IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.18409 & 18410 of 2015

M/s Raj Glass & Plywoods
rep.by its Proprietor - Kiran Kumar Jain
No.604, Oppanakara Street
Coimbatore 641 001 ...Petitioner in W.P.No.18409 of 2015

M/s M.P.Agency
rep.by its Proprietor - M.S.Maranadu
No.180/8, Madakulam Main Road
V.K.P.Nagar
Madurai 625 003 ...Petitioner in W.P.No.18410 of 2015

-vs-

1. The Assistant Commissioner(CT)
   Oppanakara Street Assessment Circle
   Coimbatore ...1st Respondent in W.P.No.18409 of 2015

2. The Assistant Commissioner(CT)
   Madurai (Rural) South
   Madurai ...1st Respondent in W.P.No.18410 of 2015

3. The Commercial Tax Officer
   Enforcement - Roving Squad-I
   Coimbatore ...2nd Respondent in WP.No.18409 of 2015

4. The Deputy Commercial Tax Officer
   Checkpost Officer
   K.G.Chavady (incoming)
   Coimbatore 641 105 ...2nd Respondent in WP.No.18410 of 2015

W.P.No.18409 of 2015 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records on the file of the second respondent in his impugned proceedings in GDR No.26323/ 2014-15 dated 18.06.2015 quash the same as illegal and against the provisions of the Act.

W.P.No.18410 of 2015 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records on the file of the second respondent in his impugned proceedings in GDR No.82/ 2015-16 dated 18.06.2015 quash the same as illegal and against the provisions of the Act.

For Petitioners : Mr.S.Rajasekar

For Respondents : Mr.V.Haribabu
Addl.Government Pleader (Taxes)

ORDER

There are two writ petitions. Writ Petition No.18409 of 2015 is filed by M/s Raj Glass & Plywoods represented by its Proprietor Mr.Kiran Kumar Jain, Coimbatore challenging the impugned goods detention notice in GDR No.26323/2014-15 dated 18.6.2015 issued by the Commercial Tax Officer, Enforcement-Roving Squad-I, Coimbatore and to quash the same as illegal and against the provisions of the Act. Writ Petition No.18410 of 2015 is filed by M/s M.P.Agency represented by its Proprietor Mr.M.S.Maranadu, Madurai challenging the impugned goods detention notice in GDR No.82/2015-16 dated 18.6.2015 issued by the Deputy Commercial Tax Officer, Checkpost Officer, K.G.Chavady (incoming), Coimbatore and to quash the same as illegal and against the provisions of the Act.

2. Learned counsel for the petitioners, assailing the impugned orders, submitted that M/s Raj Glass & Plywoods, a registered dealer on the files of the Assistant Commissioner (CT), Oppanakara Street Assessment Circle, Coimbatore with TIN No.33451861856 and CST No.280192, being engaged in the business of buying and selling of glass and plywoods and allied products, in the course of business, placed an order for supply of glass with one M/s Kothari Impex having address at Sukrawarpettai, Coimbatore. The said M/s Kothari Impex procured the order of the petitioner from the main distributor at Chennai, namely, M/s S.N.Traders. Invoice also was raised by M/s S.N.Traders, Chennai on M/s Kothari Impex, Coimbatore and the goods with the said invoice moved from Chennai through a vehicle bearing Registration No.TN 20 BM 1042, however, the same were intercepted at Neelambur by the Commercial Tax Officer, Enforcement, Roving Squad-I, Coimbatore on 18.6.2015 at 11 p.m., only on suspicion that the driver of the vehicle was also in possession of another invoice raised by

the petitioner in the name of one M/s Lakshmi Glass & Plywoods, Kamaraj Road, Coimbatore. The learned counsel also submitted that M/s M.P.Agency represented by its Proprietor Mr.M.S.Maranadu, Madurai, a registered dealer on the files of the Assistant Commissioner (CT), Madurai (Rural) South Circle, Madurai with TIN No.33745165565 and CST No.812331, being engaged in the business of trading in building materials like cement, jelly, sand and plywoods and allied products, in the course of business, purchased commercial plywood from one M/s Sagas Plyworld, Kerala and the same was duly covered by invoice and delivery note raised by the Kerala dealer specifically providing for levy of central sales tax at concessional rate of 2% against production of declaration in Form ''C'' by the petitioner. Based on the said documents, when the goods were moved through a vehicle bearing Registration No.TN 29 A 6989, the vehicle was intercepted by the Deputy Commercial Tax Officer, K.G.Chavady (Incoming), Coimbatore on the ground that the goods transported from Kerala are not covered in the Form ''B'' certificate of the petitioner. Since the transactions were suspected, the consignments were detained by the respective authority.

