IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.38335 of 2015
and M.P.No.1 of 2015

M/s.Chakrapani Vyapar Private Limited [Petitioner]
Rep. by Mr. Gajendra Prasad Panda
Authorised Signatory
No.36 & 37 3rd Cross Road
Kamalam Nagar Reddiayarpalayam
Puducherry-605 010

Vs

The Deputy Commercial Tax Officer
Kandamangalam Checkpost [Respondent]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records on the files of the respondent in Goods detention notice No. 3610 dated 23.11.15 and connected notice dated 25.11.15 and quash the same as being invalid and illegal and further direct the respondent to release the consignment immediately on payment of advance tax of Rs. 84374/- by the petitioner.

For petitioner : Mr.C.Venkatraman

For respondent : Mr.S.Manoharan Sundaram, AGP(T)

O R D E R

Heard the learned counsel for the petitioner and Mr.S.Manoharan Sundaram, 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 Goods Detention Notice dated 23.11.15 and connected notice dated 25.11.15 and to direct the respondent to release the consignment immediately on payment of advance tax of Rs. 84374/- by the petitioner.

3.1 The petitioners are consignment agents of M/s Tarajyot Polymers Limited, Purna Village, Purna, Bhiwandi, Thane, Maharashtra. The said Tarajyot Polymers Limited had despatched 16 tons of plastic granules, valued at Rs.15,04,000, against form F, to the petitioners at Puducherry and the consignment was accompanied by a consignment sale invoice dated 20.11.2015. The respondent has detained the goods vehicle on the ground that the consignment was not accompanied by a transit pass as required under Section 70(1)(a) of the TNVAT Act.

3.2 According to the petitioner, there was no willfulness on the part of the petitioner in not obtaining a transit pass, but arose, as a result of the negligence on the part of the driver of the vehicle. He would submit that when the goods entered TamilNadu, instructions were given to the driver to obtain the transit pass at Hosur checkpost, as the said checkpost was the first check post on entering the State of Tamil Nadu. However, the driver failed to obtain the same, though documents accompanying the consignment were furnished to the authorities at Hosur checkpost and appropriate entries had been made in the checkpost register. Hence, the respondent has now detained the goods on the ground that the consignment was not accompanied by transit pass and had demanded advance tax of Rs.84,374/- and compounding fees of Rs.2,53,123/-.

3.3. Further, according to the petitioner, on being informed about the detention of the goods, a request was made to release the consignment by the petitioner as the goods were being transported to Puducherry and was not for sale in the State of Tamil Nadu. That apart, according to the petitioner, they also subsequently obtained a transit pass and furnished the same to the respondent. However, the goods are not released though the petitioner is willing to pay the tax. Hence, the petitioner is before this Court.

4.1 The learned counsel for the petitioner submitted that the goods detention notice dated 23.11.2015 and the connected notice dated 25.11.2015 are liable to be quashed as being contrary to the principles of natural justice, without jurisdiction and authority to law. Further, according to him, when the goods were moving towards Puducherry and were not for sale in the State of Tamil Naud, detention of the consignment by the impugned proceeding is illegal. Adding further, learned counsel for the petitioner would submit that Section 70 does not authorize the respondent to demand advance tax and compounding fees and hence the impugned orders are invalid. Besides, according to him, when the petitioner is willing to pay the advance tax, the respondent ought to have released the consignment immediately, after receiving the advance tax amount and hence he is not justified in refusing to release the consignment without payment of compounding fees.

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 since the petitioner has failed to comply with the provisions of the TNVAT Act, 2006 for transport of VI Schedule goods, the petitioner is liable to pay as per Section 70(1)(c) of the TNVAT Act and consequent to the issue of goods detention notice on 23.11.2015, neither the driver nor the consignor/consignee appeared before the office and produce documents for the transaction in question, and having committed an offence under Section 70(1)(c), 71(3)(e) and 71(5)(a) of the TNVAT Act, an opportunity was given to the petitioner to compound the offence. Based on these, the learned counsel has prayed for dismissal of the writ petition.

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, without prejudice to his right to agitate the issue with respect to tax as well as compounding fee before the assessing authority or the revisional authority in the manner known to law, on payment of one time tax viz., Rs.84,374/-by the petitioner, the respondent, shall release the consignment in question forthwith.

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

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rg
To
The Deputy Commercial Tax Officer
Kandamangalam Checkpost
+1 cc to M/s.C.Venkatraman, Advocate, sr.65371
+1cc to the Special Government Pleader(T), S.R.No.65555(27.05.16)

W.P.No.38335 of 2015

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