

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04-10-2019

C O R A M

The Honourable Mr. Justice S. MANIKUMAR
and
The Honourable Mr. Justice R. SURESH KUMAR

Writ Appeal No. 1145 of 2017

M/s. Vaishnavi Overseas
Rep. by its Authorized signatory,
M3, Second Floor, N.S. Road,
Kolkatta, West Bengal. ... Appellant / Petitioner

Vs

Commercial Tax Officer
Roving Squad-III,
Enforcement (Central),
Greens Road,
Chennai - 600 006. Respondent / Respondent

Prayer: Appeal filed under Clause 15 of Letters Patent Act,
against the order dated 20.07.2017 made in W.P.No.18530 of 2017.

W.P.No. 18530 of 2017: Petition filed under Article 226 of the
Constitution of India praying this Honourable Court to issue a
Writ of certiorarified Mandamus, Calling for the records of the
respondent in his proceedings in G.D.No. 1131/R.S-III/ C/2016-
17 dated 21.02.2017 and quash this detention order as illegal
and contrary to the provisions of the TNVAT Act and CST Act and
direct the respondents to release the goods.

For Appellant ... Mr.C.Bakthasiromoni

For Respondent ... Mr.Kanmani Annamalai
AGP (Tax)

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J U D G M E N T

This Intra Court Appeal was made against the order passed
by the writ court in W.P.No.18530 of 2017 by order, dated
20.07.2017.

2. The writ petitioner is the appellant herein who filed
the writ petition for the prayer of writ of certiorarified

mandamus to call for the records and quash the proceedings issued by the respondent in Proceedings GD.No.1131/RS-III/C/2016-17, dated 21.02.2017.

3. The case of the writ petitioner before the writ court was that, the petitioner is a consignor having office at West Bengal and in order to export the goods to a Malaysian company at Kuala Lumpur, the petitioner sent bundle of readymade garments to Chennai port and on the way, on reaching Chennai, it has been kept at a godown of one M/s.Sre Ranga Logistics at No.55, Sothupakkam Road, Chennai - 52.

4. According to the petitioner, the goods in question are meant for export and it has not been transported for any inter state sale. While so, when the goods were kept at the godown of the said logistics, the same was intercepted or inspected by the respondent / Revenue and according to them, the said goods had been kept there for the purpose of local sale or interstate sale, thereby without paying the necessary tax under TNVAT Act 2006 or in order to evade the said tax since the petitioner had kept the goods in the godown for the sale, the respondent / Revenue had issued a Goods Detention Notice, dated 21.02.2017 which is the order impugned. Challenging the same, the writ petition was filed.

5. The learned Judge in the writ court, after hearing both sides, by order, dated 20.07.2017 in the impugned Judgment, has confirmed the decision taken by the Revenue by taking into account the subsequent development, whereby on 06.03.2017, the Revenue issued a compounding notice, whereby directed the petitioner to pay tax due at 5% on the goods in question to the extent of Rs.10,61,845/- and accordingly, the learned Judge in the impugned Judgment, dated 20.07.2017, directed the petitioner to pay the said tax without prejudice to the right of the petitioner to avail the alternate remedy available under the provisions of the Act and on remittance of the one time tax levied or indicated by the Revenue through the compounding notice, dated 06.03.2017, the respondent Revenue were directed to release the goods forthwith.

6. Aggrieved over the said order passed by the writ court, dated 20.07.2017, the present appeal has been filed.

7. We have heard Mr.C.Bakthasiromoni, learned counsel appearing for the appellant and Mr.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent.

8. Mr.C.Bakthasiromoni, learned counsel appearing for the appellant has made submissions that, the goods were emanated

from Calcutta, where the petitioner is having or located its office, only for the purpose of exporting the goods to Kuala Lumpur, Malaysia through Chennai port and the same could not be materialised at a stretch. Accordingly, on reaching the goods at Chennai, it had been kept at the godown referred to above for a shorter period only for the purpose of shipping the same for export.

9. The learned counsel would further submit that, when all documents necessary for the purpose of exporting the goods had been submitted to the respondent / Revenue, they refused to accept the same and accordingly, they detained the same as if the goods had been kept in the godown of the said logistics, for the purpose of local sale evading the tax under the TNVAT Act.

10. The learned counsel would further submit that, if at all on any apprehension of evasion of tax, the Revenue wanted to have a clutch over the petitioner, they cannot detain the goods and in this context the learned counsel would submit that, at the most the Revenue would release the goods on getting the bank guarantee for the alleged tax evasion as proposed by the Revenue and therefore by the subsequent notice of compounding, dated 06.03.2017 demanding the petitioner to pay one time tax of more than Rs.10 lakhs could not have been made and therefore based on such compounding notice, since the learned Judge had been taking the issue in a different angle and directed the petitioner to pay the said amount and thereafter work out its remedy in the alternate forum, the said decision of the writ court is erroneous.

