

*IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH*

WRIT PETITION No.27026 of 2015

Between:

Dr. Reddy's Laboratories Limited,
Visakhapatnam, repled by its Director-Finance-
P.Sivarama Krishna

... Petitioner

And

Assistant Commercial Tax Officer,
West Godavari District and three others.

... Respondents

JUDGMENT PRONOUNCED ON 04.12.2017

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE T.AMARNATH GOUD

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> Head Note:

! Counsel for the petitioner: Mr. S.Dwarakanath

^ Counsel for the respondents: Mr. Shaik Jeelani Basha

Special Standing Counsel for CT (AP)

? Cases Referred:

(2007) 9 VST 1 (SC)

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Counsel for the respondents: Mr. Shaik Jeelani Basha
Special Standing Counsel for CT (AP)

The Court made the following:

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

The petitioner is a leading manufacturer of bulk drugs and formulations having international operations. It has two bulk drug manufacturing units and two formulation manufacturing units at Pydibhimavaram, Srikakulam District, which is a Special Economic Zone (SEZ) and another two formulation units at Visakhapatnam Special Economic Zone. The petitioner is registered as a dealer in Andhra Pradesh with the Commercial Tax Officer, Gajuwaka Circle, Visakhapatnam, under the provisions of the Andhra Pradesh Value Added Tax Act, 2005 (for short 'the Act') and the Central Sales Tax Act, 1956, with effect from 02.6.2014. It is also a registered dealer in the State of Telangana under the Act, as adapted by the State of Telangana.

The petitioner averred that on 18.8.2015, its unit at Bachupally, Ranga Reddy District has stock-transferred Capsule manufacturing equipment "Omega 20 extruder" worth Rs.1.81 crores to its own formulation unit at Sector Nos.9 to 14 of Pydibhimavaram SEZ, Srikakulam District; that while transporting the goods, its unit at Bachupally arranged Proforma Invoice, e-waybill of the State of Telangana and a copy of the Original invoice issued by the manufacturer of the equipment; that during the said transit, respondent No.1

detained the goods at about 8.10 am on 20.8.2015 alleging that the said consignment was not accompanied with advance CST waybill of Andhra Pradesh; that on realising the purported mistake of not issuing the advance CST waybill, the same was immediately generated On-line at about 12.55 pm on 20.8.2015; and that the delayed generation of e-waybill, after the goods were detained, was, if at all, a technical lapse.

The petitioner further averred that it has made a representation to respondent No.3 on 21.8.2015 claiming that the goods under transit are to its own Unit located in Pydibhimavaram SEZ; that there is no transfer of title of goods to attract tax; that failure to generate CST advance waybill of Andhra Pradesh was by oversight and not willful; that respondent No.1 was not correct in insisting on payment of tax and two times the tax as penalty as, the same is not envisaged under the Act; that it has offered to pay a sum of Rs.3,000/- towards the compounding fee under Section-61 of the Act for the technical lapse of not generating the e-waybill of the State of Andhra Pradesh; and that, as its request for release of the detained goods did not yield any result, it has filed the present Writ Petition.

By an interim order, dated 25.8.2015, while issuing notice before admission, a Division Bench of this Court has directed

release of the detained goods, subject to the petitioner depositing a sum of Rs.5 lakhs, by making it clear that the amount so deposited shall be subject to the result of the Writ Petition or any other proceedings that may be taken up in future. We are informed at the hearing, that the petitioner has complied with the said interim conditional order and the detained goods were, accordingly, released.

On behalf of the respondents, respondent No.1 filed a counter-affidavit wherein he has *inter alia* stated that under Section-45(7)(a) of the Act, where goods are carried without paying tax, if any, payable or goods are carried without being properly accounted for in the documents referred to in Clause-(b) of Sub-section-(2), the said Officer shall collect the tax payable on the goods so carried and in addition, levy a penalty not exceeding two times the amount of tax payable on such goods after giving a reasonable opportunity to the person likely to be affected against the proposed penalty. It is further stated that Sub-section-(2) of Section-45 of the Act lays down that the officer at the check post is empowered to stop the vehicle to examine the contents in the vehicle or vessel and inspect all the records relating to the goods carried which are in the possession of such driver or any other person in-charge for the purpose of ascertaining whether there has been any sale or purchase of

goods carried or in case, there was sale or purchase of the goods carried, whether such sale or purchase is liable to tax and if so, whether such tax has been paid or whether the sale or purchase of the goods carried was for the purpose of payment of tax being properly accounted for in the bills of sale, or delivery notes or such other documents as may be prescribed.

Respondent No.1 has also referred to the amendment made to the Act by G.O.Ms.No.26, Revenue (CT-II) Department, dated 05.02.2015, which envisaged generation of electronic waybill through the official website of the Commercial Taxes Department or the Government of Andhra Pradesh.

