IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15652 of 2015

Tvl.Brijesh Machine Tools
represented by its proprietor
Mr.V.K.Harshavardhan
No.98, Old No.38, Bazulla Road
T.Nagar, Chennai 600 017 .. Petitioner

-vs-

The Deputy Commercial Tax Officer
Kinathukadavu Roving Squad
Coimbatore-1 .. Respondent

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records on the files of the respondent in the respondent in G.D.R.No.25766/2015-16 dated 20.05.15 and quash the same as being illegal, invalid, without authority of law and violated the principles of natural justice.

For Petitioner :: Mr.D.Vijayakumar

For Respondent :: Mr.S.Kanmani Annamalai
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned goods detention show cause notice for composition of offence issued by the respondent on 20.5.2015, on the ground that the respondent without authority of law cannot detain the goods, more particularly, when the goods have been moved from Rajkot to Chennai with necessary documents including the sale invoice bearing the buyers and the sellers registration numbers and other particulars including central sales tax. Except delivery address in the sale invoice, when there is no infirmity or omission in the transaction, there is no question of evasion of sales tax under Section 67(5) of the Tamil Nadu Value Added Tax Act, therefore, the impugned notice is liable to go.

2. Learned counsel for the petitioner further submitted that the petitioner, being a dealer in engineering lab products, has been an assessee on the file of the Assistant Commissioner (CT), T.Nagar Assessment Circle, Chennai and also doing the business of supplying

lab materials to the engineering colleges as per their requirement. After starting their business in the year 2014, the petitioner has been regularly submitting the monthly returns in their respective assessment circle in accordance with law. While so, during the course of business, the petitioner received their first purchase order from Nadar Saraswathi College of Engineering and Technology, Vadapudupatti, Theni District. In an effort to fulfill the said order, the petitioner purchased goods from Tvl.Star Machine Tools, Rajkot and requested them to deliver at Vadapudupatti in Theni District. When the seller in the other State raised invoice against the petitioner, after charging tax for the inter-State sales, the goods were moved from Rajkot vide invoice Nos.R 332 & 333 dated 3.5.2015 through the transporter, namely, Countrywide Logistics (I) Pvt.Ltd. But the seller failed to mention the delivery site address, therefore, the petitioner advised the transporter to keep the goods in their office and move the same with the invoice. In the meanwhile, the respondent visited the place of the transporter and detained the goods entertaining a suspicion. Immediately the transporter explained that the buyer at Chennai would handover the copies of the invoice for further movement. But the respondent, without hearing the transporter, issued the detention notice. The learned counsel also submitted that admittedly the goods have been moved from Rajkot to Chennai only as an inter-State sales transaction and the invoice correctly levied 2% tax for CST sales. When the goods were purchased pursuant to the purchase order placed by an educational institution, namely, Nadar Saraswathi College of Engineering and Technology, Vadapudupatti at Theni, it is an admitted case of both sides that the transaction is only an inter-State sales and no evasion of tax can be attributed against the petitioner. In any event, the issue raised is squarely covered by an order passed by this Court in W.P.No.9514 of 2014 dated 2.4.2014 (M/s Dynamic Petro Chem represented by its Proprietor Mr.K.Kassim, Chennai v. The Deputy Commercial Tax Officer, Enforcement (Roving Squad), Hosur). On this basis, he prayed for interference with the impugned notice.

3. Mr.S.Kanmani Annamalai, learned Additional Government Pleader takes notice on behalf of the respondent.

4. As the issue is covered by the order passed by this Court in W.P.No.9514 of 2014 dated 2.4.2014 (M/s Dynamic Petro Chem represented by its Proprietor Mr.K.Kassim, Chennai v. The Deputy Commercial Tax Officer, Enforcement (Roving Squad), Hosur) in similar and identical circumstances, the petitioner is directed to pay the tax as one time payment under protest as a condition precedent for release of the goods in question, in terms of Section 67(4) of the Tamil Nadu Value Added Tax Act, 2006 and on such payment of the one time tax in terms of Section 67(4) of the Tamil Nadu Value Added Tax Act, the respondent shall release the goods forthwith to the petitioner. It is made clear that the petitioner has to face the adjudication proceedings that may be initiated by the respondent. With the above direction, the writ petition stands disposed of.

Consequently, M.P.No.1 of 2015 is closed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

ss
To

The Deputy Commercial Tax Officer
Kinathukadavu Roving Squad
Coimbatore-1

1 cc to the Special Government Pleader(Taxes)

1 cc to Mr.D.Vijaya Kumar, Advocate Sr.No.26260

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