HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.6713 of 2017

ORDER: {Per Hon'ble Sri Justice Ramesh Ranganathan}

Heard Sri K.V.Raghuveer, learned counsel for the petitioner, and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, this Writ Petition is disposed of at the stage of admission. The action of the respondents in collecting an amount of Rs.2,00,000/- from the petitioner, in lieu of confiscation of the goods being carried in the subject vehicle, is questioned in this writ petition as being illegal and arbitrary.

When ninety (90) quintals of rice, valued at Rs.2,00,000/-, was being transported from Kurnool to Guntakal, the goods and the vehicle were detained at Guntakal. While the petitioner claims that, though all the required documents were being carried in the vehicle, the respondents had forcibly recovered a sum of Rs.2,00,000/- from them, the Assistant Commercial Tax Officer, in his counter-affidavit, would submit that no documents were being carried in the vehicle; and it is only with a view to avoid proceedings being instituted for confiscation of the goods, did the petitioner come forward voluntarily, to have the vehicle and the goods released, on payment of the value of the goods, of Rs.2,00,000/-.

The assertion, in the counter-affidavit, that no documents were produced by the petitioner when the vehicle was detained, is belied by the receipt issued by them wherein it is stated that the vehicle was not covered by proper documents. Be that as it may, the power to detain goods is conferred on the respondents under Section 45(7)(a) of the A.P. Value Added Tax Act, 2005 (for short "the Act") whereunder in cases 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 Section 45(2), the 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.

The subject vehicle was carrying rice which is listed at Entry 85 of Schedule IV to the Act, and is assessable to tax @ 5%. While the Assistant Commercial Tax Officer, at the check post, was entitled in law to collect tax on the value of the goods of Rs.2,00,000/- i.e Rs.10,000/-, he could have imposed two times penalty thereupon, only after giving the petitioner a reasonable opportunity of being heard. In any event, the penalty amount which could be collected is twice the tax i.e for Rs.20,000/-. In all, the check post authorities could only have collected Rs.30,000/-, representing the tax and twice the said tax as penalty, for release of the detained goods. There was no justification whatsoever for the respondents to collect the entire value of the goods as a pre-condition for release of the goods.

Sri Shaik Jeelani Basha, learned Special Standing counsel for Commercial Taxes, would however place reliance on Section 45(7)(b) of the Act to contend that the authorities have the power not only to seize the goods but also to confiscate them; and, since the value of the goods was for Rs.2,00,000/-, they had accepted Rs.2,00,000/-, paid by the petitioner voluntarily, instead of confiscating the goods.

In this context, it is necessary to take note of Section 45(7)(b) of the Act, and its proviso, in order to examine whether there is any force in this contention. Section 45(7)(b) of the Act confers power on the officer to seize and confiscate any goods, where such goods are carried in the goods vehicle without any documents or are covered by fictitious documents. While the submission of the respondents, in their counter-affidavit, is that no documents were being carried in the vehicle, it does not find support from the receipt issued by the officer himself, wherein he stated that the vehicle did not contain proper documents. Even if Section 45(7)(b) of the Act is held applicable, the officer was required, in terms of the proviso, to give the petitioner a reasonable opportunity of being heard, before initiating proceedings for confiscation. Admittedly, no such notice was given to the petitioner. It is evident, therefore, that the Assistant Commercial Tax Officer has acted in flagrant violation of the provisions of the A.P. VAT Act in collecting Rs.2,00,000/- from the petitioner.

We consider it appropriate, therefore, to direct that, in case the respondents intend initiating confiscation proceedings against the petitioner, they shall put the petitioner on notice, give him an opportunity of being heard and, thereafter, pass orders in accordance with law. The entire exercise, commencing from issuing a notice, giving the petitioner a reasonable opportunity of being heard, and culminating in an order being passed thereafter, shall be completed within six weeks from today. In case, the proceedings are not concluded within the aforesaid period of six weeks, the amount collected from the petitioner of Rs.2,00,000/- shall be refunded to him within two weeks thereafter.

The Commissioner of Commercial Taxes shall initiate disciplinary proceedings against the Assistant Commercial Tax Officer for his illegal act of collecting Rs.2,00,000/- from the petitioner in flagrant violation of Section 45(7)(a) and (b) of the Act, and take action against him in accordance with law after giving him a reasonable opportunity of being heard. The Writ Petition is disposed of accordingly. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

14th August, 2018
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Writ Petition No.6713 of 2017

Date: 14.08.2018

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