BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2019

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.7088 to 7090 of 2014
and
W.M.P.(MD)Nos.1, 1, 1, 2, 2 and 2 of 2014

M/s. Shree Lakshmi Polymers,
Rep.by its Managing Partner-K.Sankar,
S.F.533/2, K.P.Kulam,
Renganathapuram (South) Village,
Krishnarayapuram Taluk,
Karur District. .. Petitioner in W.P.(MD)No.7088 of 2014

M/s.Shree Renga Polymers,
Rep.by its Managing Partner-K.Sankar,
S.F.638, K.P.r.Thottam,
Kalipalayam,
Puliyur CF,
Karur-639 114. .. Petitioner in W.P.(MD)No.7089 of 2014

M/s.MAP Rotoprints,
Rep.by its General Manager-V.Parthasarathy,
No.1/L/5, First Class (South),
Ganapathy Palayam,
Thanthonimalai PO,
Karur-639 005. .. Petitioner in W.P.(MD)No.7090 of 2014

Vs.

The Commercial Tax Officer,
Kulithalai Assessment Circle,
Kulithalai. ... Respondent in W.P.(MD)No.7088 of 2014

The Assistant Commissioner (CT),
Karur (East) Assessment Circle,
Karur. ... Respondents in W.P.(MD)Nos.7089 and 7090 of 2014

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorari, to call for the records on the file of the respondent in his impugned proceedings of the respondent made in TIN:33783721601/2013-14 dated 21.12.2013, TIN:33073765981/2013-14 and TIN:33083766897/2013-14 dated 04.04.2014 quash the same as illegal and contrary to the provisions of the Act.

For Petitioner : Ms.Hemalatha
For Respondents : Mr.R.Murugan
Additional Government Pleader
(in all petitions)

COMMON ORDER

A common order is passed in these writ petitions insofar as the issue covered is one and the same.

2. W.P.(MD)No.7088 of 2014 is filed by M/s. Shree Lakshmi Polymers, W.P.(MD)No.7089 of 2014 is filed by M/s.Shree Renga Polymers and W.P.(MD)No.7090 of 2014 is filed by M/s.MAP Rotoprints all in respect of the period 2013-14.

3. Two issues arise in these writ petitions. The first relates to a challenge to the validity of order of assessment and the second to alleged violation of Section 70 of the Tamil Nadu Value Added Tax, 2006 (in short Act).

4. Heard learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

5. The petitioner in all cases are dealers under the provisions of the Tamil Nadu Value Added Tax Act (in short 'Act') of goods falling under the sixth schedule to the Act. The applicable statutory provisions and rules require that where the goods are transferred by way of inter-state sale to other states, a transit pass is to be obtained by the dealer in question. The provisions of Section 70 of the Act deal with transit pass and state as follows:-

" 70. (1) (a) When a goods vehicle carrying any goods mentioned in the Sixth Schedule, coming from any place outside the State and bound for any other place outside the State, passes through the State, the owner or other person in-charge of such goods vehicle shall obtain a transit pass in the prescribed form and in the prescribed manner from the officer in-charge of the first check post or barrier, after its entry into the State.

(b) The owner or other person in-charge of the goods vehicle shall deliver within the prescribed period, the transit pass to the officer in-charge of the last check post or barrier, before the exit of the goods vehicle from the State.

(c) If the owner or other person in-charge of the goods vehicle fails to comply with clause (b), it shall be deemed that the goods carried thereby have been sold within the State by the owner or person in-charge of the goods vehicle, and such owner or person in-charge of the goods vehicle shall, notwithstanding anything contained in section 3, be jointly and severally liable to pay tax in accordance with the provisions of this Act, irrespective of the quantum of

turnover and also penalty which shall be one hundred and fifty per cent of such tax:”

6. In the present cases, the petitioners state that they have obtained transit passes but the same have not been produced at the final check point in the course of transportation of the goods from Tamil Nadu to West Bengal. The Officer in charge of the final check point thus detained the goods on the ground that transit passes were not produced. Notices appeared to have been issued to the dealer calling for their objections as to why assessments not be made bringing the turn over to tax under the State law.

7. In reply, the petitioner submitted that the transit passes had been misplaced. However, the goods had, in fact, crossed the borders of the State and this was evidenced by 'C' Form that had been issued in the assessment of the dealer in West Bengal, the consignee in the transaction. Notwithstanding the aforesaid reply, impugned orders have been passed to the effect that the non-production of the transit pass would result in taxation of the entire consignment under State law. It is as against the aforesaid order that the petitioners have filed the instant writ petitions. The provisions of Section 70 of the Act were challenged before the Supreme Court in the case of *Sodhi Transport Co. and another Vs. State of Utra Pradesh and another* [(1986) 62 STC 381 (SC)]. While upholding the virus of the provisions, the Supreme Court held that Section 70 imposes a rebuttable presumption.

8. The Commissioner has issued Circular No.26/2014 dated 16.06.2014 specifically dealing with the subject of non-submission of 'e' transit pass at check point making reference to various decisions of the Taxation Special Tribunal as well as specifically the judgment of the Supreme Court in the case of Sodhi Transport Co and another Vs. State of Utra Pradesh and another (supra). In that Circular, it has been stated as follows:-

“'*.....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......”*

9. Thus the State has accepted the position that non submission of transit pass is not fatal to the case of an assessee who may support its case with other evidences as well. In the present case, the goods have been moved to West Bengal under 'C' declaration form that has been produced by the consignee at West Bengal. This is not denied by the Assessing Officer, since at page 3 of the impugned order he makes reference to the fact that the petitioner has annexed the 'C' Declaration Forms in support of its claim regarding movement of the goods, along with its written objections.

10. Since I have quashed the assessments on merits, I see no reason to advert to the aspect of assumption of jurisdiction.

11. In the result, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

To

1.The Assistant Commissioner (CT),
Karur (East) Assessment Circle,
Karur.

2.The Commercial Tax Officer,
Kulithalai Assessment Circle,
Kulithalai.

W.P(MD)Nos.7088 to 7090 of 2014
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