IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:14.02.2020

Pronounced on:19.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.23463 & 23464 of 2012
and
M.P.Nos.1 and 1 of 2012

Sri Adinath Traders
represented by its Proprietor
Kailash Kumar
124/5, Audiappanaicken Street,
Sowcarpet,
Chennai - 79. ..Petitioner in both petitions

Versus

1.The Commercial Tax Officer,
Roving Squad, (Enforcement),
O/o.The Deputy Commissioner (CT), (Enf.)
Villupuram.

2.The Assistant Commissioner (CT).
Sowcarpet I Assessment Circle
Chennai - 79. ..Respondents in both petitions

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records of the 1st respondent in GD No.8/2012-13 and 9/2012-13 dated 13.08.2012 and quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondents : Mr. R.Swarnavel, G.A.

COMMON O R D E R

By this common order both writ petitions are being disposed. The petitioner has challenged impugned proceeding of the 1st respondent dated 13.8.2012 bearing reference GD.No. 8/2012-13 and GD No. 9/2000 12-13. By the impugned proceeding, the petitioner has been called upon to pay a sum of Rs.3,51,900/-and Rs.3,51,900/-as compounding/composition fees for the alleged commission of the offence.

2.The case of the petitioner is that the petitioner acted as a consignment agent for M/s.UniK Traders Bangalore an importer of spices who had imported spices through Tuticorin Port. The imported consignment was seized and detailed at the Villipuram Check Post on 7.8.2012 when it was being transported to the petitioner. The consignments were released pursuant to a conditional order dated 10.8.2012 of this court in W.P.No. 21980-81 of 2012.

3.By the impugned order, the 1st respondent was directed to quantify the tax to be paid by the petitioner. The petitioner was directed to pay the amount subject to final adjudication to be passed by the jurisdictional authority. The 1st respondent was also directed to complete the adjudication process as expeditiously as possible.

4.Pursuant to the aforesaid order dated 10.8.2012 of this court in W.P.Nos.21980-81 of 2012 and compliance thereof, the detained goods were released. Thus, the petitioner has accepted the said order. Thereafter, the 1st respondent passed the impugned orders and has called upon the petitioner to pay the aforesaid amount as the composition/compounding fee under section 72 of the Tamil Nadu Value Added Tax Act, 2006 for the alleged offence committed by the petitioner under Section 71 (1) (a), (b) and Section 71 (3) (e) of the aforesaid Act in lieu of prosecution.

5.It is the case of the petitioner that the 1st respondent erred in passing the impugned order which are titled as “Notice” by calling upon the petitioner to pay the aforesaid amounts as compounding/composition fee in lieu of prosecution as the 1st respondent has no jurisdiction to pass such orders under section 72 of the Tamil Nadu Value Added Tax Act, 2006.

6.The learned counsel for the petitioner relied on the following decisions of this court/orders:-

(i)Order dated 08.01.2018 made in W.P.No.22484 of 2013 - Shija Rubber Vs. The Check Post Officer;

(ii)Order dated 25.06.2015 made in W.P.Nos.18409 & 18410 of 2015 - M/s.Raj Glass & Plywoods Vs. The Assistant Commissioner (CT);

(iii)Order dated 15.10.2014 made in W.P.Nos.27499 & 27500 of 2014 - M/s.Manickam Edible Oils (P) Ltd., Vs. The Deputy Commissioner Tax Officer;

(iv)Order dated 02.12.2014 made in W.P.No.31357 of 2014 - M/s.So.Ro.Import & Export Company Vs. The Deputy Commercial Tax Officer and Check Post Officer;

(v)Circular No.33/2014 dated 17.07.2014 issued by the Commissioner of Commercial Taxes;

(vi)Order dated 14.11.2016 made in W.P.Nos.39662 & 33933 of 2016 - M/s.Jagadamba Traders Vs. The Commercial Tax Officer.

7.The 2nd respondent has filed a detailed counter and an additional counter on behalf of the respondents justifying the detention and the impugned order passed under section 72 of the Tamil Nadu Value Added Tax Act, 2006.

8.I have heard the learned counsel for the petitioner and the respondent. I have also peruse the documents produced before me. The importer Unik Traders, Bangalore imported poppy seeds through the Tuticorin port and had purportedly appointed the petitioner as its consignment agent and had issued a consignment note and two e-Sugam Forms dated 23.07.2012..

