IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.40067 of 2015

M/s.Vijayalakshmi Wines
rep. by its Authorised Signatory
No.126/5 & 6 Annamalaiyar Complex
Kamrajsalai, Karaikkal. [Petitioner]

Vs

Deputy Commercial Tax Officer
Pennaiyar Bridge Checkpost
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 notice in G.D.No.2062/2015-16 dated 9.12.2015 and quash this detention order as illegal and direct the respondent to release the goods detained in.

For petitioner : Ms.C.Baktha Sironmoni
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, who took notice for the respondent and with their consent, the main writ petition itself is taken up for disposal.

2. The writ petition is filed challenging the Goods Detention Notice dated 9.12.2015 and to direct the respondent to release the goods detained.

3. The petitioner is a registered dealer under Pondicherry Value Added Tax and doing business at Karaikal. The petitioner, after purchase of Indian Made foreign liquor from

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one M/s Reveldare Distillery (P) Limited, Gurgaon in Hariyana State, who are registered dealers, transported the same to Karaikal as per Invoice No.00007 dated 26.11.2015 in Vehicle No.MH 04 FJ 6655. The said vehicle was detained with goods on 09.12.2015 at the respondent check post for the reason that the goods transported are not supported by valid transit pass as required under Section 70 of the TNVAT Act for the transport of IMFL . Subsequent to the detention so made, a notice dated 09.12.2015 was issued directing the petitioner to pay tax and compounding fee. Aggrieved over the same, the petitioner is before this Court.

4. The learned counsel for the petitioner submitted that the respondent has no right to detain the goods when the same are just passing through Tamil Nadu State, as the goods are moved from Hariyana State to Karaikal and as per Article 301 and 304 of the Constitution of India, there should be free flow of trade between the states and no state can detain the goods which are just passing through the State. Further, according to him, when the goods Indian Made Foreign Liquor transported with proper bills and records, detention of the same is unsustainable. That apart, according to him, question of issue of transit pass does not arise when the goods are moved from one state to another on account of sale or stock transfer of goods. As far as the case in hand is concerned, the goods are moved from one place to another on account of sale and intermediatory State has no power to tax such goods as the consignor and consignee are in different states.

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, the petitioner is liable to pay as per Section 70 of the TNVAT Act and hence 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 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 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 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 one time tax viz.,

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Rs.4,15,000/- (Rupees four lakhs fifteen thousand only) by the petitioner, the respondents, shall release the consignment in question forthwith.

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

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

Deputy Commercial Tax Officer
Pennaiyar Bridge Checkpost
Cuddalore

+1 cc to Mr.C.Baktha Siromoni Advocate sr.68471
+1 CC to Special Government Pleader (Taxes) Sr 69034[12.2.2016]

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