HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE MRS. JUSTICE T. RAJANI

Writ Petition No.21383 of 2017

ORDER: *(V. Ramasubramanian, J)*

The petitioner, who is a transporter, has come up with the above writ petition, challenging a demand for a sum of Rs.53,283/- raised on them under the Telangana Value Added Tax Act, 2005.

2. Heard Mr. C. Aravind, learned counsel for the petitioner and Mr. T. Vinod Kumar, learned special standing counsel for the respondents.

3. One of the goods transport vehicles of the petitioner's company passed through the Border Check Post, Wankidi in March, 2013. A transit pass was taken at the check post. The transit pass indicated the exit check post as BCP-Kodikonda. But the transit pass was not produced before the Border Check Post, which is the exit check post BCP-Kodikonda.

4. Therefore, the respondents issued a show cause notice on 13-09-2016. The petitioner failed to submit their objections. Therefore, an order was passed on 30-03-2017 demanding a sum of Rs.53,283/- from the petitioner, on the presumption that the goods could have been sold within the State. Challenging the said order, the petitioner is before us.

5. On facts, it is not disputed by the petitioner (1) that the driver of the vehicle took transit pass at the Border Check Post, Wankidi while entering the State; and (2) that while exiting from the

State of Telangana, the driver of the goods transport vehicle failed to surrender the transit pass.

6. Therefore, the provisions of Section 47 of the Telangana Value Added Tax Act, 2005 read with Rule 58 (9) of the Rules got clearly attracted in this case. But the case of the petitioner is that there was no border check post at Kodikonda and that the goods were actually taken to Bellary and sold, in proof of which the petitioner had already produced C-forms and the sale receipts. In other words, the claim of the petitioner is that the presumption raised by the respondents under Section 47 of the Act stood rebutted by the production of C-forms and the sale receipts.

7. However, we are unable to agree with the above submissions. The driver of the vehicle, who takes a transit pass while entering into a State, is under an obligation to produce the same at the exit check post, for the purpose of demonstrating that the goods were not offloaded and sold within the State. The failure of the driver of the vehicle to perform such an obligation, may invite several consequences. The petitioner cannot contend that the non-production of the transit pass at the exit check post, merely gives rise to a presumption and that the same can be rebutted. If this contention is accepted, then the provisions of Section 47 of the Act would actually become redundant and otiose.

8. The failure of the statutory obligation may lead to several consequences. One of the consequences was the raising of the presumption. If the production of C-forms after a period of time

would remove the obligation under Section 47 of the Act, then there is no necessity at all to fix such an obligation. The procedure prescribed by Rule 58 (9) is a procedural safeguard against the sale of goods within the State, without payment of tax. Such a safeguard cannot be diluted by contending that the obligation merely gives rise to a presumption and that the same may be rebutted. Hence, we find no justification to entertain the writ petition.

Therefore, the writ petition is dismissed. No costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

T. RAJANI, J

Date: 28-08-2017

Ksn