11. The learned counsel appearing for the appellant, in support of his contention, has relied upon a recent decision of a Division Bench of this Court, where, one of us was a party, in Tata Power Solar Systems Ltd., v. CTO, reported in (2017) 101 VST 16 (Mad).

12. By making all these submissions, the learned counsel appearing for the appellant would urge and canvass that, the impugned Judgment of the learned Judge of the writ court is liable to be interfered with and the writ appeal may be allowed.

13. Per contra, Mr.Kanmani Annamalai, learned Additional Government Pleader (Tax) appearing for the Revenue would contend that, during the course of conducting spot verification of the premises of the said logistics, it was found that the goods, i.e., readymade garments, had been kept in the godown without proper documents. The documents produced by the appellant as if they had registered under the Commercial Tax Department at West Bengal with IE Code and TIN number referred to in the bill of lading, invoice and the road challan, are all found to be bogus.

14. The learned Additional Government Pleader would further submit that, the godown where the goods have been kept also were not registered under the TNVAT and CST Act. Since the goods involved are readymade garments and they are liable to be taxed at the rate of 5% and on the guise of exporting the same to abroad to claim that the goods are exempted, the appellant was trying to evade the tax liability.

15. Only after noticing all these defects, the Commercial Tax Officer concerned, has issued the Goods Detention Order, dated 21.02.2017 and thereafter also since there had been no response from the appellant, the Revenue decided to issue a compounding notice, dated 06.03.2017 by imposing one time tax. However without responding to the same, the appellant has preferred the writ petition before the writ court and the same has been considered by the learned Judge and has rightly decided the same in favour of the Revenue through the impugned Judgment.

16. The learned Additional Government Pleader for the Revenue would also submit that, there is absolutely no document, whatsoever to substantiate the contention on the side of the appellant that the goods in question were emanated from Calcutta with registered IE code or TIN number and no documents, such as Bill of lading, invoice and road challan has been produced and what has been produced by them are absolutely bogus documents and therefore based on which, no exemption can be claimed by the appellant, as if that the goods in question were meant for export to Malaysia through the Chennai port and for the said purpose, during the interregnum, it had been kept at the godown. Therefore the learned Additional Government Pleader would submit that, the judgment impugned made by the learned Judge in the writ court is a justifiable and sustainable order, therefore it does not require any interference from this Court.

17. We have given our anxious consideration to the said submission made by the learned counsel appearing for the parties and we have perused the materials placed before this Court.

18. Admittedly the goods in question, according to the appellant, had been emanated from their office at Calcutta and it was meant for export to Kuala Lumpur, Malaysia through Chennai port and on the way it has been kept for short while at the godown and therefore it was not meant for any local sale or interstate sale, therefore the goods in question are not liable to be taxed under the provisions of the TNVAT Act. However, prima facie the documents produced by the appellant would disclose the fact that, the address given by the appellant does not have any IE code or TIN number, as the appellant had not registered its office at West Bengal under the said State

Taxation Law.

19. Moreover, those documents such as Bill of lading, invoice and road challan produced by the appellant were found bogus by the Revenue. In order to rebut the same, there has been no documents from the side of the appellant and no plausible or acceptable arguments have been made on the side of the appellant to rebut the said contention of the Revenue that those documents claimed to have been produced by the appellant are bogus.

20. In so far as the decision of a Division Bench of this Court cited by the appellant side in Tata Power Solar Systems Ltd., case referred to above is concerned, there is vast difference between the facts of the said case and the present one. In the said case, the appellant therein was registered with the Sales Tax authority in the State of Karnataka as well as the Central Sale Tax Authority. Here there is no such registration made by the appellant.

21. That apart, all relevant documents were produced by the party in the said case, which has been taken note of by the Division Bench at para 6.2 of the said order, which reads thus :

"6.2 In view of the consummation of the aforesaid transaction, it was arranged that the subject goods be transported to BCPL's place of business located in Dindigul, in the State of Tamil Nadu. For this purpose, the services of a transporter by the name of Shreeji Transport Services Pvt., Ltd., was availed of. As is evident from the record, the transporter carried with it, along with the subject goods, the following documents :

- (a) Original Bill of lading.
- (b) Copy of Bill of entry.
- (c) Original certificate of origin certifying that the goods originated from the Republic of China.
- (d) Form KK filed by the appellant's clearing and forwarding agent under the TNVAT Act, 2006.
- e) The invoice raised by the appellant on BCPL."

