lungi is a nontaxable item. A copy of the said order has been annexed along with the affidavit.
9. Looking at the nature of the controversy involved, it is desirable that the goods in question be released to the applicant on furnishing six per cent security other than cash or bank guarantee.
10. In the result, the revision succeeds and is allowed in part. Instead of demanding cash security at six per cent on the total value of the goods at Rs. 1,50,000, the goods in question may be released on furnishing security at the rate of six per cent of the value of the goods to the satisfaction of the authority concerned which may be other than cash or bank guarantee.
11. No order as to costs.