IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.31264 of 2015

VAC.Energy Systems [Petitioner]

Vs

The Deputy Commercial Tax Officer
Kottakuppam Check Post. [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.2979 dated 24.09.2015 and quash the same and direct the Respondent to release the goods.

For petitioner : Mr.Adithya Reddy

For respondent : Mr.V.Haribabu, AGP(T)

O R D E R

Heard the learned counsel for the petitioner and Mr.V.Haribabu, 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 Goods Detention Notice No.2979 dated 24.09.2015 and to direct the respondent to release the goods.

3. The petitioner is a dealer in Air-conditioners and a registered dealer under the TNVAT Act with TIN No.33196280834. According to the petitioner, pursuant to the purchase order placed by one Vinayaka Missions Medical College and Hospital in Karaikal, the petitioner despatched five Cassette ceiling air conditioners for a sum of Rs.4,36,685/- through vehicle bearing No.TN 12 A 9383 from their premises at Chennai along with relevant documents. However, according to the petitioner, the e-transit pass which is required under Section 70 of the TNVAT Act could not be generated due to the

bona-fide mistake committed by the staff of the petitioner Company, however, print out of the web-portal showing an attempt to obtain transit pass was enclosed. In the circumstances, the vehicle was intercepted by the respondent at Kottakuppam Check post on 24.09.2015 and the goods were detained on the ground that the goods were moved without transit pass. It is the contention of the petitioner that mere failure to produce transit pass does not lead to a presumption that the goods were being sold within the State. Admittedly, the consignee is outside the State and the goods were moving towards Karaikal from Chennai. However, the respondent served the impugned goods detention notice fixing the tax at the rate of 14.5% on the value of the goods. Aggrieved over the same, the petitioner is before this Court.

4.1 The learned counsel for the petitioner submitted that the respondent ought to have seen that all the documents accompanying the goods indicated that the goods were meant for delivery at Karaikal and when that be so, detention of goods on the ground of non production of e transit pass is unsustainable.

4.2. Further, 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 The learned counsel for the petitioner would further submit that the respondent has not followed the Circular of the Principal Secretary and Commissioner of Commercial Taxes dated 16.06.2014, in and by which instructions were given regarding the procedure to be followed in cases where the transit passes obtained and not surrendered at the last check post following the decision of the Tamil Nadu Taxation Tribunal in the case of Godrej GE Appliances Ltd., vs Assistant Commercial Tax Officer reported in 114 STC 570. According to him, the Commissioner in the said Circular has specifically stated that even in the absence of transit pass, other supporting documents can be examined to determine that the goods are being transported outside.

4.5. 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 were moved without transit pass 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.75,000/-by the petitioner, the respondent, 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.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

The Deputy Commercial Tax Officer
Kottakuppam Check Post.

+1 cc to Mr.Adithya Reddy, Advocate, sr.53835

W.P.No.31264 of 2015

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