HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
And
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

WRIT PETITION No.29042 of 2016

ORDER : (**Per HACJ**)

Heard Sri J.V. Rao, learned counsel for petitioner and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes and, with their consent, the writ petition is disposed of at the stage of admission.

The notice of detention in Form VAT-610 records that the vehicle was not carrying the CST e-Waybill issued by, and the petitioner was not registered as a dealer under the CST Act within, the State of Andhra Pradesh. Sri J.V.Rao, learned counsel for petitioner would draw our attention to the CST Registration Certificate in Form VAT-105 which shows that the petitioner was registered as a dealer, under the CST Act, with effect from 01.09.2014. The only other ground, for detention of the goods, is that the petitioner did not obtain an e-Waybill from the Commercial Tax Department of the State of Andhra Pradesh. While Sri J.V.Rao, learned counsel for petitioner, would refer to the e-Waybill dated 19.08.2016, it is evident that the said e-Waybill has been issued by the Government of Telangana, and not by the Government of Andhra Pradesh. To the extent the notice of detention records that the petitioner did not produce an e-Waybill from the State of Andhra Pradesh, the action of the checkpost authorities cannot be faulted.

The fact, however, remains that Section 45(3)(b) of the A.P. VAT Act, as substituted by Act 4 of 2016 with effect from 12.01.2016, stipulates that if, on examination and inspection of the vehicle, it appears that the sale of the goods carried has, for the purpose of payment of tax, not been properly accounted for in the documents referred to in Section 45(2)(b) and if the said officer is satisfied, after making such enquiry as he deems fit, that, with a view to prevent the evasion of tax payable in respect of the sale of the goods carried, it is necessary to detain the goods, he may direct the driver, or any other person in-charge, of the goods vehicle to pay such tax and to furnish security for the amount equal to two times the amount of tax payable in such form and to such authority as may be prescribed, on behalf of the person liable to pay such tax.

The first of the twin requirements, stipulated under Section 45(3)(b), is that the sale of the goods carried has not been properly accounted for in the documents referred to in Section 45(2)(b). This limb of the provision is satisfied as the petitioner has, admittedly, not carried the e-Waybill issued by the Government of Andhra Pradesh. That, however, does not justify detention of the goods as Section 45(3)(b) also requires the Checkpost authority to satisfy himself, after making such enquiry as he deems fit, that detention of the goods is necessary with a view to prevent evasion of the tax payable in respect of the sale of the goods carried in the vehicle. Sri J.V.Rao, learned counsel for petitioner, would submit that no such enquiry has been caused; the goods, which were detained, were imported from China and were being carried to the petitioner's own branch at Guntur; the transportation of the goods was merely a branch transfer, and not a sale; and even if it were to be construed as a sale in the course of import, it would nonetheless be exempt from tax under Section 5(2) of the CST Act r/w. Section 5 of the A.P.VAT Act.

It is only if the checkpost authority records his satisfaction, that too after making such enquiry as may be necessary, that the goods should be detained in order to prevent the evasion of tax, is such detention permissible. The detaining authority has not recorded his satisfaction that the detention of the goods is necessary to prevent evasion of tax for, if the submission of Sri J.V.Rao, learned counsel for petitioner, were to merit acceptance, then the petitioner is not liable to pay any tax at all on the branch transfer of the subject goods, and consequently the question of detention thereof would not arise.

Since the Statute places an obligation on the checkpost authority to satisfy himself in this regard, we set aside the impugned order of detention, direct the checkpost authority to consider whether there has been any evasion of tax on the part of the petitioner and, thereafter, examine whether detention of the goods is necessary to prevent such evasion of tax. As the goods are said to be lying at the checkpost, alongwith the vehicle, for the past 11 days, we consider it appropriate to direct the checkpost authority to examine the matter afresh, and pass an order latest by 02.09.2016. On such an order being passed and, if he is satisfied that the petitioner is either not liable to pay tax, or that there was no evasion of tax, he shall then consider releasing the goods forthwith.

Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes undertakes to intimate the checkpost authorities concerned of their obligations under this order. The writ petition stand disposed of accordingly. No order as to costs. Pending miscellaneous applications, if any, shall stand closed.

RAMESH RANGANATHAN, ACJ

U. DURGA PRASAD RAO, J

31st August 2016

N.B:
Issue C.C. today.
(b/o)
ajr