THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Petition No.959 of 2017

ORDER: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Heard Sri A.V.A.Siva Kartikeya, learned counsel for the petitioner, and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, the writ petition is disposed of at the stage of admission. The action of the respondents, in detaining the goods along with the vehicle, is questioned in this writ petition as being illegal and arbitrary.

The petitioner, a dealer carrying on business within the State of Pudichery, claims to have sold detergent cakes and powder to a dealer in the State of Telangana; and, pursuant thereto, to have transported the goods from Pudichery to Hyderabad. The subject goods were detained, and a notice of detention of the goods at the check post, in Form 610 dated 12.12.2016, was issued recording a variation between the value declared in the invoice and the value declared in the transit pass. While the invoice value of the goods is stated to be Rs.5,86,493/-, the value declared in the transit pass is only Rs.26,250/-. The notice dated 15.12.2016 was issued by the respondents informing the petitioner that they were liable to pay tax at the rate of 14.5%, and twice the said amount as penalty under Section 45(7) of the A.P. Value Added Tax Act, 2005 (for short "the Act').

In the notice dated 15.12.2016, the Assistant Commercial Tax Officer, Border Check Post, Pondugala, records that the dealer had loaded soaps only for a turnover of Rs.26,250/- at the origin point in Pudichery; the remaining soaps, valued at Rs.5,60,243/-, were loaded in Andhra Pradesh with the intention of evading the legitimate tax due to the Government of Andhra Pradesh, and the entire transaction was camouflaged as the sale of soaps, from Pudichery to Hyderabad, by raising an invoice.

The subject goods were detained at the border Check Post, Pondugala, Guntur District i.e. the border between the States of Andhra Pradesh and Telangana. It is evident, therefore, that the goods were entering the State of Telangana from the State of Andhra Pradesh. Even if the view expressed by the Assistant Commissioner, in the notice dated 15.12.2016, is presumed to have some basis, and the goods are treated as having been procured within the State of Andhra Pradesh for a sum of Rs.5,60,243/-, the sale of the goods to a party in Hyderabad, even from the State of Andhra Pradesh, would only be an inter-state sale under Section 3(a) of the Central Sales Tax Act liable to tax at the rate of 2% on production of C-Forms, or at the rate applicable to the goods under the State enactment.

As the subject goods were treated as unclassified goods falling under Schedule V to the Act, the check post authorities were justified in directing the petitioner to pay 14.5% tax on the invoice value of the goods, along with a penalty for twice the said amount. The fact, however, remains that, in case the petitioner is able to produce C-Forms, the rate of tax applicable to these goods would only be 2%. While the petitioner is, no doubt, not a registered dealer within the State of Andhra Pradesh, it is always open to the assessing authority to assess them to tax following the procedure prescribed under the Act.

We consider it appropriate, therefore, to direct the respondents to release the goods and the vehicle forthwith on the petitioner furnishing proof of payment of tax at the rate of 14.5% on the invoice value of the goods, along with twice the said amount as security. The assessing authority concerned shall, after giving the petitioner an opportunity of being heard, assess them to tax under the CST Act at the earliest, and not later then three months from the date of receipt of a copy of this order. It is made clear that it is open to the petitioner to produce the necessary C-Forms to claim the benefit of concessional rate of tax of 2% and thereby claim refund of the tax and twice the said amount, deposited by them as security.

The Writ Petition is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

06th January, 2017
Note: Issue C.C. tomorrow.
(B/o)
JSU

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<u>Date: 06.01.2017</u>

JSU