9.The movement of the imported consignments were on the strength of these E-SUGAM Forms issued under Section 53 (2-A) of the Karnataka Value Added Tax Act, 2003 Rule 157 (1) (a) of the Karnataka Value Added Tax Rules, 2005. The importer had arranged for transportation of the goods through 2 separate lorries and had issued consignment notes dated 23.7.2012. The 2 lorries were detained along with the consignment by the Roving Squad (Enforcement) on 7.8.2012 on the ground that under section 16 (1) of the Tamil Nadu Value Added Tax Act, 2006 in case of goods imported into the State, the stage of levy of tax shall be deemed to commence the stage of the sale effected immediately after the import of such goods. The detention notices dated 7.8.2012 states that the importer namely Unik Traders, Bangalore had effected sale immediately after the import of the above goods at Tuticorin, Tamil Nadu and hence the sale by the importer was liable to tax under the provisions of the Tamil Nadu Value Added Tax Act,, 2006 and since the seller (importer) had disposed the imported goods inside the State of Tamil Nadu and being unregistered dealer in Tamil Nadu, the petitioner was liable to pay tax. It is further stated that in E-SUGAM Form issued under Section 53 (2-A) of the Karnataka Value Added Tax Act, 2003, Rule 157 (1) (a) of the Karnataka Value Added Tax Rules, 2005, it has been stated that the goods was being moved from Bangalore whereas the goods actually moved from Tuticorin.

10.It was further stated that having failed to adopt the provisions of section 5 (2) of the CST Act, 1956 being a pre-condition that the goods had to be sold when the goods are in the high seas, such disposal of the goods after regular import and in the circumstances where the seller being an unregistered dealer would amount to committing of an offence under section 71 (1) (b) of the Tamil Nadu Value Added Tax Act, 2006.

11.The detention notices specifically called upon the petitioner to inform the owner of the goods to appear before the 1st respondent within 3 days from the date of receipt of the notice. The driver of the vehicle was directed to keep the goods in his own risk along with the vehicle at the Check Post.

12.Instead, the petitioner filed a writ petition before the court in W.P.Nos. 21980- 21981 of 2012 and got the goods released. It is thereafter the impugned order albeit notices have been issued giving an option to the petitioner to pay amounts under section 72 of the Tamil Nadu Value Added Tax Act, 2006.

13.Under section 72 of the Tamil Nadu Value Added Tax Act, 2006 the prescribed authority may whether on an application made to it in this behalf or otherwise give any person, who has committed or is reasonably suspected of having committed an offence under the Act, an option to pay within a specified period, by way of composition of such offence such amounts under sub clause (a) or under sub clause (b) of section 72. It is only an option.

14.The petitioner is registered before the 2nd respondent and holds a valid registration under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

15.Though the petitioner claims to be consignment agent who acted on behalf of M/s.Unik Traders, Bangalorehe importer, the circumstances indicate others. Though the detention notice dated 7.8.2012 called upon the owner also to appear, yet there is no representation before the 1st respondent by the saidM/s.Unik Traders, Bangalore. Instead of any response from the said importer namelyM/s. Unik Traders, Bangalore, the petitioner filed the above mentioned two writ petitions to have the goods released. Thus, confirming the position of the respondents that there was a sale between M/s. Unik Traders, Bangalore and the petitioner and that the goods had not suffered tax on its sale. It would have been different ifM/s. Unik Traders, Bangalore had come forward and filed writ petitions and got the goods released subject to terms and conditions that may have been imposed at that stage. Thus, it stands concluded that the provisions of section 72 (1) (a) of the Tamil Nadu Value Added Tax Act, 2006 stood attracted in as much as there was a failure to pay tax and therefore in addition to tax payable, a sum of money not exceeding Rs.2000/- or double the amount of tax payable whichever is greater can be collected under the Act from the purse.

16.Therefore, the question to be answered is whether the 1st respondent Commercial Tax Officer, Roving Squad Enforcement in the office of the Deputy Commissioner (Commercial Taxes) (Enforcement) at Villupuram was competent to initiate proceedings for computing of the offence under Section 72 of the Tamil Nadu Value Added Tax Act, 2006.

