IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.12.2016

CORAM

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

Writ Petition No.43226 of 2016

M/s Naveen Enterprises,
Rep. By its Proprietor
Main Road,
Ramapura
Kollegal Taluk
Chamarajnagar District [Petitioner]

Vs

Check Post Officer,
Commercial Taxes Check Post
Palakad Main Road
Gopalapuram,
Pollachi (TK), Coimbatore [Respondent]

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified mandamus, calling for the records of the respondent in notice in GDR.No.752/2016-17 dated 05.12.2016 and quash this detention order as illegal and direct the respondent to release the goods detained in.

For Petitioner : Mr.C.Bakthasiromoni
For Respondent : Mr.Kanmani Annamalai, SGP (Taxes)

ORDER

1. Issue Notice. Mr.S.Kanmani Annamalai, the learned Special Government Pleader, accepts notice on behalf of the respondent.

1.1. By consent, the writ petition is taken up for final disposal.

2. Briefly, the facts, adverted to, in the writ petition are as follows:-

2.1. The petitioner, claims to be a registered dealer under the Karnataka Value Added Tax Act.

2.2. It is stated that the petitioner is carrying on business at the Main Road, Ramapura, Kollegal Taluk, Chamarajnagar District, in the State of Karnataka.

2.3. The petitioner avers that he had sold turmeric to a registered dealer by name M/s Anna Aluminium Co., Pvt. Ltd., (Spices Division), located at Kizhakkambalam, Aluva, Ernakulam, in the State of Kerala.

2.4. The petitioner further avers that while the goods were being transported from the State of Karnakata to the State of Kerala vide Invoice No.184, dated 04.12.2016, via Vehicle No.KA 10 B 889, they were detained at the respondent's Check Post, on 05.12.2016.

2.5. It is the petitioner's case that the ostensible reason for detention of the subject goods was that the relevant documents did not bear the seal of the Tamil Nadu Check Post, as required under Section 70 of the Tamil Nadu Value Added Tax Act, 2006 (in short "the Act").

2.6. According to the petitioner, the value of the goods is equivalent to Rs.14,24,000/-. The petitioner further states that he was served with impugned show cause notice dated 05.12.2016, on the very same day, i.e., 05.12.2016, whereby, he was directed to pay tax and have the offence compounded on payment of sum fixed by the concerned officer.

2.7. The petitioner is aggrieved by the action of the respondent inasmuch as, according to him, the subject goods could not have been detained for the following reasons:-

(i) The subject goods were in transit and were not meant for local consumption and/ for local sales, in the State of Tamil Nadu and, hence, no tax was payable.

(ii) The action of detention of the subject goods was violative of Articles 304 (b), 301 and Article 19(1)(g) of the Constitution.

(iii) The maximum fine that the respondent could have levied for failure to produce the transit pass at the time of movement of the subject goods was a sum of Rs.2,000/-. Reliance in this behalf is placed on the decision of the Tamil Nadu Special Taxation Tribunal, Chennai, reported in 114 STC 570.

(iv) Since, the subject goods are an

exempted commodity under Schedule IV of the Act and, are classified, as Item No.18 in the said Schedule (Part B), no tax, in any case, was leviable.

(v) The charge that no seal was put on the relevant documents, is baseless, as there is no Check Post either at Ramapura, Kollegal Taluk in the State of Karnataka, the point from where, the subject goods moved in the first instance, and the first Check Post in the State of Tamil Nadu, which is, located at Gopalapuram.

3. Mr.S.Kanmani Annamalai, who appears for the respondent, affirms that the subject goods are exempt from tax, and, therefore, the reference in the impugned show cause notice, to the fact that the petitioner could avail the opportunity of compounding the offence, upon payment of sum so fixed, was not applicable in the instant case.

4. Having heard the learned counsel for the parties, I am inclined to allow the writ petition for the following reasons:-

4.1. A perusal of the reply submitted by the petitioner dated 05.12.2016 clearly shows that he took a stand there was no Check Post either Ramapura, Kollegal Taluk, or, at Gopalapuram, which is the first Check Post available after goods entered the State of Tamil Nadu.

4.2. Mr.S.Kanmani Annamalai, the learned Special Government Pleader for the respondent affirms this fact.

4.3. If, this was the position, surely, no seal could have been put on the relevant documents available for movement of the goods from Karnataka to Kerala through Tamil Nadu.

4.4. It is not the case of the respondent that the subject goods were meant for local sales and/or local consumption.

4.5. Furthermore, even otherwise, the learned Special Government Pleader accepts that the subject goods are exempt from tax, and therefore, the reference in the impugned notice, that the petitioner should seek their release, upon having the offence compounded, and on payment of sum, so fixed, was clearly erroneous, both in law and on facts.

5. Accordingly, the show cause notice dated 05.12.2016 is quashed.

5.1. The respondent is directed to release the subject goods with due expedition, though, not later than two (2) days of receipt of a copy of the order.

5.2. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Check Post Officer,
Commercial Taxes Check Post
Palakad Main Road
Gopalapuram,
Pollachi (TK), Coimbatore

+1cc to Mr.C. Bakthasiromoni, Advocate, S.R.No.72860
+1cc to the Government Pleader, S.R.No.73045

(CO)
md(14/12/2016)

W.P.No.43226 of 2016