IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:11.07.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.14162 to 14165 of 2015
and
MP.Nos.1 to 1 & 2 to 2 of 2015

M/s.Kirby Building Systems India Private Limited,
(Formerly known as
M/s.Kirby Building Systems India Limited)
Rep. By its Regional Manager (Sales & Marketing),
Plot Nos.8 to 15, IDA, Phase-III,
Pashamylaram, Medak District,
Telangana, India - 502 307. ...Petitioner in all WPs.

Vs.

1. The Deputy Commercial Tax Officer,
   Check Post Office, Puzhal,
   Pethikuppam Check Post, Gummudipoondi.

2. The Commissioner of Commercial Taxes,
   Chepauk, Chennai - 600 005.

3. The Government of Tamil Nadu,
   Represented by its Secretary,
   Commercial Taxes Department,
   Fort St. George,
   Chennai 600 009. ...Respondents in all WPs

Common Prayer :Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records relating to the Impugned Notices GD Nos.3112/2015-16, 3113/2015-16, 3115/2015-16 & 3116/2015-16 dated 28.04.2015 issued by the 1st respondent, quash the same.

(In all WPs.)
For Petitioner : Mr.Raghavan Ramabadran

For Respondents : Mr.S.Manokaran Sundaram
Additional Government Pleader

ORDER

Heard Mr.Raghavan Ramabadran, learned counsel for the petitioner and Mr.S.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondents and with their consent, the Writ Petition is taken up for final disposal.

2.The petitioner is a registered dealer in the State of Telangana under the provisions of the Value Added Tax Act of the State of Telangana and they are engaged in the business of manufacturing prefabricated steel structurals for building factories. In other words, it is stated that a factory is prefabricated in Telangana transported to other places and the factory is assembled in that place. It appears that the petitioner entered into a contract with M/s.Apollo Tyres Limited, Chennai and these prefabricated steel structurals and other allied articles were moved from State of Telangana to Tamil Nadu. There is no dispute over the fact that the goods have suffered tax in the State of Telangana. However, four of the vehicles which were transporting the prefabricated materials were detained by the respondents. The goods were accompanied by all the relevant documents, including the invoice. However, the authority detained the goods alleging that the consignment having moved from Andra Pradesh to Tamil Nadu to verify the genuineness, the Goods Detention Notice had been issued.

3.It is fairly admitted by the learned counsel for the petitioner that though there were earlier movement of goods which were also detained, since the amount of tax and compounding fee demanded was meagre, the petitioner had paid the amount and cleared the goods. Similarly, so far as the four notices, which are the subject matter of these writ petitions, the petitioner has paid the amount under protest, as the consignment have to be cleared to meet the required deadline. The learned counsel for the petitioner submitted that the impugned compounding notice states that the petitioner is an unregistered dealer making interstate transaction which is an offence under Section 69 of the TNVAT Act, 2006, punishable under Section 71(8) of the TNVAT Act. The further stand taken in the impugned proceedings is that the petitioner is a works contractor, but he has not registered under the provisions of the TNVAT Act and CST Act and the transaction done by the petitioner with Apollo Tyres Limited is treated as an unregistered transaction and therefore, tax and compounding fee are liable to be paid.

4.The learned Additional Government Pleader appearing for the respondents submitted that since disputed questions of fact are involved, the petitioner may be directed to approach the Revisional Authority by filing a revision petition before whom the petitioner can produce all the documents to establish the genuineness of the transaction.

5.In reply, the learned counsel for the petitioner submitted that the question of availing the alternate remedy would arise only if there is any disputed question of facts are involved. In the instant case, the petitioner would contend that even assuming the allegation made in the impugned compounding notice is correct, yet, they are not liable to pay any tax much less compounding fee. To examine this question, it would be relevant to take note of Section 9 of the CST Act in terms of which the State of Telangana has exclusive power to collect the Central Sales Tax on such a transaction. It is not disputed by the respondents that the transaction has been taxed by the State of Telangana and the petitioner has produced all the documents before the respondents to prove the same. If such is the case, then, obviously the impugned proceedings is wholly without jurisdiction.

6.Section 69 of the TNVAT Act, 2006 deals with Possession and submission of certain records by owners, etc. of goods vehicle. In terms of said provision, the owner or other person in charge of a goods vehicle shall carry with him - (a) Bill of sale or delivery note or such other documents as may be prescribed, and (b) Goods vehicle record or trip sheet. These documents should relate to the goods under transport and contain such particulars as may be prescribed and to submit to such officer as may be prescribed, the documents mentioned above or copies thereof, within such time as may be prescribed.

7.It is not disputed by the respondents that the goods were accompanied with the documents mentioned in Section 69. Furthermore, the respondents does not dispute that the goods moved from State of Telangana to Tamil Nadu. In such circumstances, when there is no doubt that the transaction is an interstate transaction, then, in terms of Section 9(1) of the CST Act, the tax so leviable on the transaction shall be collected by that Government in accordance with sub-section (2) of Section 9 in the State from which the movement of the goods commenced which in the instant case is State of Telangana. Therefore, the impugned Goods Detention notices are liable to be set aside.

8.In the light of the peculiar facts and circumstances, this Court is of the view that the petitioner need not be driven to avail the alternate remedy before the Revisional Authority, since even accepting the allegations made in the impugned compounding notices to be true, yet, the transaction is not taxable within the State of Tamil Nadu.

9.In the result, the Writ Petitions are allowed and the impugned notices GD Nos.3112/2015-16, 3113/2015-16, 3115/2015-16 & 3116/2015-16 dated 28.04.2015 are quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sgl

To

1. The Deputy Commercial Tax Officer,
   Check Post Office, Puzhal,
   Pethikuppam Check Post, Gummudipoondi.

2. The Commissioner of Commercial Taxes,
   Chepauk, Chennai - 600 005.

3. The Government of Tamil Nadu,
   Represented by its Secretary,
   Commercial Taxes Department,
   Fort St. George, Chennai 600 009.

+1cc to Mr.Mrs.Lakshmikumaran, Advocate, S.R.No. 39128

+1cc to the Spl.Government Pleader, S.R.No. 38398

W.P.Nos.14162 to 14165 of 2015

EV (CO)
PSI(23/07/2016)