IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 08-09-2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29370 OF 2015

M/s.AGL Transports Pvt.Ltd.,
rep.by its authorised signatory
Jaiveer Singh ... Petitioner

-vs-

1.The Commissioner,
Food and Safety, 5th Floor,
DMS Building,
359 Anna Salai, DMS Campus,
Teynampet,
Chennai – 600 006.

2.The Designated Officer,
Food & Safety,
5th Floor, A Block Collectorate,
Sathuvachari,
Vellore – 632 009.

3.The Food Safety Officer,
Wallajah Division, Wallajah,
Vellore District.

4.The Commercial Tax Officer (Enf),
Roving Squad,
Vellore District,
Vellore-1.

5.The Inspector of Police,
Wallajah Police Station,
Wallajah,
Vellore District. ... Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, to call for the records of the fourth respondent relating to the goods detention notice in its proceedings No.564/15-16, dated 19.08.2015, and the impugned letter vide proceedings in G.D.No.564/2015-16, dated 20.08.2015, and quash the same and, consequently, direct the respondents to release the consignment of HANS CHHAP Tobacco product and further direct the respondents from in any way interfering with the petitioner's right to transport and distribute HANS CHHAP Tobacco product in compliance of the provisions contained in the "Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act,2003".

For petitioner : Mr.D.Sai Kumaran
For respondents 1 to 3 & 5 : Mr.S.Diwakar, Spl.Govt.Pleader.

For respondent 4 : Mr.K.Venkatesh, Govt.Advocate (Taxes)

ORDER

Heard Mr.D.Sai Kumaran, learned counsel for the petitioner; Mr.S.Diwakar, learned Special Government Pleader, appearing for respondents 1 to 3 and 5; and Mr.K.Venkatesh, learned Government Advocate, appearing for fourth respondent.

2. In this Writ Petition, the petitioner challenges the Goods Detention Notice issued by the fourth respondent, wherein the vehicle, transporting certain products, was detained, on the ground that it was carrying banned tobacco products.

3. The contention of the respondents is that the Commercial Tax Officer has handed over the product Hans Chhap to the Food Safety Officer, Wallajah Division, Vellore District, on 20.08.2015 at about 05.00 p.m.; the same has been sent to laboratory for analysis and the lab report says that it is prohibited and unsafe. According to the respondents, as mentioned in the counter affidavit, the petitioner has sold this banned product during the previous years and action has been initiated thereon and, therefore, the present consignment, which has been detained, is intended for sale within the State of Tamil Nadu. The respondents seek to justify their action, stating that the product, which has been transported by the petitioner, is a food product, because, it is consumed through mouth, and that being prohibited in the State of Tamil Nadu, the detention is fully justified.

4. I have considered the submissions on either side and also perused the counter affidavit filed by the fourth respondent.

5. Admittedly, as on date, it is almost one year since the goods have been detained and, thus, the same would have been reduced to scrap and it would neither have the effect nor efficacy as it would have had at the time of detention. Though the condition of the goods is not disputed by the petitioner and the petitioner would admit that, as on date, it is vitrually a waste, the petitioner seeks permission of this Court to clear the product only for the purpose of transporting to Karnataka and not for sale within the State of Tamil Nadu.

6. It is submitted that the petitioner will file an undertaking and take back the goods to Karnataka and the invoices and other transport documents clearly show that the product was intended for sale in Karnataka and not within the State of Tamil Nadu. It is seen that the petitioner, in respect of a similar consignment, had approached this Court and filed a writ petition, namely, W.P.No.26530 of 2015, wherein, he sought for an identical relief to set aside the seizure memo, dated 21.08.2015. In the said writ petition, the identical submission was made before the Court and this Court, by an order, dated 03.09.2015, disposed of the writ petition, by passing the following order :

> "It is seen that the order impugned has been passed on the premise that the petitioner is trying to sell the product of Tobacco within the State. Learned Senior Counsel appearing for the petitioner submitted that it has been taken for transportation to Karnataka State. He would also submit that appropriate records in this respect would be produced before the respondent concerned. He also submits that an undertaking would be given that the products will not be sold within the State of Tamil Nadu.
>
> 2. Thus, this writ petition is disposed of by permitting the petitioner to produce the relevant records for transporting the Tobacco to the State of Karnataka before the second respondent and on production of such records, the second respondent after verifying the same shall allow the petitioner to transport the material to the State of Karnataka. No costs. Consequently, connected miscellaneous petitions are closed."

7. It is submitted by the learned counsel for the petitioner that in terms of the above direction, the petitioner has filed an undertaking and the goods have been transported to Karnataka. However, the petitioner's further case is that the Kerala High Court has held that tobacco is controlled only by

the provisions of the CTP Act and not the FSS Act and the Delhi High Court has also taken a similar view; whereas, the fourth respondent / designated officer has taken a stand that they have power to seize the prohibited tobacco material, which is stored, distributed, transported or sold in the State of Tamil Nadu.

8. The power of the designated officer cannot be questioned by the petitioner, since it is an admitted fact that the sale of such products is banned in the State of Tamil Nadu. Nevertheless, the petitioner's case is that they are taking the product to the State of Karnataka and the product is not intended for sale within the State of Tamil Nadu.

9. Thus, taking note of the above facts and also the earlier orders passed by this Court in the petitioner's own case, which was complied with, this Court is inclined to issue similar directions in this Writ Petition also. Accordingly, this Writ Petition stands disposed of, permitting the petitioner to produce the relevant records for transporting the product to the State of Karnataka, before the second respondent, and, on production of such records, the second respondent shall verify the same and also obtain an undertaking from the authorised signatory of the petitioner in the form of a bond, faithfully undertaking to transport the goods to the State of Karnataka, and specifically stating, in the event of violation of the undertaking, they are liable for stringent civil and criminal action. No costs. Consequently, the connected M.P.Nos.1 and 2 of 2015 are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
1.The Commissioner,
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5.The Inspector of Police,
Wallajah Police Station,
Wallajah,
Vellore District.

+1 CC to Mr. D. Sai Kumaran, Advocate Sr.No.51266

W.P.No.29370 OF 2015

NM (CO)
MD : 22/09/2016