HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.8611 of 2017

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri G.Narendra Chetty, learned Counsel for the petitioner, and Sri Sk.Jeelani Basha, learned Special Standing Counsel for Commercial Taxes.

The petitioner's grievance in this Writ Petition is that respondent No.1 had stopped two lorries importing goods from China and Malaysia via Chennai Port; the goods passed from Chennai, through the State of Andhra Pradesh, to reach Bellary in the State of Karnataka; and, on the ground that the petitioner did not obtain transit pass for entry of the goods into the State of Andhra Pradesh, the goods and the vehicles were detained on the exit check post at Guntakal, and were released on payment of tax and twice the said amount as penalty.

While the detention notice was issued on 08.02.2017, a show cause notice was issued thereafter on 10.02.2017. The petitioner claims to have submitted his objections on the same day i.e. 10.02.2017; and, as the goods were not being released, to have paid tax on 13/14.02.2017. They invoked the jurisdiction of this Court by way of the present Writ Petition on 09.03.2017 contending that there is a rebuttable presumption on whether or not the subject goods are liable to tax and penalty; and since the petitioner had, in their objections, clearly stated that the goods were only transiting from Andhra Pradesh to Bellary in the State of Karnataka, and these goods were imported from China and Malaysia, the goods were not liable to tax either under the A.P. Vat

Act or under the Central Sales Tax Act, since such sales are exempt from tax under Section 5(1) of the Central Sales Tax Act. Learned Counsel would place reliance on a Division Bench judgment of this Court in **Digital Factory, Hyderabad v. State of Andhra Pradesh**[1].

In **Digital Factory, Hyderabad**[1], a Division Bench of this Court held that, notwithstanding failure to submit transit pass, the statutory presumption can be rebutted by producing satisfactory evidence to show that the goods were not intended for sale in the State of Andhra Pradesh or the goods have crossed the borders of Andhra Pradesh; and that the dealer, or person in-charge, was not liable to tax and penalty since the goods were not sold within the State of Andhra Pradesh.

It is no doubt true that, in the light of the law declared by the Supreme Court in **Sodhi Transport v. State of U.P.**[2], and the Division Bench judgment in **Digital Factory, Hyderabad**[1], the statutory presumption is rebuttal. The fact, however, remains that the petitioner was subsequently assessed to tax vide assessment order dated 03.05.2017, and the subject goods were held liable to tax under the Act. This assessment order dated 03.05.2017 has not been subjected to challenge in this Writ Petition.

Sri G.Narendra Chetty, learned Counsel for the petitioner, would submit that the said assessment order was received only on 02.01.2018 (that too a Xerox copy). On the other hand Sri Sk.Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would submit that the assessment order dated

---

[1] (2016) 63 APSTJ 1

[2] (1986) 2 SCC 486

03.05.2017 was sent by Registered Post Acknowledgment Due to the petitioner the very next day i.e. on 04.05.2017, and was also personally served on the representative of the petitioner - dealer on the same day.

It is wholly unnecessary for us to examine these contentions, since the assessment order dated 03.05.2017 has not even been subjected to challenge in this Writ Petition. All these contentions, including the petitioner's claim of non-service of the assessment order, can only be examined in proceedings where the validity of the assessment order is subjected to challenge, and not in proceedings which preceded it. As an assessment order was passed subsequently, levying tax and twice the tax as penalty, on the petitioner, the consequential relief, sought for in this Writ Petition, to refund the amount collected by the check-post authorities, from the petitioner, along with interest cannot be granted.

Leaving it open to the petitioner to question the validity of assessment order in appropriate legal proceedings, the Writ Petition is dismissed. Miscellaneous Petitions pending, if any, shall also stand disposed of. However, in the circumstances, without costs.

RAMESH RANGANATHAN, J

KONGARA VIJAYA LAKSHMI,J

Date: 16.08.2018
usd