HONOURABLE SRI JUSTICE G. CHANDRAIAH
AND
HONOURABLE SRI JUSTICE C.KODANDA RAM

WRIT PETITION No. 26718 of 2006

Dated 26th October, 2015

Between

M/s. Bhandari Agencies, Hyderabad,
Rep. by its Manager Mongilal
….Petitioner

And

Special Assistant Commercial Tax Officer,
Kodikonda Check post, Ananthapur District and ors.

…Respondents.

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ORDER: (per Hon'ble Sri Justice G.Chandraiah)

Heard learned Counsel on either side.

The petitioner is an assessee on the rolls of the Commercial Tax Officer, Special Commodities Circle, Hyderabad and is carrying on business in sale and purchase of plywood sheets. During the course of its business, the petitioner purchased 2814.5 square meters of commercial plywood from M/s Sky Plywoods, Karavaloor vide Invoice No. 772, dated 17.12.2006 and consigned the same from the State of Kerala with necessary invoices, delivery challans and L.R. Receipts through two lorries. The second respondent intercepted the said lorries at Thumkunta check post on 20.12.2006 and detained the goods on suspicion of the goods being under valued and accordingly issued detention orders dated 19.12.2006 and 20.12.2006 under Section 45 (6) of the APVAT Act 2005 read with Rule 56 of APVAT Rules 2005 asking the petitioner to submit explanation by paying necessary tax and other amounts due under the provisions of the Act within three days from the date of receipt of order/notice. Challenging the said detention orders, the present Writ Petition is filed.

This Court while admitting the Writ Petition on 27.12.2006 granted interim direction directing the second respondent to release the goods along with vehicles.

Subsequent to the filing of Writ Petition, a show cause notice was issued on 23.12.2006 under Section 45(7)(a) of the AP VAT Act proposing to demand tax of Rs.12,298/- and penalty equivalent to two times of the tax, which comes to Rs.24,596/-. In the show cause notice, it was stated that though notice of detention was got served, neither the driver nor the consigner have responded and in the absence of any explanation, the petitioner/consignor was asked to pay tax and penalty as stated supra as the goods were under invoicing. In the said show cause a reference was made to the circular dated 29.11.2006 issued by the Commissioner of Commercial Taxes. In view of the same, the petitioner filed WPMP.No. 34605 of 2006 seeking to implead the Commissioner of Commercial Taxes, Andhra Pradesh as party respondent to the Writ Petition and WPMP.SR.No.139562 of 2006 seeking to amend the main prayer. As the respondents have not opposed, the said applications are ordered.

The first and fourth respondents filed separate counters stating that as THE petitioner is indulging in under invoicing of the goods, detention orders have been passed on 20.12.2006 in Form-610 under Section 45 of the AP VAT Act read with Rule 56(1)(a) of the AP VAT Rules asking the petitioner to arrange difference of tax amount and penalty, As the petitioner has not responded to the notice, a show cause was issued on 23.12.2006 proposing to demand the tax of Rs,.12,298/- and penalty of Rs.24,596/-. However, no explanation has been submitted till date. It is also stated that the petitioner has alternative efficacious remedy of appeal against the detention orders. However, bypassing the said remedy, he filed the present Writ Petition.

It is the main contention of the learned Counsel for the petitioner that the circular instructions issued by the fourth respondent fixing the market value of the goods consigned is wholly without authority of law and jurisdiction and that it is for the assessing authority to assess the value of the goods. He added that the circular dated 29.11.2006 issued by the fourth respondent itself is without jurisdiction and contrary to Sections 1 and 5 of the AP VAT Act 2005. He further submitted that since the circular issued by the fourth respondent is binding on subordinate officers, filing of explanation and availing of alternative remedies is useless. In support of his contentions, he placed reliance on the decisions of this Court in ***Communication Shoppee EXT & others Vs. Commissioner of Commercial Tax*** (45 APSTC 53), ***Model Milk Products Pvt***

Ltd, Hyderbad Vs. Deputy Commissioner, Commercial Taxes, Hyderabad (44 APSTJ 52), ***Headplast Industries Hyderabad Vs. Commissioner of Commercial Taxes*** (AIR 1969 SC 267), ***Sujana Enterprises, Pernamitta Vs. The Assistant Commercial Tax Officer*** (41 APSTJ 70), ***Hukam Chand Vs. Union of India*** (AIR 1976 SC 789) and ***Sri Rajarajeswari Parboiled Rice industry Vs. Commercial Tax Officer*** (28 APSTJ 299).

On the other hand, the learned Government Pleader for the respondents submitted that the impugned circular is only an internal communication meant for all subordinate officers to clarify the issue regarding tax liability and that it was not issued in violation of the provisions of the APGST Act or AP VAT Act. He further submitted justifying the action of the respondents in seizing the goods and issuing show cause notices followed by detention orders.

At the threshold, we make it clear that we are not inclined to expresse any view on the validity or otherwise of the contentions advanced by the learned Counsel on either side inasmuch as it is suffice to observe that the petitioner has alternative remedy of submitting explanation to the show cause notice dated 23.12.2006 to invite decision regarding under invoicing of goods. In view thereof, it is not necessary for us to refer the decisions relied on by the learned Counsel for the petitioner in support of his contentions.

It is no doubt true that the assessment order is required to be passed by the assessing authority in accordance with the provisions of the Act and the rules, which power is held to be quasi-judicial in its nature. It is a different matter altogether that the Commissioner with a view to resolve apparent conflicts in the views taken by the officers may issue general instructions and circulars for the better administration of the provisions of the Act so also for proper and correct levy and collection of duty. For the purpose of classification of goods the Commissioner/competent authority may issue directions allocating certain types of works to certain Officers or classes of Officers. A perusal of the circular dated 29.11.2006 issued by the fourth issued to the subordinate officers for levy and collection of tax is one such notice. These administrative directions cannot take away the jurisdiction vested in the assessing authority under the Act inasmuch as these directions can only be for the purpose of maintaining uniformity in the classification of taxable goods and with respect to levy of duties of tax on such goods. It is thus clear that the Commissioner has no power to issue instructions or orders contrary to the provisions of the Act or in derogation of the provisions of the Act, but he can only issue such direction as is necessary for the purpose of and in furtherance of the provisions of the Act.

Coming to the merits or otherwise of the submissions advanced by the learned Counsel for the petitioner, it is to be seen that the second respondent has issued show cause notice dated 23.12.2006 proposing to demand tax and penalty and no final orders have been passed in regard thereto. As such, it is for the petitioner to invite a decision on the issue. If the decision to be taken by the competent authority after considering the explanation submitted by the petitioner is otherwise contrary, it is left open for it to question the same before appropriate forum. Unless a decision is invited thereon, it is not just and proper for us to go into the validity or otherwise of the circular instructions merely at the stage of show cause notice. Thus, as the petitioner has alternative remedy of filing explanation to the show cause dated 23.12.2006 and inviting decision thereon, the petitioner is given liberty to file its explanation within a period of four weeks from the date of receipt of a copy of this order and within four weeks thereafter, the second respondent shall consider and pass appropriate orders thereon in accordance with law and communicate the same to the petitioner.

Subject to the above, the Writ Petition is disposed of.

Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.

JUSTICE G.CHANDRAIAH

JUSTICE C.KODANDA RAM

DATED 26TH OCTOBER, 2015.
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