IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.17530 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.K.W.Engineering & Signs Private Limited,
Farm No.2, Club Drive Road,
Ghitorni, Delhi - 110 030. ...Petitioner

Vs.

1. The Deputy Commercial Tax Officer,
   Kandamangalam Checkpost Office,
   Lingareddypalayam,
   Villupuram District.

2. The Commissioner of Commercial Taxes,
   Chepauk, Chennai - 600 005.

3. Government of Tamil Nadu,
   Rep. By its Secretary,
   Commercial Taxes Department,
   Fort St. George, Chennai - 600 009.

4. State of Haryana,
   Financial Cum Principal Secretary,
   Department of Excise and Taxation,
   Civil Secretariat, Haryana,
   Chandigarh - 160 017. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of certiorari to call for the records relating to the impugned Notice G.D.No.3549/2015-16, dated 13.06.2015 issued by the first respondent and quash the same.

For Petitioner :Mr.Varun Chablani

For R1 to R3 :Mr.A.N.R.Jayapratap, G.A (T)

ORDER

With the consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

2. It is the claim of the petitioner Company that they had entered into a contract with M/s.Indian Oil Corporation Limited (IOCL) for providing 'Retail Visual Identity' (i.e., Canopy and Building Facia, Canopy Column & Building Cladding, Spreaders & Directional Signs) at various outlets of M/s.IOCL in the State of Tamil Nadu. Pursuant to this, the petitioner raised Invoice Nos.055 to 091, dated 29.05.2015, for supply of various steel items and other items and subsequently, they have despatched the goods to various dealers of IOCL in Tamil Nadu. Later on, the goods were consigned through one M/s.A.K.Road Linesvide, Consignment Note No.18, dated 29.05.2015, from Haryana to Tamil Nadu through Vehicle bearing Registration No.HR 74 2987.

3. It is the further claim of the petitioner that they have charged the applicable rate of Central Sales Tax (CST) on the sale price of the goods and that the aggregate invoice value of goods is Rs.39,10,400/- excluding CST. Whileso, the first respondent intercepted the said vehicle carrying the goods at Kandamangalam Check Post and thereafter, detained the goods vide goods detention Notice No.3549/2015-16, dated 05.06.2015, on the ground that the goods moved from Mewat, Haryana, to various dealers of Indian Oil Corporation in Tamil Nadu and Puducherry, without valid documents and therefore, the transaction is suspected.

4. While narrating so, learned counsel for the petitioner brought to the notice of this Court the detention notice dated 05.06.2015 of the Deputy Commercial Tax Officer, Kandamangalam Check Post, wherein it is stated that the goods transported by the goods vehicle are not accompanied by the documents as prescribed in sub-section (5) of Section 67 of the TNVAT Act, 2006. Again drawing the notice of this Court another notice dated 07.06.2015 issued by the same officer, submitted that the very same respondent has completely changed his stand as stating that on verification of the documents produced at the time of inspection, it is found that as per the Invoices, the goods are valued at Rs.41,52,979/- and he further stated that even though it is interstate purchase, the Consignee TIN Number not noted in the Invoices, therefore, goods are detained at the Check Post of Kandamangalam under Section 67(3)(b)(8)(a) of the TNVAT Act. In such point of time, to answer the said stand of the Deputy Commercial Tax Officer, learned counsel brought to the notice

of this Court the Invoices issued by the petitioner Company, wherein the Consignee TIN number mentioned as TIN No.33270460111. Therefore, it is contention of the petitioner that when the respondent himself has admitted that the goods are moved from one State to another State, without looking into the Invoice to check whether the TIN Number has been properly mentioned or not, the said authority hurriedly passed the impugned detention order. As a result, the petitioner has been put to great-prejudice, therefore, the impugned detention order is liable to be set aside, he pleaded.

5. Mr.A.N.R.Jayapratap, learned Government Advocate (Tax), by accepting the notice on behalf of the respondents 1 to 3, admitted that the goods have been moved from Mewat, Haryana, to various places of Tamil Nadu and Puducherry. By admitting so, he further stated that the respondents ought not to have detained the goods, as the requisite documents as prescribed in Section 67 of the TNVAT Act have been annexed along with the Invoices for the goods and in the said Invoices, TIN Number of the consignee has been properly mentioned, therefore, a direction may be issued to release the vehicle.

