IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.12.2015

Coram

The Hon'ble Mr.JUSTICE R.MAHADEVAN

W.P.No.39086 of 2015
and M.P.Nos.1 to 3 of 2015

P.Periyasamy [ Petitioner ]

Vs

The Deputy Commercial Tax Officer
Pattanur Check Post @ Morattandi
Villupuram, District

[ Respondent ]

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of Writ of Certiorari calling for the records pertaining to the impugned orders in Goods Detention Notice No. 2728 dated 22.11.2015 and compounding notice in G.D.No.2728/2015-16 dt. 23.11.2015 issued by the respondent and quash the same.

For Petitioner : Mr.P.Kumaresan

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

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

2. This writ petition is filed challenging the impugned Goods Detention Notice No. 2728 dated 22.11.2015 and compounding notice in G.D.No.2728/2015-16 dated 23.11.2015 issued by the respondent.

3. The petitioner, being the owner of the lorry bearing Regisration No.TN28 AH 5236, which is a trailer type Multi Axle Goods Vehicle, having national permit issued by the Regional Transport Authority, which is valid upto 23.11.2016. Based on the invoices dated 14.11.2015 by M/s Jindal Steel and Power at Raigarh with TIN 22774904509, consignment of Steel plates were transported to the consignor place in Chandigarh to the Consignee viz., M/s Larsen & Taubro Limited, Sethurap Transmission Line Towers Factory at Pondichery with proper transit pass into Tamil Nadu dated 18.11.2015. The transit pass so generated states that the vehicle would cross TamilNadu State Border at Pattanur Check Post on or before 19.11.2015, however, the vehicle, due to bad weather conditions,

could reach the Tiruttani Check post only on 22.11.2015 at 12.25 p.m., for which they imposed Rs.2,000/- as compounding fee and subsequently the vehicle could reach only around 9.45 p.m. to Pattanur Check post. While so, the Check Post Officer detained the vehicle stating that the petitioner is liable to pay penalty in view of reaching the check post after the valid period. Though the driver of the vehicle produced the compounding fee notice issued by the Tiruttani Check Post Officer, the respondent has not accepted the same and detained the vehicle with loaded materials and issued Goods Detention Notice dated 22.11.2015 stating e-transit pass was not generated. It is the case of the petitioner that though after getting information from the driver of the vehicle, the e-transit pass was again generated, without considering the same, the compounding notice dated 23.11.2015 was issued calling upon the petitioner to pay a sum of Rs.1,24,640/-/ without releasing the goods. Aggrieved over the same the petitioner is before this Court.

4. According to the learned counsel for the petitioner the respondent ought to have seen that the vehicle could reach Tami Nadu Border viz., at Tiruttani only on 22.11.2015 due to natural calamity, where a sum of Rs.2,000/- was collected as compounding fee and thereafter reached the Pattanur Check Post on the same day at 09.45 p.m., however, without even considering the prevailing circumstances and weather conditions, stating that e-transit pass was not accompanied, the impugned detention notice and compounding notice were issued, which are totally unjust, unfair, improper and without application of mind. That apart, according to him, there is no wilful delay in crossing the check post. Besides, it is not the case of the respondent that the vehicle did not possess e-transit pass at all and it has the e-transit pass, but belatedly reached the Out Check Post, that too within a reasonable time from the In Check Post. Hence, the decision of the respondent is totally unreasonable and the respondent ought not to have detained the goods. Therefore, the detention order as well as the order directing the petitioner to pay tax and compounding fee are illegal.

5.Learned Additional Government Pleader while placing his arguments supporting the goods detention notice, submitted that since the e-transit pass was not accompanied along with the vehicle the respondent-Department has rightly detained the goods on the ground of not complying with the provisions of the TNVAT Act, 2006.

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

7. In view of the submission made by the learned counsel for the petitioner that the petitioner is willing to pay the tax and in order to give a quietus to the issue, for the purpose of release of goods, without prejudice to their 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 tax viz., Rs.35,000/- (Rupees thirty five thousand only)

by the petitioner, the respondent, shall release the goods in question forthwith.

With the above direction, the Writ Petition is disposed of. No costs. Connected miscellaneous petitions are closed.
Rg

Sd/-
Assistant Registrar (IV)

/True Copy/

Sub-Assistant Registrar

To

The Deputy Commercial Tax Officer
Pattanur Check Post @ Morattandi
Villupuram, District

+1 C.C. To Special Government Pleader (Taxes), in SR.NO.66732

+1 C.C. To MR.P.Kumaresan, Advocate in SR.NO.66521

W.P.No.39086 of 2015

PPA(CO)
sd : 11/12/2015