IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2015

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.18587 of 2015
and M.P.No.1 of 2015

The Supreme Industries Ltd. [Petitioner]
Rep by J. Jayakumar
Accounts Executive
Authorised Signatory
No.90 & 91 Sanyasikuppam
Puducherry 605 107

Vs

1 The Deputy Commercial Tax
Officer/Check Post Officer
Pattanur Check Post
Villupuram Tamil Nadu

2 The Commercial Tax Officer
Puducherry Assessment Circle Puducherry

3 The Commercial Tax Officer
Hosur Assessment Circle Hosur
Tamil Nadu

[Respondents]

PRAYER : The Writ petition is filed under Article 226 of the Constitution of India praying for a Writ of certiorarified mandamus to call for the records on the file of the 1st respondent in G.D. No. 2648/15-16 dt 17.6.2015 quash the same and direct the 1st respondent to release the goods detained in G.D. No. 2648/15-16 dt 17.6.2015 along with vehicle No. TN 34 V6977.

For Petitioner : Mr.S.N.Kirubanandam
For Respondents: Mr.V.Haribabu, AGP (T) (R1&3)
Mr.N.Mala, AGP (Pondy) (R2)

O R D E R

Heard the learned counsel for the petitioner, Mr.V.Haribabu, learned Additional Government Pleader(T), who took notice for the 1st and 3rd respondents and Ms.N.Mala, learned Additional Government

Pleader (Pondicherry) for the 2nd respondent and with their consent, the main writ petition is taken up for disposal.

2. This writ petition has been filed by The Supreme Industries Ltd. represented by J. Jayakumar, Accounts Executive, challenging the Form No.041 issued in G.D. No. 2648/15-16 dated 17.6.2015, in and by which, the 1st respondent has detained the goods for the following reason:-

> "The goods moved from Ahamadabad to Pondicherry and the goods contain plastic granules of sixth schedule commodity of TNVAT Act, 2006 by without Transit Pass. Hence the goods detained in the checkpost".

3. Learned counsel for the petitioner would submit that the petitioner, being the limited Company, having registered office at No.612, Raheja Chambers, Narimen Point, Mumbai and branches throughout the Country including the state of Tamil Nadu and the Union Territory of Pondicherry registered with necessary statutory authority like customs, excise, income tax, VAT Tax etc., has been engaging in plastic moulding goods and paying higher tax to the respective states including the State of Puducherry with Tin No.34770007654.

4. In this background, the grievance of the petitioner is that during the course of its manufacturing activities, the petitioner had purchased plastic raw materials from M/s Polylink Polimer's Ahamadabad, State of Gujarat in Invoice No.00088 dated 13.06.2015 and the same was also subsequently put on transit from Allahabad to Puducherry through Vehicle No.TN 34 V 6977. He also further submitted that the driver of the vehicle was also given Form KK as prescribed under Rule 15 (14)(15) (18) of the TNVAT Tax Rules and the seller at Ahamadabad was also mentioned clearly the TIN No. of Puducherry and the goods have successfully crossed the checkpost from the State of Gujarat to Pondicherry till the 1st respondent intercepted the goods and passed the impugned order, saying that the goods have been moved without transit pass.

5. The learned counsel for the petitioner would submit that the 1st respondent has no jurisdiction whatseover to detain the goods, as he is not the Assessing Officer. Consequently, he would submit that when the goods have moved along with accompanying documents viz., Form KK as prescribed under Rule 15(4) of the TNVAT Rules, along with copies of invoices, copy of delivery challan, the 1st respondent ought not to have unnecessarily intercepted the goods, when several other check posts have cleared the goods without finding any irregularity in the documents accompanied with the goods vehicle. Therefore, he sought for release of the goods as the documents have accompanied with goods.

6. The learned Additional Government Pleader (Taxes) has brought to the notice of this Court that e-Transit pass dated 17.06.2015 was generated only at about 09' 0 clock, that shows that the goods in question were not accompanied with necessary documents.

7. No doubt, the learned Additional Government Pleader was right in saying that e-Transit pass was generated only at about 09' 0 clock on 17.06.2015. But, the invoice mentions clearly the name of the petitioner as "The Supreme Industries Ltd., with TIN.No." and also the seller particulars. Although this Court finds that the reason given by the 1st respondent appears to be correct for detention of the goods viz., the goods were not accompanied with e-Transit pass, which has been generated only on 17.06.2015 at about 09' 0 clock, in view of the fact that this petitioner's goods have moved with invoice dated 13.6.2015 mentioning all the particulars, 1st respondent in all fairness ought not to have detained the goods and vehicle, in view of the Circular No.33/2014Q4/7752/2014 dated 17.07.2014 of the Principal Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai. At this juncture, it is useful to refer to extract below the relevant portions of the said Government Order:-

> "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 provision 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.........

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.......".

8. In view of the above, the 1st respondent is directed to release the goods along with the vehicle on production of a copy of this order. If the 1st respondent is of the view that the goods escaped the assessment, it is open to him to convey the same to the Assessing Officer by way of a communication for passing appropriate orders.

In the result, the impugned order is set aside and the writ petition is allowed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

rg
To
1 The Deputy Commercial Tax
Officer/Check Post Officer
Pattanur Check Post
Villupuram Tamil Nadu

2 The Commercial Tax Officer
Puducherry Assessment Circle Puducherry

3 The Commercial Tax Officer
Hosur Assessment Circle Hosur
Tamil Nadu.

1 cc to Mr.S.N.Kirubanandam, Advocate Sr.No.31864
1 cc to Spl.Government Pleader(Taxes).Sr.No.31768

W.P.No.18587 of 2015

pmk.1.7.2015