IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15987 of 2015
and
M.P.No.1 of 2015

Tvl.S.D.Saw Mill and Timber Merchants
rep by partner Mr.D.Ravi
S.No.62/8, Chinnakollapatty
Kondappanaickenpatty (PO)
Salem 636 008 ...Petitioner

-vs-

The Commercial Tax Officer
Roving Squad IV, Enforcement
Greams Road
Chennai-6 ...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 G.D.No.6525/15-16/R.S-IV(N) dated 01.06.15 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.Manoharan Sundaram
Additional Government Pleader
(Taxes)

ORDER

This writ petition has been filed by M/s S.D.Saw Mill and Timber Merchants represented by its partner Mr.D.Ravi challenging the Form No.041 goods detention notice bearing No.6525/15-16/R.S-IV(N) dated 01.06.15, inter alia, on the ground that the respondent has passed the order without any authority, inasmuch as when the goods have moved from Tuticorin Port to Chennai with necessary forms, viz., Form-JJ as prescribed under sub-section (5) of Section 67 of the Tamil Nadu Value Added Tax Act bearing the registration number of both the buyer and seller along with other particulars, the respondent ought not to have detained the goods. Adding further, the learned counsel submitted that when Section 67(5) of the Tamil Nadu Value Added Tax Act clearly says that the bill of sale or delivery note as prescribed under the Act shall accompany the movement of goods, it is good enough to satisfy the useful movement of goods, therefore, there is no violation of the provisions of the Act. But ignoring the fact that the vehicle of the petitioner was moving with the goods along with the Form-JJ, there is no basis for the respondent to pass the Form No.041 goods detention notice. Continuing his arguments, the learned counsel submitted that the petitioner, being an assessee on the file of the Assistant Commissioner (CT), Salem Rural Assessment Circle, is a dealer in timber and plywoods effecting local sales and inter-State sales, had imported timber logs from other countries and also effected sales. In the course of business, the petitioner imported logs from other foreign countries and cleared the consignment from Tuticorin Port. After the customs clearance, the goods were kept in port yard, from where the petitioner effected sales to various dealers. One such load of consignment, namely, timber logs was sold to M/s Shankar Timber Depot, a dealer in Chennai. The consignment was moved with Form-JJ No.0010 dated 29.5.2015, which is a delivery document prescribed under the Tamil Nadu Value Added Tax Act through the lorry bearing Registration No.TN-69 AE-4546 along with L.R.copy. When the consignment was moving towards the destination, the respondent intercepted the vehicle near the Puzhal check post at Chennai. Immediately the driver of the vehicle produced all the documents before the respondent. But the respondent without considering the documents produced under Section 67(5), wrongly issued the impugned detention notice. In support of the prayer, the learned counsel also submitted that when the invoices raised upto 30th April alone reflected in the website and for the month of May, the sale invoice was not reported to the department, since the petitioner was having enough time upto 20th June, therefore, when there is no illegality in the movement of the consignment from Tuticorin Port to the dealer at Chennai, the respondent refused to accept the same and finally issued the impugned detention notice. Secondly, from the date of detention i.e., 1.6.2015, the vehicle carrying the goods with all permissible documents as contemplated under Section 67(5) is unnecessarily detained causing huge prejudice to the petitioner.

2. Learned Additional Government Pleader appearing for the respondent, on the other hand, submitted that the impugned goods detention notice dated 1.6.2015 issued against the petitioner clearly

shows that the respondent has issued the notice saying that the website revealed the sale invoice upto 132 number only. However, the learned Additional Government Pleader submitted that if the petitioner is willing to pay the one time tax liability, the petitioner is entitled to take back the goods.

3. Rightly agreeing to the said submission made by the learned Additional Government Pleader for the respondent, the learned counsel for the petitioner also submitted that in any event the petitioner is entitled to get the benefit of adjustment, even if he is directed to pay the tax liability for immediate release of the goods vehicle.

4. In the light of the above, the petitioner is directed to pay the one time tax as indicated by the respondent in the impugned notice as per the invoice and on such payment of one time tax by the petitioner, the respondent shall forthwith release the goods. Needless to mention that the petitioner is entitled to have the benefit of adjustment of the tax in future. With the above direction, the writ petition is disposed of. Consequently, M.P.No.1 of 2015 is closed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer
Roving Squad IV, Enforcement
Greams Road
Chennai 600 006

1 CC to Mr.D.Vijayakumar, Advocate SR.No. 26914

1 CC to the Government Pleader, SR.No. 27036

W.P.No.15987 of 2015

GR (CO)
PSI (11.06.2015)