22. Moreover in that case, it was a concession given by the Revenue, as submitted by the learned Additional Government Pleader appeared in the said case that, the detained goods can be released to the appellant, if security is furnished by the appellant in respect of tax in terms of Section 67(4) of the TNVAT Act. This was also recorded by the Division Bench in the said Judgment cited by the appellant side.

23. Here in the case in hand, the appellant has not registered at West Bengal and with the same name, i.e., M/s.Vaishnavi Overseas, it was registered at Moradabad at Uttar Pradesh and the owner of the godown namely Sre Ranga Logistics, where the goods were kept in, also found to be an unregistered dealer. That apart none of the documents produced (not original, only photo copy) by the appellant found to be genuine, instead all those documents were found to be bogus one.

24. Therefore the appellant cannot take any shelter under the said Judgment of the Division Bench referred to above, as if that the appellant is also entitled to get the same relief of releasing the goods on furnishing the bank guarantee.

25. Taking note of all these factors only, the Revenue themselves came forward to issue the compounding notice and directed the appellant to pay tax at 5% on the said value of the goods to the extent of Rs.10,61,845/-. Therefore the learned single Judge of the writ court through the impugned Judgment, having taken note of the said development, had disposed the writ petition by directing the petitioner to remit the one time tax of Rs.10,61,845/- quantified by the Revenue in the compounding notice, dated 06.03.2017 before availing other alternative remedy available under the provisions of the Act. The learned Judge also on such payment of the tax, directed the Revenue to release the goods forthwith.

26. The said relief granted by the learned Judge in the impugned Judgment, in our considered opinion, is an acceptable and sustainable decision, as the appellant has not made out any case to release the goods in question either without paying the tax or with execution of bank guarantee alone, as in the case of the other one cited by the appellant in the Judgment referred to above.

27. Therefore for all these reasons, we deem it that, the Judgment impugned passed by the learned Judge in the writ court is a justifiable and sustainable one, accordingly it does not require any interference from this Court. Hence, this writ appeal fails and accordingly, it is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

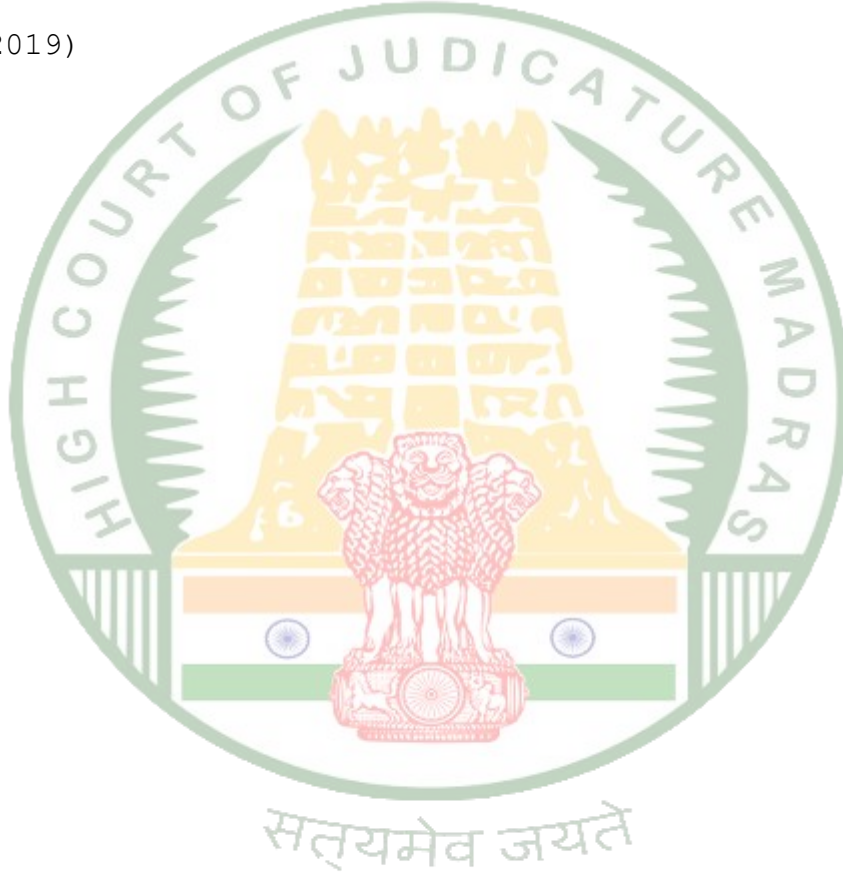
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To

The Commercial Tax Officer
Roving Squad-III,
Enforcement (Central),
Greams Road,
Chennai - 600 006.

W.A.No.1145 of 2017

SV(CO)
GN(01/11/2019)



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