IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.29406 of 2015

Laxmi Rolling & Strips Pvt. Ltd.
Rep. by its Plant Manager J.G.Babu
Hosur Thally Road Kalukondapalli Village
Belagondapalli Hosur-635 114. [Petitioner]

Vs

The Commerical Tax Officer
Krishnagiri.
[Respondent]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the Respondent in his proceedings in Goods Detention Notice No.8080/2015-2016 dated 12.09.2015 and quash the same and direct the respondent to release the goods .

For petitioner : Mr.Adithya Reddy
For respondent : Mr.S.Kanmani Annamalai, AGP(T)

O R D E R

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the writ petition is taken up for disposal.

2. This writ petition has been filed challenging the proceedings of the respondent in No.8080/2015-2016 dated 12.09.2015 and to direct the respondent to release the goods.

3. The petitioner is a manufacturer of TMT Bars having registration under TNVAT Act with TIN No.33323367901. According to the petitioner, they sent a consignment of steel bars to Afsal Traders, Elayngudi, Sivagangai District, from its factory at Hosur, by way of sale in a vehicle bearing No.TN 37 R 9752 along with the invoice and other documents covering the sale. During transit, at

Rayokotai Road near Luke India, the said vehicle was intercepted by the respondent on 12.09.2015 at 8.35 p.m. The respondent detained the goods on the ground that when the documents as required under Section 67(5) of the Act was asked for, the driver of the vehicle though furnished a sealed cover, the same was not a bill for the purpose of transport of goods. It is the contention of the petitioner that for the purpose of safe keeping, the driver of the vehicle has kept the sale invoice in a sealed cover and handed over the same to the respondent. However, inspite of the repeated requests made by the driver of the vehicle to open the sealed cover, the respondent has refused to do so and he has also not returned the cover to the driver. However, the respondent has served the impugned Goods Detention Notice on the driver, demanding the petitioner to pay the tax at the rate of 5% on the value of the goods ie.. Rs.27,855/- along with compounding fee of Rs.55,710/-. Aggrieved over the same, the petitioner is before this Court.

4.1 The learned counsel for the petitioner submitted that when the driver of the vehicle was carrying the necessary documents in a sealed cover, there was no basis for the respondent to detain the goods. The reasoning given by the respondent that the sealed cover would not amount to a bill is patently absurd and prima-facie mala-fide inasmuch as there is no provision in TNVAT Act including Section 67(5) prohibiting carrying the requisite documents in a sealed cover. That apart, according to the learned counsel, the respondent ought to have seen that all the documents accompanying the goods were enclosed in a sealed cover. In fact, the driver of the vehicle, when posed a question to furnish the documents, he immediately handed over the sealed cover to the respondent, which is not violative of any of the provisions of the Act and does not lead to a presumption of evasion of tax.

4.2 That apart, according to the learned counsel for the petitioner, the respondent ought to have seen that Section 71(3)(d), (e) and 71(5)(a) have no application to the facts of the case, since the petitioner's goods were accompanied with all the documents including sale invoice.

4.3. Adding further, learned counsel for the petitioner would submit that the respondent has violated the principles of natural justice in coming to the conclusion that the petitioner Company has intended to evade Sales Tax on the sales in question without giving any opportunity.

4.4. Besides, according to the learned counsel for the petitioner, the respondent has grossly erred in demanding not only payment of tax, but also payment of compounding fee as conditions for release of the goods.

Basing on these, the learned counsel for the petitioner has sought for allowing of the writ petition.

5. The learned Additional Government Pleader (Taxes) on the other hand would submit that since the goods have not been accompanied with documents and it has contained only a sealed cover, which is not a bill for the purpose of transport of goods, the impugned detention notice came to be passed.

6. At this juncture, the learned counsel for the petitioner would submit that the petitioner is willing to pay one time tax and on such payment, the goods detained may be directed to be released.

7. In view of the submissions made by the learned counsel for the petitioner that the petitioner is willing to pay one time tax and in order to give a quietus to the issue, for the purpose of release of goods, on payment of one time tax viz., Rs.27,855/-by the petitioner, the respondent, who is on special duty, shall release the goods forthwith. With regard to compounding fee, it is always open to the petitioner to challenge the same in the manner known to law.

With the above directions, the writ petition is disposed of. No costs.

-s/d-
Assistant Registrar(CSII)

True Copy

Sub-Assistant Registrar

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To

The Commerical Tax Officer
Krishnagiri.

+1 cc to Mr.Adithya Reddy Advocate sr.51080

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