6. Before proceeding further, given the facts of the case, Section 67(5) of the TNVAT Act and Rule 15(3) of the TNVAT Rules need perusal and are extracted as under:

> "Section 67(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.
>
> Rule 15(3) --- For purposes of sub-section (3) of Section 64 and sub-section (5) of Section 67, the following shall be the documents to be set along with the goods, namely:--
>
> Rule 15(3)(a) --- A bill of sale or a delivery note in Form JJ and a goods vehicle record or trip sheet or log book;
>
> Rule 15(3)(b) --- A certificate from the Village Administrative Officer when the goods under the transport are claimed to be agricultural produce other than sugarcane grown in his own land or on a land in which he has interest, or declaration signed by the agriculturist and by the registered dealer to whom the agricultural produce is transported; and
>
> Rule 15(3)(c)--- A certificate from the Cane Inspector (Assistant Director of Agriculture) when the goods under the transport are claimed to be sugarcane grown in his own land or on a land in

> which he has interest, or declaration signed by the agriculturist and by the registered dealer to whom the agricultural produce is transported."

A mere reading of Section 67(5) of the TNVAT Act shows that at the time of transit, the owner of the vehicle should possess the bill of sale or delivery note. Again, a mere reading of Rule 15(3) also shows that the owner of the vehicle should possess a bill of sale and a goods vehicle record or trip sheet. In the case on hand, the driver of the detained vehicle was very much in possession of the Invoices as well as the LR Copy at the time of interception of the vehicle by the first respondent at Kandamangalam check post. Therefore, the detention order passed by the first respondent on the ground that the detained vehicle was not having the requisite documents cannot stand to any good reason as stated above.

7. In this context, it is useful to refer to the judgment of this Court in Siemens Limited v. Assistant Commissioner (Commercial Taxes) (Enforcement), Madurai (2012 (51) VST 124 Mad), wherein it has been held that if at all the authorities were under the impression that the assessee was evading payment of tax under law, it was always open for them to initiate proceedings by issuing a show cause notice and making an appropriate assessment, however, it was not open for the check post office to demand the compounding fee as a pre-condition for release of the goods.

8. In yet another decision, the Andhra Pradesh High Court in Ramanadh Poultry Farms and others v. Assistant Commercial Tax Officer and another ((1999) 114 STC 140(AP)) held that collection of tax at the checkpost on the presumption that the goods were likely to be sold clandestinely and the tax would be evaded by the petitioners cannot be resorted to.

9. Above all, the Principal Secretary/Commissioner of Commercial Taxes, Chennai, has issued a circular dated 17.07.2014 with regard booking of offences and collection of compounding fees. For proper appreciation of the case, paragraph No. 2 thereof is extracted hereunder:

> "2. The above movement of goods accompanied with a valid invoice satisfies the provisions of Section 68 of TNVAT Act and consequently, there is no offence falling under Section 71(5)(a) of TNVAT Act. Composition of offence under Section 72(1)(a) of TNVAT Act is possible only in the case of a dealer's failure to pay or attempt to evade or evasion of, any tax

payable under the Act. Failure to file monthly return for previous months is not an offence relatable to movement of the goods. For this lapse, the assessing authority concerned has powers to book offence 71(1)(a) of the Act and if necessary, he may also make provisional assessment under Section 25 of the Act. Therefore, the Roving Squad Officers have invoked the composition provisions under 72(1)(a) of TNVAT Act, without valid grounds and for an offence not relatable to the said movement of the goods."

A cursory reading of the above said part of the circular depicts that movement of goods accompanied with a valid invoice satisfies the provisions of Section 68 of the TNVAT Act and thus, there is no offence falling under Section 71(5)(a) of the TNVAT Act and that the composition of offence under Section 72 (1)(a) of the TNVAT Act is possible only in case of a dealer's failure to pay or attempt to evade any tax payable under the Act. It further states that failure to file monthly return for previous months is not an offence relatable to movement of the goods. Therefore, though, in the case on hand, requisite documents have been produced as stated above, the first respondent has not followed the above said procedure while detaining the goods.

6. Further, this Court also, on perusal of the typed set of papers filed in support of the writ petition, is able to see the TIN Number mentioned in the Invoices, as it is admittedly mentioned as TIN No.33270460111 of M/s.Indian Oil Corporation Limited / Consignee, therefore, in such view of the matter, for the reasons stated above, the impugned order is deserved to be set aside. Accordingly, by setting aside the same, the first respondent is directed to release the vehicle along with the goods on production of a copy of this order forthwith. With this direction, the writ petition stands allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commercial Tax Officer,
   Kandamangalam Checkpost Office,
   Lingareddypalayam,
   Villupuram District.

2. The Commissioner of Commercial Taxes,
   Chepauk, Chennai - 600 005.

3. The Secretary,
   Commercial Taxes Department,
   Fort St. George, Chennai - 600 009.

4. Financial Cum Principal Secretary of State of Haryana,,
   Department of Excise and Taxation,
   Civil Secretariat, Haryana,
   Chandigarh - 160 017.

1 CC to Mr.Lakshmikumaran, Advocate SR.No. 31589

1 CC to the Government Pleader, SR.No. 31085

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and
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GGK (CO)
PSI (26.06.2015)