IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 12.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.3288 of 2018
&
W.M.P.No.4040 of 2018

M/s.Babu Roto Tech (P) Ltd.
Rep. by its Managing Director Mr.P.Ramesh
Old Survey No.56-2-2, 52: New Survey No.37/1
Chennai Kumbakonam Road
Abatharanapuram, Vadalur 607 303,
Cuddalore District. .. Petitioner

Versus

1. The Assistant Commissioner (CT),
   Cuddalore Taluk Assessment Circle
   Sub-Jail Road, Cuddalore - 607 001.

2. The Deputy Commercial Tax Officer
   Puzal (Out) Check Post
   GNT Road, Near Jail Compound
   Chennai - 600 066. .. Respondents

Petition filed under Article 226 of the Constitution of India, seeking for Writ of Prohibition, prohibiting the first respondent from assessing, levying or collecting or recovering sales tax under Tamil Nadu Value Added Tax Act, 2006 on the inter-state sales of "5-Iron and steel as specified in clause IV of the CST, Act, 1956" which are designed, manufactured and supplied to M/s.Thyssenkrupp Industries India Limited for supply at work site at Anathavaram Village, T.P.Gudur, Mandal Nellore-District at Andhra Pradesh, the movement of which are supported by Contract, Labour Invoice and Andhra Pradesh way bill.

For Petitioner : Mr.V.Sundareswaran
For Respondents : Ms.G.Dhana Madhri
Government Advocate

ORDER

Heard Mr.V.Sundareswaran, learned counsel for the petitioner and Ms.G.Dhana Madhri, learned Government Advocate for the respondents.

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2. The petitioner has filed this writ petition praying for issuance of writ of prohibition, to prohibit the first respondent from assessing, levying or collecting or recovering sales tax under the Tamil Nadu Value Added Tax Act, 2006 on inter-state sales of iron and steel, which are designed, manufactured and supplied at work site at Anathavaram Village, T.P.Gudur, Mandal Nellore-District at Andhra Pradesh.

3. The learned Government Advocate raises a preliminary objections with regard to the prayer sought for by the petitioner in the writ petition contending that if the writ of prohibition, as sought for by the petitioner, is issued, it would be preventing the authority from exercising its statutory powers and no such writ of prohibition would be maintainable.

4. The learned counsel for the petitioner submits that when the facts are admitted and the authority refuses to look into the facts, the Court can issue a writ of prohibition.

5. In any event, given the facts and circumstances, this Court is not convinced to issue a writ of prohibition to the authority as prayed for by the petitioner, as the issue only pertains to whether the goods were disposed of within the State of Tamil Nadu or not. The only reason for disbelieving the petitioner's stand is on the ground that the E-Transit pass was not surrendered. In fact, such a stand was taken by the respondents, while making an order of assessment dated 13.01.2016. The petitioner challenged the same by filing W.P.No.5344 of 2016, which was allowed by this Court vide order dated 16.02.2016, by setting aside the assessment order, remanding the matter for fresh consideration and deciding the matter afresh, after considering the petitioner's objection and documents produced by them. Subsequent to the order passed by this Court in the earlier writ petition, the petitioner submitted their objections on 30.08.2016, which appears to be very detailed objections and also enclosed the relevant records, containing 11 files. Subsequently another notice was issued by the respondents and the petitioner responded to the same, by a representation dated 24.03.2017, once again submitted necessary documents and 11 files consisting of 185 pages. However, the first respondent, shut his eyes to the documents produced by the petitioner and gone by the instructions of the head of the Department stating that since the petitioner has not surrendered the E-Transit pass, the total turnover as determined in the assessment order cannot be revised.

6. At this juncture, it is relevant to take note of the circular issued by the Commissioner vide Circular No.26/2014, dated 16.06.2014, pertaining to E-Transit pass, non submission at check-post. Paragraph 7 (d) to (f) of the above said circular

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would be relevant and the same is extracted hereunder:

> "d) While holding the legal validity of the statutory provisions relating to issue of transit pass under Section 44-A of the Tamil Nadu General Sales Tax Act, 1959, the Tamil Nadu Taxation Special Tribunal has held in the case of Godrej-Ge Appliances Ltd. Vs. Assistant Commercial Tax Officer, 1999 (114) STC 570 (TNTST) that the assumption made to treat the transaction for which transit pass is not surrendered in the exit check-post as local sales is a rebuttable presumption. The above view has been upheld by the Karnataka High Court in the case of Smt.Geetha Bhat V. Additional Commissioner of Commercial Taxes, Zone I, Gandhinagar, Banagalore, 2012 (52) VST 292 (Karn)
>
> e) Regarding acceptance of other documentary evidences in lieu of surrendering transit pass, the honourable Supreme Court in the case of Sodhi Transport Co. V. State of U.P. reported in 1986 (62) STC 381 (SC), has held as under (page 391 in 62 STC):
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> "... The transporter concerned is not shut out from showing by producing reliable evidence that the goods have not been actually sold inside the State. It is still open to him to establish that the goods have been disposed of in a different way. He may establish that the goods have been delivered to some other person under a transaction which is not a sale, they have been consumed inside the State or have been redespatched outside the State without effecting a sale within the State, etc....
>
> f) Therefore, in case of non surrender of transit pass, if a dealer could produce sufficient legally valid and reliable documentary evidence to prove that the goods moved with the transit pass in question had actually crossed the borders of the State, such evidences may be accepted by the assessing authority as an evidence of inter-State movement of goods."

7. The above circular clearly shows that the surrender of E-transit pass is not a sin qua non for establishing that the goods were sold within the State. Since there were several cases arising out of the non surrender of E-Transit pass, the Commissioner has given specific direction to the Assessing

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Officer. Therefore, the first respondent cannot merely go by the directives of his Superior Officer and ignore the circular, which is very specific. Therefore, this Court is inclined to remit back the matter to the respondents to specifically consider all the documents and verify as to the correctness of the submissions made by the petitioner, without insisting upon the surrender of E-Transit pass.

8. For the above reasons, this writ petition is disposed of by remitting the matter to the first respondent for fresh consideration, who shall consider the petitioner's representations dated 30.08.2016 and 24.03.2017 and the annexures, documents filed along with and without insisting upon the surrender of E-Transit pass, examine the entire case and pass orders on merits and in accordance with law by independently applying his mind. It is needless to state that the first respondent should afford an opportunity of personal hearing. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsm

To

1. The Assistant Commissioner (CT),
   Cuddalore Taluk Assessment Circle
   Sub-Jail Road, Cuddalore - 607 001.

2. The Deputy Commercial Tax Officer
   Puzal (Out) Check Post
   GNT Road, Near Jail Compound
   Chennai - 600 066.

+1cc to the Government Pleader, S.R.No.27901

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