THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION NO. 20071 of 2016

ORDER :

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the respondents in seizing lorry bearing No.MP 09 HG 6232 along with finished products of tiles and slabs and demanding seigniorage fees on the finished product as illegal, arbitrary and unconstitutional.

The facts in issue are as under:

The petitioner herein established a firm by name M/s. Mahalakshmi traders after obtaining relevant permissions from the concerned authorities. The petitioner is indulged in business of sale and transport of finished products. It is his case that he purchased 3650 sft. of finished products from Om Hanuman Granites, Guntur District vide tax invoice No. 4, dated 24.05.2016 and sold the same to Jagdamba Marble and Granites, Maharastra. The same was being transported through a lorry bearing No.MP 09 HG 6232 owned by Mahendra Reddy Road Lines. It is said that while the vehicle was proceeding to deliver the goods to the vendee, was intercepted at Martur on 28.05.2016 by Deputy Commercial Tax Officer, Parchur, who intimated the same to the Assistant Director of Geology, Ongole, Prakasam District which lead to detention of the vehicle and subsequently handed over the same to the fourth respondent. A notice came to be issued by the Assistant Commercial Tax Officer informing the petitioner that since relevant documents were not produced at the time of checking of the vehicle, the same was detained for further action. After depositing tax on invoice of Rs.59,116/-, a release order came to be issued by the Deputy Commercial Tax Officer in Form No.604, dated 10.06.2016, but, however, the third respondent i.e., the Assistant Director of Mines and Geology, refused to release the same. Challenging the same, the present writ petition came to be filed.

Relying upon the judgment of this Court in W.P.No.37500 of 2015 and also judgment of this Court in W.P.No.27094 of 2013, learned counsel for the petitioner submits that seizure of the vehicle due to non-payment of seigniorage fee during transportation of finished products is illegal and improper.

Learned Government Pleader for Mines and Geology on written instructions states that the petitioner has to pay the market value of the Mineral value Seigniorage fee prevalent as per Rule 26 (3)(iii) of A.P.Minor Minerals Concession Rules, 1966 and also furnish documentary proof in support of having paid seigniorage fee as per G.O.Ms.No.37, dated 14.03.2016. In the absence of the same, it is contended that the petitioner is not entitled for release of the vehicle.

From the material placed before the Court it is clear that the petitioner who is owner of the vehicle was transporting tiles and slabs (finished products). The record also reveals that the petitioner paid a sum of Rs.59,160/-, vide receipt No.B5688758, on a demand made by Assistant Commercial Tax Officer which lead to passing of a release order in Form 604, dated 10.06.2016.

The question now is whether the third respondent was right in detaining the vehicle for want of seigniorage fee, when the said vehicle was transporting finished product.

The issue is no more *res integra* in view of the judgment in ***Novel Granites Limited and others Vs. Government of A.P. and others***[1] wherein this Court at para No.53 of the judgment held as under:

> "53. From the detailed discussion undertaken above, the conclusion is irresistible that the explanation to Rule 2(h) by which the processed mineral and final products are treated as 'mineral' is *ultra vires* the rule making power of the State Government and the same is accordingly struck down. Consequently, the definition of 'dealer' in Rule 2(1)(d) shall be read down as to exclude the persons, who undertake manufacturing/processing activity using mineral as raw material. It is, however, made clear that the State Government and its officials authorized for this purpose shall be free to inspect and check any premises or factory/industry where the mineral is stored before it is processed/manufactured and exercise the power of seizure of mineral before it is processed and converted into a finished product, if it is found that such mineral has not suffered royalty and/or dead rent."

As per the said judgment, respondent authorities has no power or authority to exercise any control over manufacture/process activity using mineral as raw material except to the extent of inspecting and checking in factory/industry, wherein mineral is stored before it is processed/manufactured. That being the position and as held by this Court in W.P.No.27094 of 2013, dated 19.09.2013, there is a blatant violation of the judgment referred to above as the state Government and its functionaries have no power or authority to intercept and seize the vehicle transporting finished products.

This Court in W.P.No.37500 of 2015, while dealing with the similar circumstances, released the vehicle therein forthwith along with the material and imposed other conditions. Even a Division Bench of this Court in W.P.No.2682 of 2016, while dealing with somewhat an identical issue, observed that when a person has purchased finished goods and is transporting it for his or her own consumption, could possibly be asked to disclose the source from which he had purchased the finished products, and that he cannot be called upon to produce proof of payment of mineral revenue as to what he is transporting is not the minor mineral on which royalty is required to be paid.

In terms of the aforesaid decisions and in view of the orders passed by this Court in W.P.No.37500 of 2015, the writ petition is disposed of directing the respondent authorities to forthwith release the petitioner's vehicle along with the material with a further direction to the respondent authorities not to interfere with the transportation of the finished/processed, manufactured, cut and polished tiles and slabs of the petitioner by extending to it the Mineral Dealers Rules, 2000. However, the State Government and its officials authorized for this purpose shall be free to inspect and check any premises or factory/industry where the mineral is stored before it is processed/manufactured and exercise the power of seizure of the mineral before it is processed/manufactured and converted into a finished product, if it is found that such mineral has not suffered royalty and/or dead rent. No costs.

Miscellaneous petitions, pending if any, shall stand closed in the light of this final order.

JUSTICE C. PRAVEEN KUMAR

08.07.2016

Note:

Issue CC in three days.

B/o.

vhb

[1] 2010 I ALD 812