IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.41121 of 2016
and
WMP.Nos.35112 & 35113 of 2016

ETA General Pvt. Ltd., rep.by its
Additional General Manager
(Commercial) B.T.Prabahar ... Petitioner

Vs

The Commercial Tax Officer,
Roving Squad-IV, Enforcement
North, Chennai-6. ... Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in Goods Detention Notice No.1672/16-17 dated 28.10.2016 and the consequent compounding notice in G.D.1672/16-17 dated 31.10.2016 and to quash the same.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who accepted notice for the respondent on 23.11.2016, obtained written instructions from the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner challenged a goods detention notice and the consequential compounding notice dated 31.10.2016 issued by the respondent.

3. The consignments in the vehicle concerned having 80 numbers of air conditioners, were stated to be moving from

Madhavaram to West Bengal as a stock transfer. Admittedly, the consignments were accompanied by necessary documents such as stock transfer note, lorry receipt, Form LL and Form JJ. The reason for detaining the vehicle is that the transit pass in Form LL stipulated a time limit, within which, the vehicle should cross Puzhal Out Check Post. The time stipulated in the transit pass is on or before 26.10.2016 at 7.10 PM. The respondent, while issuing the detention notice as well as the compounding notice, admitted that the vehicle crossed the Puzhal Out Check Post on 27.10.2016.

4. It appears that it is not within the time permitted. But, in any event, the vehicle crossed the Puzhal Out Check Post. After crossing the Puzhal Out Check Post, the vehicle should proceed towards West Bengal and leave the State of Tamil Nadu. However, the vehicle was found within the Tamil Nadu border at Vadakarai on 28.10.2016. Therefore, the vehicle had been detained and the compounding notice has been issued on the ground that there is a violation of Section 70(2)(b) of the Tamil Nadu Value Added Tax Act, 2006.

5. The facts, as mentioned in the compounding notice, show that the transit pass was surrendered in the Puzhal Out Check Post on 27.10.2016. Thus, the petitioner had effected statutory compliance as contemplated under Section 70(2)(b) of the said Act. The allegation against the petitioner is that the vehicle should have crossed the border thereby taking the goods out of Tamil Nadu. But, the vehicle was intercepted on 28.10.2016 at 6.30 PM along with full load as per invoice and it was found that the vehicle did not leave the border of Tamil Nadu as per the condition in the transit pass. This abnormal delay in not crossing the border of Tamil Nadu has been the sole reason for detaining the goods.

6. What has been admitted in the impugned compounding notice is that the vehicle was moving with full load as per the invoice. There is no allegation that the consignments were neither offloaded nor partially off loaded nor in the process of being off loaded. The explanation given by the petitioner was that the driver's wife had fallen sick, that he had to attend to her and that therefore, there is a delay. However, this explanation appears to be not fully substantiated.

7. However, what is required to be seen is as to whether the petitioner has complied with the provisions of Section 70(2)(b) of the said Act, which states that the seller or consignor or transferor or clearing and forwarding agent of the goods shall deliver or cause to be delivered within the prescribed period, the transit pass to the officer in-charge of the last check post

or barrier, before the exit of the goods vehicle from the State. It is not in dispute that the transit pass has been delivered to the officer in charge of the last check post namely Puzhal Out Check Post. It is only thereafter the vehicle has not left the State of Tamil Nadu. Since no untoward incident had taken place in the meantime and since it is admitted that the vehicle was moving with full load as per the invoice, there is no justifiable ground for detaining the vehicle.

8. Accordingly, the writ petition is allowed, the impugned order is set aside and the respondent is directed to release the vehicle as well as the goods forthwith and ensure that the vehicle crosses Tamil Nadu border immediately. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

RS

To

The Commercial Tax Officer,
Roving Squad-IV,
Enforcement North,
Chennai-6.

+1cc to Mr.Joseph Prabakar, Advocate, S.R.No.16331
+1cc to the Special Government Pleader(T), S.R.No.68766

W.P.No.41121 of 2016
&
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GJ(CO)
CA(25/11/2016)