(2017) 03 AP CK 0018

In the Andhra Pradesh High Court

Case No : 8762 of 2017

M/s. Aditya Rice Industries — APPELLANT

Vs

The Assistant Commercial Tax Officer, Miryalaguda Circle, Nalgonda District & others — RESPONDENT

Date of Decision : 23-03-2017

Acts Referred:
Andhra Pradesh Reorganisation Act, 2014, Section 101, Section 102 -
Telangana Value Added Tax Rules, 2005, Rule 55(2) -
Telangana Value Added Tax Act, 2005, Section 2(17), Se

Citation : (2017) 03 AP CK 0018

Hon'ble Judges : V. Ramasubramanian, J. Umadevi

Bench : DIVISON BENCH

Advocate : S. Krishna Murthy, T. Vinod Kumar

Judgement

1. The petitioners, who imported paddy from Bihar into the State of Telangana purportedly from an unregistered dealer and whose goods were detained by the respondents, have come up with these writ petitions challenging show cause notice for imposition of penalty.

2. Mr. S. Krishna Murthy, learned counsel for the petitioners and Mr. T. Vinod Kumar, learned special standing counsel for the Commercial Tax.

3. Since the facts out of which all these writ petitions arise are almost identical, it is enough to state the facts out of which W.P.No.8887 of 2017 arises. The petitioner in this case admittedly placed an order for supply of paddy from a dealer in Bihar. According to the respondents, the said dealer is an unregistered dealer.

4. The goods admittedly arrived by train in Railway Wagons. It is the case of the petitioners that when the goods were off loaded from the railway wagons and loaded on to the lorries, the respondents intercepted the same and threatened to detain the goods on the ground that the goods were not accompanied by

advance way bills mandated under Rule 55 (2) of the Telangana Value Added Tax Rules. Therefore, the petitioners claim that they paid tax @ 5% on the value of the goods as demanded by the respondents, in order to avoid the risk of the goods getting detained and getting exposed to the vagaries of weather.

5. After the petitioners paid the tax as demanded by the respondents and cleared the goods, they were visited with the show cause notices for imposition of penalty @ 100% under Section 45 (7) (a) of the Telangana Value Added Tax Act, 2005. Therefore, the petitioners have come up not only with a challenge to the show cause notices but also demanding refund of the tax paid on the ground that the procedure adopted by the respondents was not correct.

6. Mr. S. Krishna Murthy, learned counsel for the petitioners raised 3 contentions namely: 1) that when the goods are imported from outside the State through railway wagons, the goods need not be accompanied by advance way bills, since railway wagons do not come within the purview of the definition goods vehicle under Section 2 (17) of the Telangana Value Added Tax Act, 2005; 2) that in any case the power of detention can be exercised by the respondents only at check posts and that the railway lines or stations cannot be construed as check posts; and 3) that in any case without an order of assessment, there cannot be a levy and collection of tax.

7. We have carefully considered the above submissions.

8. On the first contention, it is necessary to take note of the definition of the expression goods vehicle under Section 2 (17), which reads as follows: (17) Goods vehicle means any motor vehicle constructed or adapted for the carriage of goods, or any other motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers and also includes every wheeled conveyance.

9. A careful look at the definition of the expression would show that any motor vehicle constructed or adapted for the carriage of goods or any other motor vehicle not so constructed or adapted, when used for the carriage of goods solely or in addition to passengers, is primarily taken to be a goods vehicle. In addition, every wheeled conveyance is also included within the definition of the expression goods vehicle, by virtue of the last part of the definition. Therefore, to say that the railway wagons are excluded from the definition, may not be proper.

10. In a case of this nature, the test to be applied is the common parlance test. If so applied, the phrase wheeled conveyance would take within its purview even railway wagons. Therefore, the contention that for carrying goods through railway wagons no advance way bills are necessary, may not be proper.

