IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE T. RAJA

W.P.Nos.19194 and 19195 of 2015

M.P.Nos.1 and 1 of 2015

M/s.Bhora Marbles,
Rep., by its Authorised Signatory,
Mr.Sanjay Bhora ...Petitioner in both W.Ps.,

Vs

1. The Commercial Tax Officer,
   Roving Squad II, Enforcement (North),
   Greams Road, Chennai 600 006.

2. The Assistant Commissioner (CT),
   No.170, GNT Salai, Puzal,
   Chennai 600 066. ...Respondents in both W.Ps.,

Writ Petitions filed under Article 226 of the Constitution of India, praying for Writ of Certiorarified Mandamus, to call for the records of the first respondent in G.D.R.Nos.7060 /2015-16 & 7061/2015-16, dated 12.06.2015 and consequential proceedings in G.D.Nos.7060 & 7061/2015-16, dated 16.06.2015, quash the same and further direct the first respondent not to demand, collect or recover any tax or compounding fee, till the adjudication, if any, is done by the second respondent, as per Section 70(3) of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran

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

COMMON ORDER

There are two writ petitions, filed by M/s.Bhora Marbles, represented by its Authorised Signatory, Sanjay Bhora, challenging the impugned detention order of goods in G.D.R.Nos.7060 & 7061/2015-16, dated 12.06.2015 and consequential proceedings in G.D.Nos.7060 & 61/2015-16, dated 16.06.2015, on the grounds that the goods were not accompanied with E-Transit passes and the amount mentioned in the Invoices differ from the amount mentioned in K.K.Forms.

2. It is the case of the petitioner that he has placed orders with M/s.Global Commodity Suppliers (14-15), No.601, Mandvi-Navjivan Premises Co-operative Society Ltd., 121-127, Kaji Syed Street, Masjid (West), Mumbai, registered dealer in the State of Maharastra, with TIN.No.27340688849 and the goods were cleared by the Clearing Agent in two lorries, bearing Registration Nos.TN 23 CA 2399 and TN 23 AU 1976, accompanied with KK Forms 52673 and 52675 and sale invoices, raised by the seller, on the petitioner, mentioning the destination with Tax Identification Number (TIN) and hence, the first respondent ought not to have interfered with the transit of goods.

3. The petitioner has further submitted that at the time of detention, the goods were accompanied with KK Forms, Bill of Entry, Sale Bill of the Seller in Bombay against C Forms, taxable at 2% Central Sales Tax, which would show that the goods can pass through the State of Tamil Nadu and that no tax can be levied under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the Act"), as it is an inter-state transaction. As the goods are enumerated under the Sixth Schedule, the petitioner opted to download the Transit Passes from the Tamil Nadu Commercial Tax Website on 12.06.2015 at 15.53 P.M., and 16.21 P.M. However, by mistake, the lorry drivers have failed to take the passes with them. In the mean while, when the vehicles were proceeding in the National High Ways towards Bangalore, the first respondent has detained the same, along with the goods and issued the impugned proceedings, dated 12.06.2015, on the following grounds,

> "(i) That the value of the goods in the Form KK and the value of the goods in the sale invoice did not correlate,
>
> (ii) That transit pass was not accompanying the goods at the time of detention;
>
> (iii) the dealer is not a registered dealer in the State of Tamil Nadu."

4. The petitioner has contended that immediately after detention, he pleaded with the authorities that the detention order is not correct, neither valid, in the eye of law. However, the first respondent with the definite view to collect tax, under the TNVAT Act, with compounding fee, which is twice the amount of tax, ordered that the goods shall not be released, till the payment of tax and other fees.

5. Learned counsel for the petitioner submitted that the first respondent is not the concerned authority to detain the goods. In support of his submission, he also relied on the order passed by this Court in W.P.No.17530 of 2015, dated 24.06.2015 [M/s.K.W.Engineering & Signs Pvt. Ltd., v. The Deputy Commercial Tax Officer], wherein, it has been held that as per Section 67(5) of the TNVAT Act, at the time of transit, the owner of the vehicle should possess the bill of sale or delivery note and that the goods should not be detained, even by any officer, belonging to Roving Squad.

6. Learned counsel for the petitioner further submitted that when the lorries were proceeding in the Bangalore National Highways, the first respondent, not even a registered authority, detained the goods and demanded the petitioner to pay One Time Tax for the release of the goods. According to him, even after the payment of One Time Tax, for the release of the goods, it would be difficult for the petitioner to recover the amount, as he was not belonging to the State of Tamil Nadu. If the petitioner is a registered dealer in the State of Tamil Nadu, he would be in a position, to get his tax adjusted and therefore, no such condition can be imposed against the petitioner, for release of the goods. On the other hand, the petitioner is able to satisfy this Court that at the time of movement of the goods, the goods were accompanied with KK Forms, Bill of Entry, Sale Bill of the Seller in Bombay against C Forms, in addition to E-Transit Pass.

7. Per contra, opposing the above relief, learned counsel for the respondents, placed on record, the original files and submitted that the first respondent, after intercepting the petitioner's vehicles, carrying goods, has noticed some discrepancies in the amounts entered in KK Forms and Invoices. Since the total costs of the goods, ladened in the vehicles, have not been properly mentioned in the Invoices and also not properly entered in the KK Forms, the first respondent, raising suspicion, with regard to evasion of tax, has rightly detained the goods and therefore, if the petitioner is very particular of the release of the goods, he may be directed to pay One Time Tax and thereupon, it is for him to contest the matter, as per law.

8. Heard the learned counsel for the parties and perused the materials available on record.

9. As rightly contended by the learned counsel for the petitioner that the goods were ladened in two vehicles, bearing Registration Nos.TN 23 CA 2399 and TN 23 AU 1976, along with the documents, such as, KK Forms 52673 and 52675, Bill of Entry, Sale Bill of the Seller in Bombay against C Forms and E-Transit passes. Section 70(1)(b) of the TNVAT Act, r/w. Rule 15(17)(bb) of the TNVAT Rules, shows that the owner or other person in charge of the goods vehicle, shall deliver within the prescribed period, the transit pass to the officer in charge of the last check post or barrier, before the exit of the goods vehicle from the State. In view of the above, the petitioner's vehicles need not carry E-Transit pass in the middle of the transit.

10. Therefore, considering the fact that when the subject vehicles, ladened with the goods, have accompanied with KK Forms, Bill of Entry and Sale Bill of the Seller in Bombay against C Forms, the first respondent could have released the vehicles, along with the goods, after verifying the above documents. As the first respondent did not do so, this Court, while setting aside the impugned orders, hereby directs him to release the goods and if for any reason, the first respondent is of the view that he can himself initiate any proceedings against the owner of the vehicles, it is for him, to do the needful, by contacting the assessing officer of the place concerned, in accordance with law.

11. With the above direction, the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To

1. The Commercial Tax Officer,
Roving Squad II, Enforcement (North),
Greams Road, Chennai 600 006.

2. The Assistant Commissioner (CT),
No.170, GNT Salai, Puzal,
Chennai 600 066.

2 CCS to Mr.V.Sundareswaran, Advocate SR.No. 33524

1 CC to the Government Pleader, SR.No. 33620

W.P.Nos.19194 and 19195 of 2015

ku (CO)
PSI (22.07.2015)