(2015) 12 MAD CK 0075

In the Madras High Court

Case No : W.P. Nos. 38618, 38619 of 2015, M.P. Nos. 1 and 2 of 2015

Prime Hitech Engineering Ltd. APPELLANT

Vs

The Commercial Tax Officer (CT) and Others RESPONDENT

Date of Decision : 08-12-2015

Acts Referred:

Central Sales Tax Act, 1956 — Section 5(2)
Tamil Nadu Value Added Tax Act, 2006 — Section 70

Citation : (2015) 12 MAD CK 0075

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : C. Rekha Kumari, for the Appellant; S. Kanmani Annamalai, AGP(T), for the Respondent

Final Decision : Disposed Off

Judgement

R. Mahadevan, J.—Since the issue involved in these two writ petitions are common in nature and the parties are also one and the same, the writ petitions are taken up together for disposal and a common order is passed.

2. The writ petitions are filed challenging the Goods Detention Notices dated 21.11.15 and connected notice dated 24.11.15 and to direct the respondents to release the consignments detained on 21.11.2015.

3.1 The petitioner Company is involved in manufacture of transformer tank, power and energy sector equipments. The petitioner has registered office at New Delhi and manufacturing Units at Naidupetta, Gudur, Andhra Pradesh. The petitioner has also registered on the files of the Assessing Officer at New Delhi and Naidupetta Circle, Andhra Pradesh and has also obtained registration under APVAT Act at Naidupetta, Gudur with effect from 01.06.2011. The Naidupetta, Gudur manufacturing unit is situated in Special Economic Zone and declared by the Government of India as SEZ Unit in Notification No. 26(D)66/2011-SSSEZ(VSEZ) 34, 70 dated 27.06.2012 and hence in view of the said notification, the manufacturing unit at Andhra Pradesh is enjoying the benefits of exemption and deduction as SEZ Unit.

3.2 According to the petitioner, the Naidupetta Unit has been declared as SEZ unit and regularly being assessed by its Assessing Officer, since 2011. The petitioner Company has also obtained Import Export Code Number at Naidupetta. Further, according to the petitioner, the manufacturing Unit is regularly importing materials through Chennai Port and take the entire consignment to the registered premises at Naidupetta, situated in SEZ area.

3.3 That apart, according to the petitioner, they purchased goods on high seas under Section 5(2) of the CST Act, from M/s. Prime Power Corporation Limited, New Delhi and filed Bill of Entry in its own name and cleared the consignment. The raw materials which are purchased on high seas and cleared through Chennai harbour are used in the manufacture of transformer tank, power and energy sector equipments and exported. The Andhra Pradesh unit, being SEZ units, the major portion of the finished products are exported to foreign countries. Hence, whatever materials are purchased or imported by the manufacturing unit are mainly meant for export outside the country.

3.4 Further, according to the petitioner, the petitioner''s Unit at Naidupetta purchased imported MS Plates on high seas from M/s. Prime Power Corporation Limited and the same was cleared by the petitioner''s clearing agent by filing Bill of Entry dated 28.08.2015 and thereafter the same was stored in the godown of the clearing agent and thereafter transported the same through Form KK Nos. 20 and 21 dated 20.11.2015. While transit, the goods were accompanied by documentary evidences like Bills of Entry dated 28.08.2015, Packing Slip, Form KK and such other relevant documents. However, the respondent has detained the consignments on the ground that the petitioner failed to enclose Transit Pass in Form LL, as required under Section 70 of the TNVAT Act for VI Schedule goods.

3.5 According to the petitioner, there was no willfulness on the part of the petitioner in not obtaining a transit pass, since they were advised that the same is not required for the goods which are imported from a foreign country and bound to be transported SEZ unit outside the State. According to the petitioner, it is an admitted fact that there was no transaction of any sale or purchase inside the State but imported goods are being transported by an importer to its own registered place of business, which is a SEZ unit. It is not the case of the respondent that the goods were not accompanied by other documentary evidences. When such being the case, the detention of goods on the sole ground that it was not accompanied by transit pass is unjustified.

3.6. Further, according to the petitioner, the respondent had issued two Goods Detention Notices in G.D. Nos. 6635 and 6636 dated 21.11.2015 for 2 different Form KK which accompanied the consignment and a single compounding notice dated 24.11.2015 has been issued, quantifying the tax amount of Rs. 5,68,832/- and "C" fees of Rs. 11,37,664/- for both the GD notices. Hence, the petitioner is before this Court challenging the said notices.

4.1 The learned counsel for the petitioner submitted that the goods detention notices dated 21.11.2015 and the connected notice dated 24.11.2015 are liable to be quashed as being contrary to the principles of natural justice, without jurisdiction and authority to law. Further, according to her, the respondent ought to have seen that it is an imported consignment (high sea purchase), which was moving to a SEZ unit and hence the requirement of transit pass for imported goods is not sustainable. Adding further, learned counsel for the petitioner would submit that there is no tax liability inside the State and mere non accompanying of transit pass would not lead to any revenue loss as the petitioner''s company is a SEZ unit, which is not involved in any kind of sale transactions inside the State of Tamil Nadu. Adding further, learned counsel for the petitioner would submit that though pointing out the failure to generate the transit pass, the goods transported got detained, subsequent to the same, the petitioner generated the forms and produced the same, but the respondent detained the goods.

Basing on these, the learned counsel for the petitioner has sought for allowing of the writ petitions.

5. The learned Additional Government Pleader (Taxes) on the other hand would submit since the petitioner has failed to comply with the provisions of the TNVAT Act, 2006 for transport of VI Schedule goods, the petitioner is liable to pay as per Section 70 of the TNVAT Act and hence the learned counsel has prayed for dismissal of the writ petitions.

6. At this juncture, the learned counsel for the petitioner would submit that the petitioner is willing to pay the actual tax to be paid for the purpose of release of goods and on such payment, the goods detained may be directed to be released.

7. In view of the submissions made by the learned counsel for the petitioner that the petitioner is willing to pay one time tax and in order to give a quietus to the issue, for the purpose of release of goods, without prejudice to their right to agitate the issue with respect to tax as well as compounding fee before the assessing authority or the revisional authority in the manner known to law, on payment of one time tax viz., Rs. 5,70,000/- by the petitioner, the respondents, shall release the consignments in question forthwith.

With the above directions, the writ petitions are disposed of. No costs. Connected miscellaneous petitions are closed.

