(2015) 07 MAD CK 0087

In the Madras High Court

Case No : W.P. No. 17145 of 2015

Tvl. Sical Multimodal & Rail Transport Ltd. APPELLANT

Vs

Assitt. Commr. (CT), Chennai RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:
Customs Act, 1962 — Section 150, 48
Tamil Nadu Value Added Tax Act, 2006 — Section 42(2), 45, 45(1)(b)

Citation : (2015) 325 ELT 332

Hon'ble Judges : T. Raja, J.

Bench : Single Bench

Advocate : R. Sivaraman, for the Appellant; Manoharan Sundaram, AGP(T), for the Respondent

Judgement

T. Raja, J.—The petitioner has filed the present writ petition challenging the impugned notices dated 3-6-2015 and 6-6-2015 issued by the first respondent. In the first notice, the petitioner was asked to pay a sum of Rs. 75,27,657/-, which was pending towards the sales tax arrears payable by the second respondent. In the second notice, the first respondent requested the third respondent Bank not to release the bank account of the petitioner Company without prior intimation to their office. It is the claim of the petitioner Company that the petitioner Company, having specialization in Container Freight Services (CFS) for their customers, obtained necessary permissions for CFS facilities vide Public Notice 172/1997, dated 15-10-1997, from the Office of the Commissioner of Customs, Government of India. It is their further claim that one M/s. Ayya Steels, the second respondent herein, had imported certain goods in the nature of sheet cuttings of various sizes and they were issued with a Bill of Lading dated 10-5-2013 by their carrier/Mediterranean Shipping Company S.A. Though the goods in question reached the Chennai Harbour, the second respondent had not cleared the goods within the stipulated time, therefore, the Liner, namely the Mediterranean Shipping Company S.A. had moved the goods to the petitioner''s CFS. It is further stated that such movement of the goods have been intimated to the Superintendent of Customs, CMFC, Customs House, Chennai, vide letter dated 16-6-2013.

2. By narrating the abovesaid facts, learned counsel for the petitioner submitted that since the cargo containing the goods of the second respondent was lying at the CFS facility of the petitioner Company from 17-6-2013, they initially had issued notice under Section 48 of the Customs Act on 22-7-2013 requesting the second respondent to clear the said cargo, failing which necessary steps would be taken to dispose of the said goods. It is further submitted that since the second respondent on receipt of such notice failed to reply for the same, they have issued another notice dated 8-8-2013 under Section 48 of the Customs Act, reminding the second respondent again to collect their cargo. However, the second respondent failed to reply to any of their notices even after receiving several reminders from the petitioner Company. Such details had also been intimated to the Assistant Commissioner of Customs (Imports) by the petitioner Company vide letter dated 1-3-2014. Finally, since the cargo containing sheet cuttings un-cleared for more than a period of one year, as per the provisions of the Customs Act, 1962, the petitioner Company sold the same to M/s. New Golden Steels, for a sum of Rs. 40,77,000/- vide E-auction dated 28-11-2014. Therefore, it is the contention of the petitioner that after holding the E-auction, it is incumbent on the part of the petitioner Company to statutorily comply with the requirement of the Customs Act, for, as per Section 150 of the Customs Act, the petitioner had to pay VAT, customs duty and other handling charges on the said Auction amount. Accordingly, the petitioner Company had also paid the said amount in the following breakups;

3. When the matter stood as above, it is the contention of the learned counsel for the petitioner that as illustrated in the above table column, it is clear that only an debit balance of Rs. 21,243/- remains with the petitioner Company and in other words, there is no money due and payable by the petitioner Company to the so-called owner of the goods, namely the second respondent. Therefore, he contended, the first respondent cannot apply Section 45 of the TNVAT Act against the petitioner as a garnishee either to appropriate the proceeds or in the alternative to recover the money whatever payable by the second respondent. On the other hand, the first respondent has wrongly recovered a sum of Rs. 75,27,657/- by attaching the petitioner''s bank account.

4. Concluding his argument, learned counsel for the petitioner submitted that as a matter of right, even if the first respondent is entitled to recover the proceeds, namely, Rs. 40,77,000/- received from the auction, after adjusting the said amount, they ought to have debited balance amount of Rs. 35,27,000/- to the petitioner''s bank account. In any event, since first respondent did not provide an opportunity of personal hearing, they ought not to have directed the third respondent bank not to release their bank account. With these submissions, he prayed for allowing the writ petition.