The deponent has further referred to Sub-rule-(2) of Rule-55 of the A.P. Value Added Tax Rules, 2005 (for short 'the Rules'), which was substituted by the State amendment, and stated that the said Sub-rule has made accompanying of e-waybill with goods carried mandatory and the petitioner having, admittedly, not generated such e-waybill of the State of Andhra Pradesh, it is liable to pay tax as well as penalty, as stipulated under Sub-section-7(a) of Section-45 of the Act. Accordingly, the action of respondent No.1 in detaining the goods for non-payment of tax and penalty was justified.

Mr. S.Dwarakanath, learned counsel for the petitioner, submitted that the provisions of Sub-section-7(a) of Section-45

of the Act and also Rule-55 of the Rules, on which the Revenue has placed heavy reliance, are attracted only where there has been sale or purchase of goods carried, and that, such goods can be intercepted and detained only where such tax has not been paid (or) sale or purchase of goods carried has not been properly accounted for in the bills of delivery of goods. That admittedly, in the instant case, no sale or purchase of goods is involved and that, what was being transported was only a machinery despatched by the petitioner's unit at Bachupally, Ranga Reddy District, Telangana State for being installed and used by its unit in Pydibhimavaram SEZ, Srikakulam District, Andhra Pradesh. The detention of goods, argued the learned counsel, on the ground of non-observance of the procedure prescribed under Rule-55 of Rules, is wholly illegal. He has also pointed out that the stand taken by the petitioner in the affidavit that respondent No.1 was right in detention of goods was under mistake of law and that, on a proper reading of Section-45 of the Act and Rule-55 of the Rules, the petitioner was advised to submit that even the initial detention of goods by respondent No.1, on the ground of non-accompanying of e-waybill of the State of Andhra Pradesh, itself is illegal and unauthorised.

Mr. Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes (Andhra Pradesh), made strenuous

attempt to convince this Court that Rule-55 of the Rules is attracted in the present case and that, in view of breach of the said Rule, the detention of goods is legal and proper and the petitioner is liable to pay the tax and penalty, as specified in the impugned detention order.

We have carefully considered the respective submissions of the learned counsel for the parties with reference to the material on record.

Sub-section-(1) of Section-45 of the Act, which is the pivotal provision for adjudication of the dispute raised in this Writ Petition, reads as under:

“At every check post or barrier mentioned in sub-section-(1), or at any other place when so required by any officer empowered by the Government in this behalf, the driver or any other person in-charge of goods vehicle or vessel shall stop the vehicle or vessel as the case may be and keep it stationary as long as may reasonably be necessary, and allow the officer in-charge of the check post or barrier, or the officer empowered as aforesaid to examine the contents in the vehicle or vessel and inspect all records relating to the goods carried which are in the possession of such driver or other person in-charge for the purpose of ascertaining whether there has been any sale or purchase of goods carried and in case there was sale or purchase of the goods carried, whether such sale or purchase is liable to tax and if so:

(a) whether such tax has been paid; or

(b) whether the sale or purchase of the goods carried has, for the purpose of payment of tax been properly accounted for in the bills of sale, or delivery notes (or waybills) or such other documents as may be prescribed.”

The amended Sub-rule-(2) of Rule-55 of the Rules to the extent it is relevant reads as under:-

“Any dealer who desires to import goods from other States or Union Territories or any dealer who desires to send goods to outside the State shall electronically generate the way bill, through the official website of the Commercial Taxes Department or the Government of Andhra Pradesh. Such electronically generated waybill shall accompany the goods along with sale invoice or delivery note and shall be tendered by the person in-charge of the goods vehicle to the officer in-charge of the check post through which the goods vehicle first enters into the State or exits the State, as the case may be.”

As could be seen from its provisions, Section-45 of the Act is envisaged to prevent or check evasion of tax in any place or places in the State. Under Sub-section-(2) of Section-45 of the Act, the authority concerned is empowered to examine the contents in the vehicle or vessel and inspect all records relating to the goods carried, whichever is in possession of the driver, or any other person in-charge, for the purpose of ascertaining whether there has been sale or purchase of goods carried and in such a case, whether such sale or purchase is liable to tax.

Under Clause-(ii) of Sub-section-3 of Section-45 of the Act, where the sale or purchase of goods carried has, for the purpose of payment of tax, not been properly accounted for in the documents referred to in Clause-(b) of Sub-section-(2) and the officer concerned 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 or purchase of the goods carried, it is necessary to detain the goods, he shall detain the goods and direct the driver or any other person in-charge of the goods vehicle or vessel or consignment or consignee to pay such tax or to furnish security for an amount equal to two times the amount of tax payable in such form and in such manner and to such authority as may be prescribed, on behalf of the person liable to pay such tax.

