THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.8016 of 2003

ORDER: (*Per Hon'ble Sri Justice R. Subhash Reddy*)

The petitioner is a partnership firm engaged in lorry transport business. This writ petition is filed seeking to declare the action of the 1st and 2nd respondents in collecting sales tax of Rs.67,000/- and compounding fee of Rs.1,84,000/- as illegal and for a consequential direction to refund the said amounts.

It is the case of the petitioner that on 12.02.2003, on the request made by the 5th and 6th respondents, he has arranged five lorries for transporting rice from Nellore to Chennai. It is stated that when the said vehicles were proceeding to Chennai, the same were intercepted and seized at the Check Post in the limits of Nellore District on the allegation that basmati rice was being transported in the said vehicles without valid documents. On the grounds that rice was being transported without valid documents, that the drivers of the vehicles did not stop the vehicles when the check post officials asked them to stop, that they prevented the said officials from inspecting the vehicles and also obstructed the officials from discharging their duty, the vehicles were detained and the statements of the drivers were also recorded. The main allegation of the petitioner is that the 1st and 2nd respondents have no authority or jurisdiction to collect tax and compounding fees, without issuing any notice and without passing any order. It is also alleged that in addition to levying of tax and compounding fee, the 1st and 2nd respondents have forcibly collected an amount of Rs.10,000/- towards user charges for each vehicle.

Learned counsel for the petitioner has placed reliance on the judgment of this Court in **M/s. Vardhaman Jewelleries, Governorpet, Vijayawada vs. The Commercial Tax Officer (INT), Vijayawada**[1]. It is further submitted that, in any event, the respondents are not having any authority to collect user charges under the provisions of the A.P. General Sales Tax Act, 1957 (for short 'the APGST Act').

On the other hand, it is submitted by the learned Special Government Pleader for Taxes (A.P.) appearing for the respondents that in this case, the petitioner has undertaken the transportation of basmati rice without possessing valid documents and without accounting for the same. It is also submitted that after the vehicles were intercepted and notices were served on the drivers, the drivers filed letters on 19.02.2003, offering to pay compounding fee in lieu of prosecution and, as such, the offer of payment of tax and compounding fee was accepted and, accordingly, order dated 19.02.2003 was passed levying tax of Rs.13,400/- and also compounding fee of Rs.26,800/- for each vehicle as contemplated under Section 32 (1) (a) of the APGST Act. It is further submitted that the Special Assistant Commercial Tax Officer, Integrated Check Post, Bhimunivanipalem, is competent to pass orders under Section 32 (1) of the APGST Act.

Although it is the case of the petitioner that sales tax and compounding fee were collected without issuing notice and without passing any orders, from a perusal of the counter affidavit, it is clear that after issuing notices to the drivers, orders were passed on 19.02.2003 by the Special Assistant Commercial Tax Officer of Integrated Check Post, Bhimunivanipalem. The offence is compounded by collecting tax and compounding fee under Section 32 (1) (a) of the APGST Act, which is double the amount of tax levied. In view of the orders dated 19.02.2003, the judgment relied on by learned counsel for the petitioner would not render any assistance in seeking refund of tax and compounding fee.

Further, the material placed before this Court clearly discloses that in addition to levying of tax of Rs.13,400/- and compounding fee of Rs.26,800/- for each vehicle, a further sum of Rs.10,000/- towards user charges was collected for each vehicle. In the counter affidavit filed on behalf of the respondents, absolutely there is no justification for collection of such user charges. Even the respondents have not cited any provision either under the APGST Act or the Rules made thereunder for collection of such user charges. Thus, we are compelled to hold that collection of Rs.10,000/- towards user charges for each vehicle is unauthorised and illegal and, as such, the same is liable to be refunded to the petitioner.

For the aforesaid reasons, the Writ Petition is allowed-in-part directing the respondents to refund user charges of Rs.50,000/-, which was collected for five vehicles, to the petitioner within a period of two months from the date of receipt of a copy of this order, failing which the respondents are liable to pay interest at 12% per annum on such amount.

As a sequel, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE R.SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

09.03.2015

v v

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[1] (1990) 11 APSTJ page-5