5. Per contra, learned Additional Government Pleader (Tax) appearing for the

first respondent submitted that it is too late for the petitioner Company to say that the goods sold by them in E-auction belonged to the second respondent. The petitioner-Company, after issuing notices dated 22-7-2013 and 8-8-2013 to the second respondent calling upon them to clear the goods, have sold the goods in question for a sum of Rs. 40,77,000/- vide E-auction, dated 28-11-2014, therefore, since second respondent failed to pay the arrears of sales tax to the tune of Rs. 1,25,34,480/-, the first respondent is entitled to recover all the proceeds realised by the petitioner Company by applying Section 42(2) of the TNVAT Act. Therefore, as the first respondent has got the right of recovering such arrears in the light of Section 42(2) of the TNVAT Act, the petitioner cannot challenge the impugned proceedings of the first respondent. It is further submitted that even as per Section 45(1)(b) of the TNVAT Act, the petitioner cannot escape from the legal duty cast on him, for, a mere reading of the said Section shows that the assessing authority may by way of issuance of notice, require any person to pay to the assessing authority the amount due under this Act on account of the dealer or other person who has become liable to pay any amount due under this Act. In the present case, the petitioner Company, after issuing notices to the second respondent as stated above inviting them to clear the goods lying in the CFS facility, have admitted that the goods sold in E-auction belonging to the second respondent, therefore, the first respondent has rightly issued the impugned notices for recovery of dues payable by the second respondent towards sales tax arrears, hence, no interference is called for.

6. Heard both sides.

7. Admittedly, the cargo containing sheets cutting belonging to the second respondent was lying with the petitioner''s CFS and thereupon, by conducting E-auction, the petitioner''s Company sold the goods in question for a sum of Rs. 40,77,000/-. As per Section 150 of the Customs Act, the petitioner Company has to pay necessary fees to the customs department. In this context, it is relevant to extract Section 150 of the Customs Act, which is to the following effect:

"150. Procedure for sale of goods and application of sale proceeds.-

(1) Where any goods not being confiscated goods are to be sold under any provisions of this Act, they shall, after notice to the owner thereof, be sold by public auction or by tender or with the consent of the owner in any other manner.

(2) The proceeds of any such sale shall be applied-

(a) firstly to the payment of the expenses of the sale,

(b) next to the payment of the freight and other charges, if any, payable in respect of the goods sold, to the carrier, if notice of such charges has been given to the person having custody of the goods,

(c) next to the payment of the duty, if any, on the goods sold,

(d) next to the payment of the charges in respect of the goods sold due to the person having the custody of the goods,

(e) next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs, and the balance, if any, shall be paid to the owner of the goods:

Provided that where it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within a period of six months from the date of sale of such goods or such further period as the Commissioner of Customs may allow, such balance of sale proceeds shall be paid to the Central Government."

From the abovesaid Section, it is clear that in the event of a public auction under the Act, the proceeds of the sale shall be applied in the above said order. Accordingly, in the present case, the petitioner Company had incurred Rs. 1,50,000/- towards E-auction, Rs. 9,27,303/- towards the customs duty and Rs. 2,03,850/- towards VAT arising from sale and Rs. 30,20,940/- towards storage, handling and overdue charges. These expenses have been supported by the various documents. Therefore, when the petitioner Company has sold away the goods belonging to the second respondent legally in E-auction only after issuing notices to both the respondents and thereby they have also realised a sum of Rs. 42,80,850/-, after adjusting all these amount as per Section 150 of the Customs Act, yet they have incurred additional expenses of Rs. 21,243/- and thus, they were ultimately left with no money from the sale proceeds of E-auction. Hence, since nothing has been left with the petitioner Company as balance money from the proceeds of the auction sale, the respondent is not legally entitled to attach the amount deposited in the third respondent Bank.

8. Though the learned Additional Government Pleader (Tax) submitted that as per Section 45(1)(b) of the TNVAT Act, the assessing authority may by way of issuance of notice, require any person to pay to the assessing authority the amount due under this Act on account of the dealer or other person who has become liable to pay any amount due under this Act, I do not find merit in the said submission, for, in the present case, even though the petitioner sold the goods belonging to the section respondent in E-auction on 28-11-2014 and thereby realised a sum of Rs. 40,77,000/-, yet they incurred with additional expenses of Rs. 21,243/- after making necessary payment as stated in the preceding paragraphs, therefore, in such scenario, the respondent cannot resort to apply Section 45(1)(b) of the TNVAT Act. However, on the contrary, the respondent, without application of mind, erroneously resorted to attach the bank account of the petitioner-Company.

9. Further, as highlighted above, even before bringing the goods belonging to the second respondent to sell in E-auction, the petitioner Company had issued notice dated 22-7-2013 under Section 48 of the Customs Act requesting the second respondent to clear the said cargo, otherwise, necessary steps would be taken to dispose of the said goods. Again, finding no reply, the petitioner issued another notice dated 8-8-2013 under Section 48 of the Customs Act for disposal of the

said goods and finally, since there was no response from the second respondent, the petitioner Company, with due intimation to the first respondent, sold the goods belonging to the second respondent for a sum of Rs. 40,77,000/- vide E-auction dated 28-11-2014, therefore, I do not find any irregularity in selling the goods as they admittedly issued notices to both the respondents before selling the goods. Thus, for the aforesaid reasons, the impugned order is liable to be set aside and accordingly, the same is set aside. Consequently, the first respondent is directed to refund the amount of Rs. 75,27,657/- to the petitioner Company within a period of two weeks from the date of receipt of a copy of this order. It is open to the first respondent to proceed against the second respondent for recovery of the arrears towards the sales tax in accordance with law. In fine, the writ petition stands allowed. No Costs. Consequently, connected miscellaneous petitions are closed.