An analysis of the aforesaid provisions leaves us in no doubt that the officer concerned is empowered to exercise the power of detention of goods only where he is *prima facie* satisfied that the movement of goods is covered by the transaction of sale or purchase and that there is an attempt on the part of the person concerned to evade the tax.

Every Sub-section of Section-45 of the Act including that of Section-7(a) thereof is attracted only where the goods are carried in pursuance of a transaction of sale or purchase and

consequently, the detention of goods is authorised only where a transaction of sale or purchase is involved and the same is not properly accounted for by means of proper documents as mentioned in Clause-(b) of Sub-section-(2) of Section-45 of the Act. Therefore, the transaction of sale or purchase constitutes the soul of Section-45 of the Act.

In pursuance of the rule making power under Section-78 of the Act, the State Government has made Rules called Andhra Pradesh Value Added Tax Rules, 2005. Under Sub-section-(1) thereof, the Government is empowered to make Rules for the purposes of the Act. Every Rule made by the Government is intended to carry out the purposes of the Act and not to thwart it. Therefore, there cannot be any doubt that Rule-55 of the Rules which occurs in Chapter-12 pertaining to movement of goods/goods vehicles and check-posts is made in order to prevent or check evasion of tax as envisaged under Section-45 of the Act.

Sub-rule-(2) of Rule-55 of the Rules obligates that any dealer who desires to import goods from other States or Union Territories or any dealer who desires to send goods to outside the State, shall electronically generate the waybill through the official website of the Commercial Taxes Department or the Government of Andhra Pradesh. Such electronically generated

waybill shall accompany the goods along with sale invoice or delivery note and shall be tendered by the person in-charge of the goods vehicle to the officer in-charge of the check-post through which the goods vehicle first enters into the State or exits the State, as the case may be.

When Section-45 of the Act and Rule-55 of the Rules are read together, it is clear that wherever there is any movement of goods in pursuance of sale or purchase, the dealer of that particular State has to generate e-waybill, both for importing into the State or sending outside the State, as the case may be. Therefore, a transaction of sale or purchase is a *sine quo non* for attracting the provisions of Section-45 of the Act and Rule-55 of the Rules.

In the light of this clear legal position, we shall now examine the exact nature of the transaction in this instant case.

The petitioner has filed copies of Proforma Invoice issued by its Unit at Bachupally, Ranga Reddy District, Telangana State and e-waybill generated from the official website of the Commercial Tax Department of the Government of Telangana. The Proforma Invoice shows that a machine, described as "Extruder with Accessories (Total 14 Corrugated Boxes)" was transported from Bachupally to Pydibhimavaram SEZ. Under the heading "terms of payment" it was shown as "free of charge". In

the CST e-waybill of the Commercial Tax Department of the Government of Telangana, in Column No.5, option-(d) reads as “from shop or godown to another shop or godown for purpose of storage or sale”.

It is not in dispute that the petitioner is neither a manufacturer nor a purchaser of the detained goods. It was only the machinery which was sent by the petitioner from its Unit at Bachupally to its Manufacturing Unit at Pydibhimavaram for the purpose of erection. This stand of the petitioner is not contradicted by the respondents. There is not even an allegation that the transaction involved sale or purchase of the detained goods (machinery). This being the admitted position, in our opinion, there is no obligation on the part of the petitioner to generate e-waybill of the Commercial tax Department of the State of Andhra Pradesh as, *ipso facto* Rule-55 of the Rules is not attracted.

Learned Standing Counsel has placed reliance on the judgment of the Supreme Court in *Guljag Industries Vs. Commercial Taxes Officer*¹. He has relied upon paragraph-22 of the said judgment and submitted that breach of Section-78(2) of the Rajasthan Sales Tax Act, 1994, which provides that

¹ (2007) 9 VST 1 (SC)

movement of the goods should accompany Form No.18A/18C, invites payment of tax and penalty.

In our opinion, the said judgment has no application to the facts of the present case as, admittedly in that case, the transaction involved sale and purchase of the goods which were intercepted and detained during transportation as, the same were not accompanied by prescribed Forms.

On the analysis as above, we have no hesitation to hold that the detention of goods in the instant case is wholly without any sanction of law and the same is, accordingly, declared as illegal and unauthorised.

The Writ Petition is, accordingly, allowed with costs of Rs.10,000/- (Rupees Ten thousand only). The respondents are directed to refund the sum of Rs.5 lakhs (Rupees Five lakhs only), paid by the petitioner in pursuance of the interim order, with interest at the rate of 12% per annum from the date of payment till the date of realisation. The State Government is directed to initiate appropriate proceedings against the officer concerned for illegal detention of goods of the petitioner and recover the interest and costs imposed by this order from him after following due procedure under law.

As a sequel, WPMP.No.35081 of 2015 is disposed of as
infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE T.AMARNATH GOUD

04th December 2017

Note

LR copies to be marked.

B/o

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