IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.31550 of 2015

M/s.Oil Country Tubular Limited,
Rep by its Authorised Signatory,
Kamineni,
3rd Floor, King Kothi,
Hyderabad 500 001. [Petitioner]

Vs

Deputy Commercial Tax Officer,
Pennaiyar Bridge Check Post,
Cuddalore. [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 G.D. No.2029/2015-16 dt 19.9.2015 and quash this detention order as illegal and without jurisdiction contrary to the provisions of the TNVAT Act as the transit pass No. MVRNO. TNETP2015017182306520l was generated even before the detention of goods and direct the respondent to release the goods.

For petitioner : Mr.C.Baktha Sironmoni

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 G.D. No.2029/2015-16 dated 19.9.2015 and to direct the respondent to release the goods.

3. The petitioner Company, registered under the Companies Act, 1965, is engaged in selling Steel Pipes to dealers in various States in India. The petitioner sold steel pipes to M/s Oil and Natural Gas Commission Limited, Karaikal, which is a Government Undertaking and transported the goods from the petitioner's office at Hyderabad to Karailal, as per Delivery Challan Nos.DP/15/024 and DP/15/025 dated 15.09.2015 and also invoice No.89 dated 15.09.2015. Since the driver of the vehicle has no knowledge about transit pass, he has not obtained the same from the first check post officials and straightaway moved the goods to Karaikal. Before reaching Karaikal, the Check Post Officials of Pennaiyar Bridge Check post have detained the goods vehicle bearing registration No.TN28AE 0549 on the ground of non possession of transit pass. According to the petitioner, they generated e-transit pass, MVR No.TNETP2015017182306520l on 18.09.2015 at 17.35 p.m. before entering into the State of Tamil Nadu. While the matter stood thus, when the vehicle reached Pattanur Check Post on 19.09.2015 and while making entries, the driver of the vehicle has given the said e-transit pass which was generated on 18.09.2015. The respondent has detained the goods along with vehicle by issuing Goods Detention Notice dated 19.09.2015 for the reason that the driver of the goods vehicle could not produce the e transit pass, as the same according to the petitioner was handed over to the Pattanur Check post. But, the respondent has stated that transit pass was not obtained by the petitioner. According to the petitioner, by mistake the e transit pass was handed over to the Pattanur check post before the Pondicherry State which has to be surrendered at the last check post viz., Tharangampadi Commercial Taxes check post. However, the intermediary check post officer at Pennaiyar Bridge Check Post, which is not the exit check post for Karaikal, has detained the goods. However, the respondent served the impugned goods detention notice dated 19.09.2015, followed by another notice dated 21.09.2015, proposing to levy tax and 200% as compounding fee. Aggrieved over the same, the petitioner is before this Court.

4.1 The learned counsel for the petitioner submitted that the respondent has no right to detain the goods when the same are transported from Hyderabad to Karaikal with proper records, that too, when the respondent is not the last check post officer, he has no right to detain the goods, even though the transit pass was surrendered to the previous check post authority at Pattanur.

4.2 Further, according to the learned counsel for the petitioner, the respondent has no jurisdiction to detain the goods which is just passing through the State of Tamil Nadu and as the consignor and consignee are in different States, the petitioner has no liability to pay tax at Tami Nadu.

4.3. Adding further, learned counsel for the petitioner would submit that the respondent has no jurisdiction to invoke Section 72 (1)(a) of the TNVAT Act, without proving any evasion of tax or attempt to evade any tax.

4.4 The learned counsel for the petitioner would further submit that when the goods are transported from one State to another State, then the intermediary State has no jurisdiction to detain the goods.

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 as quantified by the respondent 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/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

Deputy Commercial Tax Officer,
Pennaiyar Bridge Check Post,
Cuddalore.

1 CC to Mr.C.Baktha Sironmoni, Advocate SR.No. 54196

1 CC to Spl. Government Pleader (Taxes), SR.No. 54219

W.P.No.31550 of 2015

CA (CO)
PSI (07.10.2015)