IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2015

Coram

The Hon'ble Mr. Justice T.RAJA

W.P.No.20242 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.Archana Industries rep. by its
Manager Suresh Kumar .. Petitioner

Vs.

1.The Assistant Commissioner (CT),
Ranipet SIPCOT Circle,
Ranipet, Vellore District.

2.The Deputy Commercial Tax
Officer/Checkpost Officer,
K.G.Chavady (incoming),
Coimbatore - 641 105. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records on the file of the second respondent in his impugned proceedings in GDR No.376/2014-15-No.26650-Show Cause Notice for composition of offence dated 29.06.2015 quash the same as illegal and against the provisions of the Act.

For Petitioner .. Mr.S.Rajasekar

For Respondents .. Mr.S.Kanmani Annamalai,
Addl. Govt. Pleader (T)

ORDER

This writ petition has been filed by M/s.Archana Industries on the sole ground that the Checkpost Officer, by stepping into the shoes of the assessing officer, has straight away issued the notice on the basis that the petitioner has evaded the payment of tax under Section 67(3) (b) of the TNVAT Act, 2006, without there being any deduction thereon by following the due process of law.

2.Mr.S.Kanmani Annamalai, learned Additional Government Pleader (T) takes notice for the respondents.

3.The petitioner is a registered dealer on the file of the Assistant Commissioner (CT), Ranipet-Sipcot Circle, the first respondent herein with TIN No.33924364052 and is also engaged in the business of trading granite slabs. It is also claimed that the petitioner is also having branch office at No.101/169, Jagadevi Main Road, G.Nagamangalam, Krishnagiri. In the course of business, the petitioner purchased polished granite - 2917 sq.ft. from one M/s.Silpa Granites and Tiles, Karukutty, Ernakulam, Kerala. The said goods were duly covered by invoice No.552/28.6.2015 along with delivery note and despatched through the vehicle bearing Regn. No.TN 29 AX 9732. The tax invoices were also raised by the Kerala dealer for levy of CST at concessional rate of 2% against production of declaration in Form C by the petitioner. When all the papers were available, the vehicle was stopped for verification of the documents by the second respondent at KG Chavadi Checkpost. The second respondent, after scrutiny of the documents, took an inconsistent stand that the dealer purchased the materials from within the State and claimed ITC. On that basis, he has reached a conclusion that the petitioner has evaded tax under Section 67 (3)(b) of TNVAT Act.

4.The second respondent, being the Checkpost Officer, has got a duty to check any vehicle carrying the goods whether they are accompanied with the requisite documents like delivery note, invoice, Form KK etc., But, in the present case, a perusal of the impugned notice would show that he has detained the vehicle not for want of any of the documents. On the other hand, by stepping into the shoes of the assessing officer, he has reached a conclusion that the petitioner has evaded tax under Section 67 (3)(b) of TNVAT Act. This Court has time and again, by various rulings, held that the checkpost officer has no authority to pass any order detaining the goods on any flimsy reason. However, in the present case, the second respondent has passed the order almost assessing the tax payable by the petitioner without any valid reason. In my considered view, the same is not capable of being fortified by this Court. In this regard, it is pertinent to refer to my earlier order passed in W.P.No.17530 of 2015 dated 24.06.2015, touching on the same issue, wherein I have held as follows:

> "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 precondition 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."

5.In the light of the above position, as the second respondent has got power to detain the goods only for the limited purpose of ascertaining whether there has been sale or purchase of goods carried on and whether there has been any attempt to evade payment of tax due thereon, in the present case, on the face of the impugned order, he has not verified whether the vehicle carried the goods along with the requisite documents as per Section 68 of the TNVAT Act. As there is no reference whatsoever made and the goods have been transported along with all the requisite documents, the detention is unfounded. Therefore, the impugned proceedings of the second respondent dated 29.06.2015 is quashed and the second respondent, on production of the copy of this order, is directed to release the goods forthwith.

6.In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner (CT),
Ranipet SIPCOT Circle,
Ranipet, Vellore District.

2.The Deputy Commercial Tax
Officer/Checkpost Officer,
K.G.Chavady (incoming),
Coimbatore - 641 105.

+1cc to Mrs. R. Hemalatha, Advocate, S.R.No.34063

+1cc to the Government Pleader, S.R.No.34769

KU(CO)
EU(10/07/2015)

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