IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23.06.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.20634 of 2016
&
W.P.M.P.No.17712 of 2016

Tvl.Naga Engineering Works
Represented by its Proprieotrix of Mrs.P.Radha
D.No.275, SF.No.548
Krishnapuram, Pulivalam Village
Sholinghur- 631 102
Vellore District .. Petitioner

Vs.

1. The State of Tamil Nadu
   Represented by its Secretary to Government
   Fort St. George, Chennai - 600 009

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

3. The Joint Commissioner (CT)
   Enforcement Wing, Vellore

4. The Deputy Commercial Tax Officer
   Ranipet (out) Check Post
   Serkaddu, Vellore District .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records relating to the issue of the notice by the fourth respondent in GDN No.2507/2016-17 dated 06.06.2016 received by the petitioner on 13.06.2016 and quash the same and to direct the 2nd and 4th respondents to release the vehicle.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mr.V.Haribabau
Additional Government Pleader

ORDER

Heard Mr.Md.Ibrahim Ali, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader appearing for the respondents. With the consent of the learned counsel appearing on either side, the writ petition itself is taken up for final disposal.

2. The petitioner, who is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 on the file of the Ranipet Sipcot Assessment Circle, has filed this writ petition challenging the Goods Detention Notice dated 06.06.2016. The goods were detained by the fourth respondent on the only ground that without "e" transit pass, the goods are moved and therefore, the petitioner has committed an offence under Sections 70(2)(c), 71(3)(d), 71(3)(e) and 71(5)(a) of TNVAT Act, 2006 and accordingly, the fourth respondent granted an opportunity to the petitioner to compound the offence. The petitioner has challenged the impugned proceedings on the ground that the goods could not be detained solely on the ground that "e" transit passes have not been produced, but, there are other documents which the check post authorities are bound to consider the same and release the goods.

3. In support of his contention, the learned counsel for the petitioner refers to a circular issued by the Principal Secretary/ Commissioner of Commercial Taxes in Circular No.26/2014 dated 16.06.2014. Apart from the same, the reliance has also been placed on the decisions of this Court in W.P.No.39776 of 2015 (M/s.Bacardi India (P) Ltd., Vs. The Deputy Commercial Tax Officer and another) dated 07.01.2016.

4. The learned Additional Government Pleader, by referring to the counter affidavit, submitted that as the goods were moved from Vellore to Rajasthan, the movement has to be treated as interstate movement and for the inter-state movement, the goods must be accompanied with required "e" transit pass to prove the fact of sufferance of tax at the other end and the non-accompanying of the required "e" Transit Pass is an offence under Section 70(2)(a) of the Tamil Nadu Value Added Tax Act, 2006. Further it is submitted that the petitioner, instead of paying the tax and getting the goods released, has approached this Court by filing this writ petition and if aggrieved against the order of compounding, the petitioner ought to have approached the Revisional Authority under Section 55 of the Tamil Nadu Value Added Tax Act.

5. In the case of M/s.Bacardi India (P) Ltd. (cited supra), the challenge was to a Goods Detention Notice, where the goods in question were detained on the ground that it was not accompanied with transit pass as well as copies of invoices. It was contended by the petitioner therein that except the transit pass

generated, the petitioner has other documents to establish the nature of transaction and there is no suspicion about the genuineness of the accompanying documents and the seal affixed on the invoice at the time of entry at the check post and hence, issuing of Goods Detention Notice is arbitrary and illegal. In the said case, the respondents took a specific stand by contending that the Authority is entitled to levy only a penalty of Rs.2,000/- for such lapses and the goods cannot be detained. In the light of the above said taken by the respondent, the petitioner therein was directed to pay a sum of Rs.2000/- towards fine and the goods were directed to be released. The manner in which the check post officers have to function when the goods are not accompanied by E-Transit Pass came up before the Commissioner of Commercial Taxes and a circular has been issued in Circular No.26/2014 dated 16.06.2014. On a reading of the circular, it is seen that the Commissioner has also taken into consideration the representations received from the dealers and after taking note of the decision of the Hon'ble Supreme Court in Tvl.Sodhi Transport Co. and Another Vs.State of U.P and another reported in (1986) 62 STC 381, it was held that in case of non-surrender of transit pass, if a dealer could produce sufficient legally valid and reliable documentary evidence to prove that the goods moved with the transit pass in question had actually crossed the borders of the State, such evidences may be accepted by the Assessing Authority as an evidence of inter-state movement of goods. The officers of the Department were also cautioned that this cannot be accepted for repeated violations.

6. It is submitted by the learned counsel for the petitioner that this is the first occasion where the petitioner's goods have been detained and the petitioner has not come to the adverse notice of the Department on the earlier occasions.

7. Hence, taking into consideration the facts of the case and the decision of the Commissioner of Commercial Taxes in Circular No.26/2014 dated 16.06.2014, there will be direction to the petitioner to remit a sum of Rs.2,000/- (Rupees Two Thousand only) towards fine for the purpose of release of goods and on such remittance, the respondent shall forthwith release the goods. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

gpa

To

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1 cc to Mr.M.Md. Ibrahim Ali, Advocate, Sr. 34840

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