3. Continuing his arguments, the learned counsel also submitted that without even issuing the goods detention notices to the drivers of the vehicles, show cause notices for composition of offence under Section 72 of the TNVAT Act were issued straightaway. He also submitted that when the roving squad/checkpost officer is not the assessing officer, he has no jurisdiction to compound the offence on receiving the amount. That apart, unless and until the petitioners agree for compounding the offence, the roving squad/checkpost officer cannot compound the offence and pass orders therefor. He has also brought to the notice of this Court the Circular No.33/2014 Q4/7752/2014 dated 17.7.2014 issued by the Principal Secretary/Commissioner of Commercial Taxes, Chennai to say that the roving squad/checkpost officer has no power to invoke the composition of offence under Section 72(1)(a) of the TNVAT Act without valid grounds. He also further submitted that when the movement of goods are accompanied with valid invoices satisfying the provisions of Section 68 of the TNVAT Act, there cannot be any offence that can be brought under Section 71(5)(a) of the TNVAT Act. When the composition of offence under Section 72(1)(a) is possible only in cases of the dealers failure to pay or evade the tax payable under the Act, the roving squad/checkpost officer cannot step into the shoes of the assessing officer, as he has no jurisdiction as held by this Court in W.P.No.14399 of 2015 dated 13.5.2015 (Supreme Industries Limited represented by J.Jayakumar Accounts Executive/Authorised Signatory v. Deputy Commercial Tax Officer, Kandamangalam Check Post, Lingareddypalayam). In support of his

submissions, he has also placed on record an unreported order in W.P.No.937 of 2015 dated 3.3.2015 (M/s Tristar Kitchens (P) Ltd., represented by its Authorised Signatory v. The Deputy Commercial Tax Officer, Ranipet (IN) Checkpost, Serkadu, Katpadi Taluk) for immediate release of the goods.

4. Per contra, the learned Additional Government Pleader for the respondents, while meeting the contentions raised by the petitioner that the second respondent has no jurisdiction or authority, as he is not the assessing authority to compound the offence on receiving the amount, is unable to give any reply.

5. Heard the submissions on either side. In this context, it is necessary to extract the relevant paragraphs of the Circular No.33/2014 Q4/7752/2014 dated 17.7.2014 issued by the Principal Secretary/Commissioner of Commercial Taxes, Chennai, as follows:-

> ''1. It has been brought to the notice of the undersigned that in one case, a consignment of cotton yarn was intercepted by a Roving Squad. The consignment was accompanied with proper invoice. However, on verification, it was found by the R.S. officers that the consignees have not filed monthly return for the month of April and May 2014. This was treated as an offence liable under Sec.72(1)(a) of TNVAT Act and tax payable and two times of tax payable as C.Fee was collected before the release of goods.
>
> 2. The above movement of goods accompanied with a valid invoice satisfies the provisions of Sec.68 of TNVAT Act and consequently, there is no offence falling under Sec.71(5)(a) of TNVAT Act. Composition of offence under Sec.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 Sec.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.

3. The above illegal act of the Roving Squad amounts to harassment of dealers/transporters concerned and tarnish the image of the department. Therefore, all the Enforcement officials are instructed to carry out the vehicular check at check posts, check points and by Roving Squads in a diligent and prudent manner and book offences and compound the same under the correctly applicable statutory provisions. Wherever necessary action is to be taken by the assessing authority, a report has to be sent to the assessing authority. In case, the nature of transaction is suspicious and requires further investigation and inspection/audit, proper Investigation File need to be opened and sent to the higher authorities and surprise inspection carried out with approval immediately wherever necessary. The quality of enforcement lies in identifying cases with repeat offences and investigating such cases completely.
4. Any complaint of harassment during vehicular check will be viewed seriously. If the complaint is found to be correct on enquiry, appropriate action will be taken against the erring officials. Random audit of O.R files will also be ordered by the undersigned to ensure the quality of offences booked in vehicular check. If repeated serious violations are noticed in the offence booing, the Enforcement higher authorities will also be held liable for the lapses in enforcement of statutory provisions.''

