BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2019

CORAM

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH**

W.P(MD)Nos.7885, 7886 & 7887 of 2014
and
W.M.P.(MD)Nos.1, 1, 1, 2, 2 and 2 of 2014

M/s. V.N.C.Steel,
Rep. by its Partner C.Basker,
No.18, Industrial Estate,
S.Vellalapatti,
Karur - 639 004. ... Petitioner in W.P(MD)Nos.7885 & 7886/2014

M/s. V.N.C.Steel Distributors,
Rep. by its Partner C.Basker,
No.17, Industrial Estate,
S.Vellalapatti,
Karur - 639 004. ... Petitioner in W.P(MD)No.7887/2014

Vs.

The Assistant Commissioner (CT),
Karur (East) Assessment Circle,
Karur,
Karur District. ... Respondents in all W.Ps'

COMMON RAYER: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 No.33563762753/2013-14 & 2013-14 dated 28.03.2014 and TIN No.3354376354/2013-14 dated 04.04.2014 quash the same as illegal and contrary to the provisions of the Act.

For Petitioner : Mr.S.Karunakar
(In all W.Ps')
For Respondents : Mr.A.Thiyagarajan,
(In all W.Ps') Government Advocate.

**COMMON ORDER**

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

2.W.P.(MD)Nos.7885 & 7886 of 2014 is filed by M/s.V.N.C.Steels for the period 2013-14 and W.P.(MD)No.7887 of 2014 is filed by M/s.V.N.C.Steel Distributors for the period 2013-14.

3.Heard learned counsel for the petitioner and the learned Government Advocate for the respondents.

4.The petitioner in all cases are dealers under the provisions of the Act in 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 be obtained by the dealer in question. The provisions of Section 70 of the Act deal with Transit pass and read 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:'

5.In the present cases, the petitioners state that though they have obtained transit passes, 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 proceeded to detain the goods on the ground that transit passes were not produced. Notices were issued to the dealer calling for their objections as to why assessments not be made bringing to tax the turnover under State law.

6.In reply, the petitioners emphasized that the goods have, in fact, moved to the other State. Admittedly, though the driver of the lorry had not surrendered the related e-Transit form at the check post, all material to evidence inter-state movement such as Forms and 'F' Form were produced. Notwithstanding the aforesaid reply, the officer proceeded to pass the impugned orders bringing to tax the entire consignment under State law on the ground that the transit pass has not been produced. It is as against the aforesaid order that the petitioners have filed the instant writ petitions.

7.The first challenge raised is to jurisdiction of the authority to have passed the impugned order itself. The impugned assessment has been completed in terms of the provisions of Section 27(1) (a) r/w 70 (2) (c) of the Act bringing the entire turnover to tax and imposing penalty. The provisions of Section 27 (1) (a) of the Act read as under:-

> '27. (1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of five years from the date of assessment order by the assessing authority, determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.'

8. The provision is intended to bring to tax escaped turnover or wrong availment of input tax credit. The applicability of the provisions is conditional upon the officer establishing escapement of turnover. Such escapement could be determined only pursuant to a determination of original turnover by the Assessing Authority and subsequent information having come to his notice in regard to escapement in turnover. In the present case, there admittedly, has been no original assessment at the first instance framed in terms of Section 22(4) of the Act. In such an event, I am of the considered view that the scheme of assessment in terms of the provisions of the Act do not provide for a re-assessment in the absence of a original assessment. On this score alone, these assessments are quashed.

9. I advert to the merits of the matter as well, for the sake of completion. Provisions of Section 70 were the subject matter of challenge before the Supreme Court in the case of Sodhi Transport Co. and another Vs. State of Uttar Pradesh and another [(1986) 62 STC 381 (SC)]. While upholding the constitutionality of the provision, the Supreme Court holds the conclusion that the goods in question have been sold inter-state, fastening a rebuttable presumption upon the assessee.

10.The Commissioner of Commercial Taxes 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 the judgment of the Supreme Court in the case of Sodhi Transport Co (supra) as well as various decisions of the Taxation Special Tribunal. The Circular, states 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.'



11. Thus the State has accepted the position that non-submission of transit pass is not fatal to the case of an assessee, who continues to be entitled to support its stand regarding inter-state movement with other acceptable evidences. In the present case, the goods have, admittedly been moved to other State under 'C' declaration form and this is not denied by the Assessing Officer (see paragraph No.3 of the impugned order where reference is made to other documents filed by the petitioners in support of the contention regarding inter-state movement of goods).

12. In the result, these writ petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

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

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

+1 CC to M/s.S.KARUNAKAR, Advocate ( SR-76211[F] dated 19/07/2019 )

+1 CC to M/s.SPL GP ( SR-76330[F] dated 19/07/2019 )

W.P(MD)Nos.7885, 7886 & 7887 of 2014
18.07.2019

ps
MS/12.09.2019/4P.5C