THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-

Writ Petition No.36589 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri T.Srinivasa Murthy, learned counsel for the petitioner, and Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes and, with their consent, the writ petition is being disposed of at the stage of admission.

The vehicle driven by petitioner, a truck driver employed by Sri A.B.Makvana and driving Truck bearing No.GJ25T 9912 registered with the Registering Authority at Porbandar, Gujarat, was detained by the 3rd respondent at Shameerpet Road near Hyderabad in the State of Telangana. On verification, the goods were detained on the ground that the designated route of the vehicle was from Patancheru to Shamshabad and onwards to exit the State of Telangana, whereas the vehicle was detained at Shameerpet on the suspicion that the goods were sought to be offloaded in the State of Telangana, and there was an attempted evasion of tax.

Sri T.S.Murthy, learned counsel for the petitioner, would submit that the vehicle was going through the State of Telangana, during the course of transportation of goods from Gujarat to Chennai, and the goods were detained illegally.

In the counter affidavit filed by the 3rd respondent, it is stated that three earlier transactions between Diamond Enterprises and Azaro Logistics were carried on using the petitioner's vehicle on behalf of the Azarao Logistics; the respondents had reasons to believe that the subject goods were being offloaded within the State of Telangana without payment of sales tax; and the goods would be released if the petitioner furnished the trips sheets relating to the earlier three transactions.

When the matter came up before us on 16.11.2015, Sri T.S.Murthy, learned counsel for the petitioner, sought time to produce the three trip sheets. Today, the learned counsel would submit that, though the Rules in the State of Gujarat require trip sheets to be maintained, the petitioner had, by oversight, failed to do so. He would request that, in terms of Section 45(7)(a) of the

A.P.Value Added Tax Act, 2005 (for short “the Act”), the vehicle and the goods be released on payment of tax and deposit of two times penalty. He also undertakes that the vehicle and the goods would be taken out, through Tungabadra check post out of the State of Telangana; and the good would not be sold within the State.

Section 45(7)(a) of the Act stipulates that, where the goods are carried without paying tax, if any, payable or goods are carried without being properly accounted for in the documents referred to in clause (b) of sub-section (2), the said officer shall collect the tax payable on the goods so carried, and in addition levy a penalty not exceeding two times the amount of tax payable on such goods after giving a reasonable opportunity to the person likely to be effected, against the proposed penalty.

While the requirement of the said provision is only for payment of tax and value of the goods detained, the subject vehicle is registered in the State of Gujarat outside the territorial jurisdiction of the respondents herein. We consider it appropriate, in such circumstances, to direct the petitioner to pay tax on the value of the goods detained and deposit two times penalty. The said amount, deposited towards penalty, shall be subject to the penalty proceedings instituted by the respondents against the petitioner herein.

Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes, would contend that the petitioner should be asked to deposit tax and penalty for the earlier three trips also, before the goods are directed to be released. Learned counsel is, however, unable to show any statutory provision, which empowers the respondents to levy tax and penalty, for the earlier transactions, for release of the vehicle and the goods now detained.

Suffice it to make it clear that it is open to the respondents to verify whether the goods have left the State of Telangana; and if the goods are disposed of within the State, to then take action in accordance with law.

The writ petition is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 10.12.2015

Note: Issue C.C. tomorrow.

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