

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.35431 of 2017

ORDER:

This Writ Petition has been filed by the petitioner challenging the action of the 3rd respondent in detaining Lorry bearing No.TN88 A 4827 along with finished granite slabs of quantity of 248.7560 sq. meters belonging to the petitioner meant for delivery to the State of Kerala, and demanding seigniorage fee on the finished product for releasing the same.

2. Counsel for petitioner contends that the petitioner had purchased 11.00 cubic meters quantity of raw material from M/s Pokarna Limited, which was having a valid permit, that after purchase, petitioner processed the same in its unit and sold 248.756 M2 quantity of polished slabs to Anuroopa Stone Floorings and loaded the same in lorry bearing above number after handing over way bills and necessary invoices with permits to the driver of the lorry; and that the 3rd respondent inspected the lorry with the material on 13.10.2017 at Kanakadurgamma Vardhi, Vijayawada, Krishna District while the vehicle was on transit to Earnakulam District of Kerala State without any reason.

3. It is alleged by the petitioner that when the driver of the lorry produced all the necessary and relevant documents, the

staff of the 3rd respondent, who inspected the lorry, forced the driver to write down the invoice details on the backside of the permit, but the driver had written permit details instead of invoice details; that when the officials of the 3rd respondent again instructed him to write correct details, he applied whitener supplied by the officials of the 3rd respondent; and that on the ground that whitener was applied, the lorry with materials has been seized and put in the custody of the 4th respondent.

4. Counsel for petitioner relies on the decision of this Court in ***Novel Graniates Ltd. And others v. Government of Andhra Pradesh and others***¹, wherein this Court had held that vehicle carrying finished materials cannot be seized, and also a Government Memo dt.30.09.2013 directing the Officials of Mines and Geology not to seize finished products of granite during transportation.

5. The Government Pleader for Mines and Geology however places reliance on the judgment of a Division Bench of this Court dt.24.02.2016 in W.P.No.2682 of 2016 to contend that it is permissible to seize vehicles.

6. A reading of the said judgment, however, indicates that the Court was of the view that a transporter of finished goods,

¹ 2010(1) ALD 812

who had purchased them can only be asked to disclose the source from which he had purchased the finished product or processed material, and he cannot be called upon to produce proof of payment of mineral revenue, and such disclosure of the source from which he had purchased the finished products would enable the authorities to verify from the person sold, whether he had paid mineral revenue on the raw product or not. The Division Bench observed that the petitioner therein furnished satisfactory proof of the source from which he bought the finished granite slabs and the 3rd respondent therein should release the goods.

7. Nowhere in the said judgment has the Division Bench held that the finished products can be made to suffer mineral revenue or royalty, nor has the Division Bench permitted a purchaser of the processed granite to be made liable for payment of mineral revenue.

8. It is stated across the Bar that subsequently a show cause notice had been issued on 16.10.2017 to the petitioner and that the petitioner had given a reply thereto stating that he had purchased the raw material from M/s Pokarna Limited and that a Demand Notice dt.23.10.2017 had been issued by the 3rd respondent rejecting the petitioner's explanation.

9. A reading of the said order indicates that the 3rd respondent had not bothered to enquire from M/s Pokarna Limited as to whether in fact it had sold raw material to the petitioner or not, and had simply proceeded on the basis of an assumption that the documents produced appears to be tampered because there was overwriting and tampering by use of white-fluid.

10. When the Division Bench in the above decision wanted the Officials to be satisfied about the source from which the person transporting finished granite had bought the same, it was the bounden duty of the respondents to verify whether in fact the petitioner had purchased the raw-material from M/s Pokarna Limited. The failure of the 3rd respondent to make any such enquiry shows the total disregard of the respondents for due process and the anxiety to seize the vehicle as well as the goods therein without proper enquiry.

11. In this view of the matter, liberty is granted to the petitioner to question the Demand Notice dt.23.10.2017 and the 3rd respondent is directed to release the vehicle as well as the goods seized from the said vehicle, subject to the petitioner giving bank guarantee for the sum of Rs.3,32,357/- to the 3rd respondent.

12. Accordingly, the Writ Petition is allowed. No costs.

13. Consequently, miscellaneous petitions pending if any shall stand closed.

M.S.RAMACHANDRA RAO, J

27th October, 2017.

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