6. In the light of the above circular, if the same is applied to the case of the petitioners, the vehicle of the petitioner in the first writ petition was intercepted at Neelambur by the Commercial Tax Officer, Enforcement, Roving Squad-I, Coimbatore on 18.6.2015 at 11 p.m., on the premise that the driver of the vehicle was also in possession of another invoice raised by the petitioner in the name of one M/s Lakshmi Glass & Plywoods, Kamaraj Road, Coimbatore and the vehicle of the petitioner in the second writ petition was intercepted by the Deputy Commercial Tax Officer, K.G.Chavady (Incoming), Coimbatore on the premise that the goods transported from Kerala were not covered in the Form ''B'' certificate. While so, it is not in dispute that the goods were accompanied by the valid transport

documents, namely, invoices raised by M/s S.N.Traders, Chennai on M/s Kothari Impex, Coimbatore and the goods with the said invoice moved from Chennai through a vehicle bearing Registration No.TN 20 BM 1042 on 18.6.2015 in respect of the petitioner in the first writ petition and the goods in respect of the invoice and delivery note raised by the Kerala dealer were moved through a vehicle bearing Registration No.TN 29 A 6989 in respect of the petitioner in the second writ petition, therefore, when the goods have been properly accompanied by valid transport documents, the second respondent ought not to have detained the goods on mere suspicion rather than on certainty. It is also further relevant to extract Rule 15(1) & 15(4) of the TNVAT Rules, which reads as follows:-

> ''15. Check post.--(1) Officers of the Commercial Taxes Department not below the rank of an Deputy Commercial Tax Officer shall be the officer prescribed for the purposes of Sections 65, 66, 67, 68 and 69.
>
> Explanation.--For the purpose of this Rule, the expression 'said officer' shall mean the officer prescribed in sub-rule (1) or the officer in charge of the check-post or barrier.
>
> (4) A copy of the order of detention of the goods made under sub-section (3) of Section 67 shall be served on the driver of the vehicle or the boat or other person in charge of the goods along with order specifying the tax or security to be paid for the release of the goods.''

7. A mere reading of the above rule also says that the officers of Commercial Taxes Department not below the rank of Deputy Commercial Tax Officer shall be the officer prescribed for the purposes of Sections 65, 66, 67, 68 and 69. Although this may be so, the Circular No.33/2014 Q4/7752/2014 dated 17.7.2014 issued by the Principal Secretary/Commissioner of Commercial Taxes, Chennai clearly shows that the movement of goods, if accompanied with a valid invoice, would satisfy the provisions of Section 68 of the TNVAT Act, hence, there is no offence falling under Section 71(5)(a) of the TNVAT Act. Further, when Rule 15(1) totally excludes the operation of Section 72(1)(a) of the TNVAT Act and also for the reason that the movement of goods were accompanied with valid invoices as per Section 68 of the TNVAT Act, the impugned goods detention notices issued by the second respondent in both the writ petitions are liable to be set aside. Accordingly, the impugned orders are set aside and the

respondents are directed to release the goods forthwith to the petitioners on production of a copy of this order. The writ petitions are allowed. Consequently, M.P.Nos.1 & 2 of 2015 are closed. No costs.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner(CT)
   Oppanakara Street Assessment Circle
   Coimbatore

2. The Assistant Commissioner(CT)
   Madurai (Rural) South
   Madurai

3. The Commercial Tax Officer
   Enforcement - Roving Squad-I
   Coimbatore

4. The Deputy Commercial Tax Officer
   Checkpost Officer
   K.G.Chavady (incoming)
   Coimbatore 641 105

2 CCs to Mrs.R.Hemalatha, Advocate SR.No. 31368 & 31369

2 CCs to the Government Pleader, SR.No. 31361 & 31362

W.P.Nos.18409 & 18410 of 2015

LRS (CO)
PSI (07.07.2015)