17.The expression used in Section 72 of the Tamil Nadu Value Added Tax Act, 2006 is “prescribed authority”. There is no definition for the expression “prescribed authority” in Section 2 of the Act. At the same time under Section 67 of the Act, with a view to prevent or check evasion of tax at that the Act, the government may in any place or places in the State may by notification, direct the setting up of Check-Posts or erection of barriers or both, at such place or places as may be notified.

18.At every check post or barrier mentioned in Section 67 (1), or at any other place when the required by any “officer prescribed” by the Government in this behalf, the driver or any other person in charge of any goods or both shall stop the goods vehicle or both, as the case may be and keep it stationary as long as may be reasonably necessary and allow the officer in-charge of the check post or barrier or the officer prescribed as aforesaid, to examine the contents in the goods, vehicle or both and inspect all documents relating to the goods carried which are in the possession of such driver or other person in charge, for the purpose of ascertaining whether there has been any sale or purchase of the goods carried and in case there was sale or purchase of the goods carried, whether such a sale or purchase is liable to tax under the Act and if so-

(a) whether such tax has been paid, or

(b) whether the sale or purchase of the goods carried has, for the purpose of the payment of tax under this Act, been properly accounted for in the documents referred to in sub-section (5).

19.As per Section 67(3) of the Act, if, on such examination and inspection it appears -

(a) (i) that the tax, if any payable under this Act in respect of the sale or purchase of the goods carried, has been paid, or

(ii) that the sale or purchase of the goods carried has, for the purpose of payment of tax under this Act, been properly accounted for in the documents referred to in sub-section (5), the said officer shall release the goods vehicle or boat with the goods carried; or

(b) (i) that the tax, if any, payable under this Act in respect of the sale or purchase of the goods carried, has not been paid; or

(ii) that the sale or purchase of the goods carried has, for the purpose of payment of tax under this Act, not been properly accounted for in the documents referred to in sub-section (5), and if the said officer is satisfied, after making such enquiry as he deems fit, that with a view to prevent the evasion of tax payable in respect of the sale or purchase of the goods carried, it is necessary to detain the goods, he shall detain the goods and direct the driver or any other person in charge of the goods vehicle or boat, or the consignor or the consignee,

(i) to pay such tax; or

(ii) to furnish adequate security in such form and in such manner and to such authority as may be prescribed, on behalf of the person liable to pay such tax.

20.As per Section 67(4) of the Act, if the tax is paid or the security is furnished, then the goods so detained shall be released forthwith. Thus, the officers at the check post/barriers are the proper officers empowered to call upon the driver or the person in charge of the vehicle/boat to pay tax or to furnish adequate security in such form and in such manner and to such authorities as may be prescribed, on behalf of the person liable to pay tax. It is only on payment of such tax, the detained goods can be released.

21.In fact the petitioner or the purported owner who importer as the case may be ought to have paid the tax and got the goods released. There is no necessity to file a writ petition. Instead, the petitioner espoused the cause of the purported owner (importer) by filing a writ petition directly before this court. It was altogether unnecessary in the light of the fact that the authorities acting under the act are duty bound to release the goods on payment of tax as per section 67 (4) Of the Tamil Nadu Value Added Tax Act, 2006.

22.Further, as per rule 15 of the Tamil Nadu Value Added Rules, 2007 the officers of the Commercial Tax Department not below the rank of Deputy Commercial Tax Officer (with effect from 2.7.2012) shall be the "officer prescribed" for the purpose of section 65, 66, 67, 68 and 69. The expression "said officer" shall mean the officer prescribed under sub rule (1) or the officer in charge of the check post or barrier.

23.Thus, there is no difficulty in concluding that the 1st respondent was competent to not only detained the goods under section 67 of the Tamil Nadu Value Added Tax Act, 2006 but also was competent to issue notice/order under section 72 of the aforesaid Act. There is no illegality.

24.In the light of the discussion, I find no merits in the present writ petitions. Therefore, the writ petitions are dismissed as devoid of merits. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Arul

To

1.The Commercial Tax Officer,
Roving Squad, (Enforcement),
O/o.The Deputy Commissioner (CT), (Enf.)
Villupuram.

2.The Assistant Commissioner (CT).
Sowcarpet I Assessment Circle,
Chennai - 79.

AD(CO)
RN(09/06/2020)