IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.17347 to 17350 of 2015

Greens Agency
rep by its Proprietrix
No.40/7, Pavaditheru
Manickanathan Road
Paramathi Velur 637 207 .. Petitioner in all the writ petitions

-vs-

The Commercial Tax Officer (Enforcement)
Roving Squad
Vellore .. Respondent in all the writ petitions

W.P.No.17347 of 2015 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the entire records of the respondent Goods Detention Notice No.535 dated 13.06.2015 and the consequential compounding notice in G.D.No.535/2015-16 dated 14.06.2015 and quash the orders passed therein and direct the respondent to release the detained goods of the petitioner along with the vehicle bearing Registration No.TN 05 AZ 1494.

W.P.No.17348 of 2015 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the entire records of the respondent Goods Detention Notice No.536 dated 12.06.2015 and the consequential compounding notice in G.D.No.536/2015-16 dated 14.06.2015 and quash the orders passed therein and direct the respondent to release the detained goods of the petitioner along with the vehicle bearing Registration No.TN 03 J 6099.

W.P.No.17349 of 2015 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the entire records of the respondent Goods Detention Notice No.537 dated 13.06.2015 and the consequential compounding notice in G.D.No.537/2015-16 dated 14.06.2015 and quash the orders passed therein and direct the respondent to release the detained goods of the petitioner along with the vehicle bearing Registration No.TN 03 J 7899.

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W.P.No.17350 of 2015 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the entire records of the respondent Goods Detention Notice No.538 dated 13.06.2015 and the consequential compounding notice in G.D.No.538/2015-16 dated 14.06.2015 and quash the orders passed therein and direct the respondent to release the detained goods of the petitioner along with the vehicle bearing Registration No.TN 05 AX 4599.

For Petitioner :: Mr.A.P.Srinivas

For Respondent :: Mr.S.Kanmani Annamalai
Addl.Government Pleader (Taxes)

ORDER

Challenging the goods detention notice Nos.535 to 538 dated 12.6.2015/ 13.6.2015 and the compounding notices in G.D.Nos.535/2015-16 to 538/2015-16 dated 14.6.2015 issued by the Commercial Tax Officer (Enforcement), Roving Squad, Vellore, the respondent herein, the petitioner has brought these writ petitions, inter alia, contending that the impugned goods detention notices are illegal, since the goods were accompanied by proper documents such as sale bill, as required under Section 64(3) of the Tamil Nadu Value Added Tax Act, 2006.

2. Learned counsel for the petitioner in all matters submitted that the petitioner being a dealer in edible oil and a registered dealer under the Tamil Nadu Value Added Tax Act (for short ''the TNVAT Act'') with TIN No.33141885549, in its usual course of business, after purchasing RBD palm oil, transported the same to its own business place along with the proper documents viz., sale bill as prescribed under Section 67(5) of the TNVAT Act. Nonetheless, when the goods were in transit from Chennai to Paramathy, the respondent intercepted the vehicles and detained the goods along with the vehicles for the reason that the vehicles travelled in an unrelated route, namely, that the vehicles route being Chennai, Walaja, Vellore, Ambur (NH 46) and Namakkal, on the contrary, the vehicles had moved in an unrelated route, namely, Chennai, Walaja, Ranipet, Muthukadai and this apart, the vehicles crossed more than 5 kilometres from the diversion point. Contending further that the allegation of the respondent is factually wrong, the learned counsel also submitted that the drivers never took the vehicles in a diversified route. The reason being now that four way National Highways is formed and over bridges also erected in several junctions, if one particular junction is missed or wrongly diverted, then, by travelling in a different route only, the vehicles can reach the specified route. Therefore, the vehicles had travelled in the right route only, since after Muthukadai, again the said route will join the main road.

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3. Emphasizing again, the learned counsel for the petitioner submitted that once the goods travelled with the correct documents as prescribed under the TNVAT Act, then the respondent officer has no jurisdiction to detain the goods, because there is no requirement under the TNVAT Act that the goods should be moved in a particular route. In these cases, when an explanation was offered by the representative of the petitioner, the respondent was not receptive. On the contrary, presuming that the petitioner has committed a serious crime, the respondent detained the vehicles by issuing the goods detention notice Nos.535 to 538 dated 12.6.2015/13.6.2015 followed by the compounding notices in G.D.Nos.535/2015-16 to 538/2015-16 dated 14.6.2015 mentioning therein that the petitioner has committed an offence under Section 71(3)(d)(e), 71(5)(a) & 71(8) of the TNVAT Act, 2006.

