(2014) 08 MAD CK 0121

In the Madras High Court

Case No : W.P. (MD) No. 13707 of 2014

L and T Valves Ltd. APPELLANT

Vs

Assistant Commercial Tax Officer RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(1)
Tamil Nadu Value Added Tax Act, 2006 — Section 54, 67(5), 69, 71(5)(a), 72(1)(a)

Citation : (2014) 74 VST 203

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—The petitioner seeks for issuance of writ of certiorari to quash the detention notice dated August 7, 2014. The petitioner is a registered dealer on the file of the Assistant Commissioner, Anna Salai II, Assessment Circle, Chennai-6. The petitioner purchased the body cast from outside the State as a sale falling under section 8(1) of the CST Act, 1956, and on issuance of form C from the registered dealers.

2. According to the petitioner, the body cast purchased is entrusted by the petitioner to job-workers for the purpose of radiographic test and this is a pure service job and there is no transfer of material involved from the job-workers to the petitioner and the title to the body cast remained with the petitioner. The petitioner placed a purchase order with a company at Maharashtra and the purchase order showed that the same has been placed by the factory of the petitioner at Coimbatore. The body cast was dispatched by the vendor to the factory of the petitioner at Coimbatore and the lorry receipt prepared by the transporter indicating the consignee as the petitioner''s factory Coimbatore. According to the petitioner while the goods are on transit, they are issued instructions to transit the goods to the job-worker at Trichy. In the interregnum, the goods were intercepted and they detained on the ground that the documents were not accompanied the goods and that the vendor has consigned the goods to the petitioner''s factory at Coimbatore and the petitioner is not entitled to divert

the goods to Trichy that too without any document accompanied the goods. Therefore, by the impugned detention notice, the petitioner''s goods were detained and the authority demanded tax of Rs. 35,361 together with compounding fee of Rs. 70,722 in toto a sum of Rs. 1,06,083, this notice has been challenged by the petitioner in this writ petition.

3. The learned counsel appearing for the petitioner submitted that there is neither an attempt nor evasion of tax payable under the Act, and in the instant case no sale was involved only a service job and the object of movement of the goods to super quality services was to ensure that a "service" of testing was conducted. Further, it is contended that there was a change of vehicle at Coimbatore for the movement of the consignment Trichy and consequently, the lorry receipt mentioned the name of a different vehicle and the respondent has wrongly written the service provider as a registered dealer and the consignee was only involved in providing pure labour activity and did not require registration under the provision of the Tamil Nadu Value Added Tax Act, 2006. It is further contended that though the form JJ was not accompanying the consignment since the purpose and intention of the movement was only for a labour work. Therefore, it is submitted that the respondent erroneously demanded compounding fee and no offence has been committed by the petitioner. On the above grounds, the learned counsel for the petitioner seeks for setting aside the impugned detention notice and release the goods.

4. The learned Additional Government Pleader appearing for the respondent contended that the vehicle was intercepted at Vairamadai in Karur District on August 7, 2014 and during the inspection, it was found that body cast industrial valves have been transported from Coimbatore to Trichy without any document such as invoice, delivery note, form JJ, goods vehicle record and log book which are required in terms of rule 15(3)(a) of the TNVAT Rules read with section 67(5) of the VAT Act (Act). It is further submitted that on verification of the documents, the driver of the lorry has submitted invoice No. 01153 dated July 30, 2014, which was consigned from Maharashtra to Coimbatore. But the goods were moved to Trichy without any bill and the petitioner utilized the same invoice dated July 30, 2014, which was utilised for transporting the goods from Maharashtra to Coimbatore, the same invoice has been endorsed in manuscript by the dealer name of "Super Quality Service, Trichy". It is gross violation of rule 15(3) of the TNVAT Rules read with section 69 of the VAT Act. Further it is submitted that the Super Quality Service, Trichy has already stopped the business as per the preliminary verification conducted by the respondents.

5. In the above factual background, the impugned detention was issued demanding tax and compounding fee. Further it is contended that the explanation given by the petitioner stating that subsequently, the goods were diverted to Trichy for labour work by e-mail, is it clear after-thought to overcome the offence committed by the petitioner under section 71(5)(a) of the Act. It is further contended that the Super Quality Service, Trichy has stopped business as

per the preliminary verification of the respondent. Therefore, the actual finding available to the petitioner is either to accept the compounding fee or in the event to approach the competent criminal court for release of vehicle. Further, it is submitted that but for the inspection the transaction would not come to light and it is nothing but willful suppression of transaction and evasion of tax and loss to the exchequer. For the purpose of release of vehicle, the petitioner has to make a payment as per section 72(1)(a) one time tax payable and double the amount of tax payable as a compounding fee. Therefore, it is submitted that the petitioner pleads the said detained goods may be released.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. The respondent detained the goods when the goods were diverted to Trichy while all the relevant documents show that the goods were meant to be delivered at petitioner''s factory at Coimbatore. It is an admitted fact that the goods were not accompanied by any of the documents as required under the Act and Rules framed thereunder. It has to be seen that as to whether the diversion of goods was bona fide when it was not accompanied by records and what would be the effect of the preliminary report received by the respondent stating the Super Quality Service, Trichy has stopped business activities. In such circumstances, this court is of the view that the petitioner has not made any prima facie case for issuing interim direction to permit the petitioner to take the goods without even payment of tax or payment of compounding fees, and on the ground raised by the petitioner, this court is not inclined to quash the detention notice.

8. The learned counsel for the petitioner submitted that the items are high value items and the petitioner is a registered dealer and they should not be foreclosed from exhausting the remedy available under the Act, solely on the ground that tax and compounding fees is being collected from them. Further on facts, this court is not inclined to permit the petitioner to take away the goods without complying the requirements under the detention notice without prejudice to his rights to file a revision before the Joint Commissioner under section 54 of the Act. In the result, this writ petition is disposed of by directing the petitioner to pay the tax and compounding fee as demanded by the respondent within a period of two weeks from the date of receipt of a copy of this order. On such payment, the goods in question shall be released to the petitioner. It is made clear that the payment made by the petitioner is without prejudice to the rights of the petitioner to file a revision before the Joint Commissioner which shall be considered on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

