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

-
-

WRIT PETITION No.11101 OF 2002

-

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

The Writ Petition is filed by the petitioners questioning the notices, dated 15.05.2002 and 06.06.2002 issued by the sole respondent-the Assistant Commercial Tax Officer, Srikakulam District.

2. The petitioners-Public Limited Companies are engaged in the manufacture and sale of papers of various kinds. The 1st petitioner is having its unit at Kala-amb, Himachal Pradesh and the unit of 2nd petitioner is at Gaziabad in the State of Uttar Pradesh. Both the petitioners are having their registered corporate offices at New Delhi.

3. It is the case of the petitioners that the 1st petitioner effected sale of two consignments of news print paper to one concern by name M/s. Express Publications(Mumbai) Limited, Hyderabad, vide invoice Nos.870 and 872, dated 30.03.2001 and 31.03.2002 respectively. Similarly, the 2nd petitioner also effected one consignment of paper to one concern by name Vaartha A.G.A.Publications, Hyderabad vide invoice No.1516, dated 14.03.2001. Both the consignments were routed

through Economic Transport Organization only. The buyers did not lift the material from the transport company on account of some unavoidable reasons. Subsequently, the petitioners, with great difficulty, located a buyer at Berhampur in the state of Orissa. The petitioners directed the transporter to despatch the goods to the buyer by name Anupam Bharat, Berhampur. Invoice was also raised in favour of the said buyer for the sale effected by the petitioners. While the goods were set on transport to Berhampur, they were intercepted and seized by the respondent on the ground that tax is payable under the Central Sales Tax Act(for short, the CST Act'), in the state of A.P., as the goods were moved by the petitioners from Hyderabad to Berhampur in the state of Orissa, and the respondent issued detention show cause notices impugned herein to the petitioners alleging that it is inter-state sale, which is liable to tax at the rate of 10% under Section 3(a) (7) and (8) of the CST Act; as such the petitioners have to show reasons why tax and penalty at 5 times to tax shall not be levied on the above three consignments.

4. At the stage of admission, this Court passed interim orders in W.P.M.P.No. 13659 of 2002, by order dated 23.07.2002, directing the respondent to release the consignments in favour of the petitioners on condition of the petitioners depositing an amount of Rs.18,400/- and

further directed the petitioners to file an undertaking before the respondent to the effect that they shall be bound by the outcome of the decision of this Court in the writ petition.

5. When the matter is taken up for hearing, it is submitted that, pursuant to the interim orders dated 23.07.2002, the vehicles were released. It is further submitted that the petitioners submitted their explanations/objections to the show cause notices impugned herein.

6. In view of the pendency of the proceedings before the Assistant Commercial Tax Officer, pursuant to the show cause notices, it is a matter to be decided by the respondent as to whether the allegations made by the petitioners are correct or not and whether such consignment is inter-state sale for the purpose of levy of tax under provisions of the CST Act. As the petitioners have already deposited the amount for the release of vehicles and the vehicles were released and explanation is already submitted by the petitioners to the show cause notices, we deem it appropriate to dispose of the writ petition confirming the order dated 23.07.2002 passed in W.P.M.P. No.13659 of 2002 and further directing the respondent to pass appropriate final orders in the matter, by considering objections raised in the explanation submitted by the petitioners to the show cause notices. It

is made clear that the amount already deposited is to be adjusted towards any liability of tax, subject to final orders to be passed by the respondent.

8. Consequently, miscellaneous Petitions, if any, pending in this Writ petition shall stand closed. No costs.

R.SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

February 24, 2015.

B/o.vvr