4. Continuing his arguments, he submitted that the jurisdiction of the check post officer under Section 67(2)(3) is to see that whether the goods are accompanied with the documents as prescribed under Section 67(5) of the TNVAT Act, 2006. Even if the respondent had any doubt in the said documents, he can write to the assessing officer of the concerned dealer to verify the same in the course of assessment and for that purpose the goods cannot be detained. In the present cases, as the petitioner has been sending the goods along with the requisite correct documents, namely, sale bills as prescribed under Section 64(3), the goods in question ought not to have been detained on flimsy reasons, as this would seriously affect not only the petitioner's business, but also the growth of economy in the area. He also submitted that the respondent is not the assessing officer to issue the compounding proceedings, for the reason that before issuing the compounding proceedings, it has to be decided whether the dealer has evaded payment of tax or not and this apart, it has to be done by the regular assessing officer and not by the check post officer. In addition thereto, the compounding of offence being an option, the respondent cannot force the petitioner to opt for compounding of the offence. Further no notice was issued by the respondent asking whether the petitioner was willing to compound the alleged offence. For all these reasons, the learned counsel for the petitioner sought for quashing of the impugned goods detention notice Nos.535 to 538 dated 12.6.2015/13.6.2015 and the compounding notices in G.D.Nos.535/2015-16 to 538/2015-16 dated 14.6.2015.

5. Per contra, Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent submitted that the petitioner, claiming to be regular in sending the goods, ought not to have diverted from the regular route, namely, when the vehicles route being Chennai, Walaja, Vellore, Ambur (NH46) and Namakkal, the vehicles had moved in an unrelated route, namely, Chennai, Walaja, Ranipet, Muthukadai. That apart, the vehicles crossed more than 5 kilometres from the diversion point, therefore, the respondent has rightly detained the goods along with the vehicles, on the ground that the petitioner has committed an offence under Section 71(3)(d)

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(e), 71(5)(a) and 71(8) of the TNVAT Act, 2006. The petitioner was also given an opportunity to compound the offence under Section 72(1)(a) of the TNVAT Act, hence, no interference can be called for with the impugned notices.

6. This Court is not able to see any merit in the submissions made by the learned Additional Government Pleader for the respondent. Admittedly, in the present cases, the RBD palm oil transported by the petitioner in the vehicles in question have been accompanied by proper documents like sale bills as prescribed under the TNVAT Act, 2006. However, the reasons given in the impugned goods detention notices dated 13.6.2015 read thus:-

> ''The goods moved from Chennai to Namakkal. On verification of the records, the movement is suspicious and attempt to evade tax. To verify the genuineness of the transaction, the goods with vehicle detained at the O/o the Ranipet (IN) checkpost until further orders from this office at their own risk.''

7. A mere reading of the above reasons given by the respondent does not throw any light whether the vehicles of the petitioner were not carrying the sale bills as required under the TNVAT Act, 2006. In this regard, it is necessary to look into Section 67(5) of the TNVAT Act, which reads as follows:-

> ''(5) The documents referred to in sub-sections (2) and (3) are bills of sale, or delivery notes, or such other documents, as may be prescribed.''

8. A close reading of the above provision also clearly supports the case of the petitioner that the goods were moved with the bills of sale, therefore, the respondent ought not to have hurriedly intercepted the vehicles and ought not to have issued the impugned goods detention notices. Secondly, as contended by Mr.S.Kanmani Annamalai that the vehicles crossed more than 5 kilometres from the diversion point, the respondent has not indicated that there was any deviation in the vehicles route. Admittedly, in the present cases, it appears that the vehicles moved from Chennai, Walaja, Vellore, Ambur (NH46) to reach Namakkal along with the sale bills for the goods laden in the vehicles. While so, even if it is presumed that the vehicles had taken a diversified route i.e., 5 kilometres from the regular route, the Additional Government Pleader for the respondent has miserably failed to place before this Court any provision to justify the passing of the goods detention notices impugned herein. Therefore, when there is no provision, as argued by the learned Additional Government Pleader, placed before this Court that taking a diversified route from the regular route, the respondent is entitled to intercept the vehicles, this Court is not able to find any merit either in the goods detention notice Nos.535

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to 538 dated 12.6.2015/13.6.2015 or in the compounding notices in G.D.Nos.535/2015-16 to 538/2015-16 dated 14.6.2015, hence, they are liable to be set aside. Accordingly, the impugned notices are set aside and the respondent is directed to release the goods along with the vehicles bearing Registration Nos.TN 05 AZ 1494, TN 03 J 6099, TN 03 J 7899 and TN 05 AX 4599 forthwith to the petitioner on production of a copy of this order. The writ petitions are allowed. Consequently, M.P.Nos.1 of 2015 are closed. No costs.

ss

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer (Enforcement)
Roving Squad
Vellore.

+ 1 cc to the Spl.Govt.Pleader (T) High Court, Madras SR 30302

+ 4 ccs to Mr.A.P.Srinivas, Advocate SR 30378, 30377, 30376, 30375

ts(co)
prk23/6

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