11. As part of the first contention, Mr. S. Krishna Murthy, learned counsel for the petitioners also submitted that paddy is not classified as a sensitive good, under the Circular dated 16-12-2015. The said circular lists out commodities which come within the purview of Rule 55 (2) of the Telangana Value Added Tax Rules,

2005. About 27 items are included in the said circular. Paddy is not one of the items included in the said circular.

12. But it is pointed out by Mr. T. Vinod Kumar, learned special standing counsel that by an earlier notification bearing CCTs Enft. Ref.No.D2/723/05, dated 25-03-2010, Paddy and Rice were also notified as sensitive commodities for the purpose of Rule 55 (2) with effect from 31-03-2010. Therefore, it is the contention of Mr. T. Vinod Kumar, learned special standing counsel that paddy and rice continue to be sensitive commodities notified within the purview of Rule 55 (2).

13. In answer to the above contention, it is submitted by the learned counsel for the petitioners that after the Reorganisation of the State, the Commissioner of Commercial Tax issued a circular bearing No.D2/723/05, dated 16-12-2015 under the Telangana VAT Rules, 2005 and that therefore, the circular dated 25-03-2010 cannot be relied upon.

14. But we do not think so. Section 102 of the Andhra Pradesh Reorganisation Act, 2014 makes it clear that notwithstanding that no provision or insufficient provision has been made for the adaptation of a law made before the appointed day, any court, tribunal or authority required or empowered to enforce such law may, for the purpose of facilitating its application in relation to either of the States, construe the law in such manner, without affecting the substance, as may be necessary. Therefore, unless the notification issued by the Combined State has been revoked or adapted with modifications in terms of Section 101 of the A.P. Reorganisation Act, 2014, the notification dated 25-03-2010 cannot be taken to be annulled. Hence, the first contention of the petitioners does not deserve acceptance.

15. The second contention of the petitioners is that railway station is not a check post for the respondents to detain the goods. On this contention, there is a small area of dispute with regard to the facts. According to the petitioners, the goods were detained before being loaded on to the lorries. According to the respondents, the goods were detained only after they were loaded on to the lorries and the lorries left the railway station.

16. Into such a disputed question of fact, we cannot go, in view of our limitation. Today the petitioners have already paid the tax as demanded. Therefore, it may not be open to them to invite us to record a finding on a disputed question of fact after having accepted the demand and made payment of the tax.

17. In so far as the third contention is concerned, the records produced by the learned special Standing counsel show that the Association of dealers in paddy, appear to have made a joint representation and it is at their intervention that the tax amount at 5% had been paid by the petitioners. Therefore, the question of there being no assessment order may not arise. Irrespective of the consequences, it was always open to the petitioners to contest the detention and wait for an order of assessment. If this had been done, the second and third

contentions could have been tested legally. At this stage, it is not possible to put the cart before the horse. Therefore, we are of the considered view that all the three contentions cannot be accepted.

18. But still there is one area left over. By the impugned show cause notices, a demand to the extent of 100% of the penalty is made under Section 45 (7) (a) of the Act. This provision enables imposition of penalty up to a maximum of twice the amount of tax. In other words, the Officer has the discretion to impose a penalty ranging from 1% to 200%. The show cause notice proposes to levy penalty at 100%. Considering the fact that the dealers have paid the tax at the place where the goods were threatened to be detained and also considering the fact that they have chosen to come up only after the issue of show cause notices for penalty, we are of the view that the Assessing Officer could be considerate, while considering the objections of the petitioners. This is a small reprieve that could be granted to the petitioners on account of their conduct. Hence, all the writ petitions are disposed of to the following effect: 1) the prayer for refund of tax already paid is rejected;

2) the petitioners shall submit their objections to the show cause notices within a period of 15 days from the date of receipt of a copy of this order;

3) The Assessing Officer shall take into account the mitigating factors, as indicated above and levy a penalty that will be proportionate to whatever the petitioners have done. In other words, the Assessing Officer shall show lenience in the matter of imposition of penalty.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.