(2015) 06 MAD CK 0225

In the Madras High Court

Case No : Writ Petition No. 16246 of 2015 and M.P. No. 1 of 2015

Viswanata Industries APPELLANT

Vs

The Assistant Commissioner (CT) Enforcement and Others RESPONDENT

Date of Decision : 09-06-2015

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 69

Citation : (2015) 06 MAD CK 0225

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : C. Rekha Kumari, for the Appellant; Manoharan Sundaram, Additional Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

T. Raja, J—Heard the learned counsel for the petitioner and Mr. Manoharan Sundaram, learned Additional Government Pleader (Taxes), who took notice for the respondents and with their consent, the writ petition is taken up for final disposal at the admission stage.

2. This writ petition has been filed by M/s. Viswanath Industries challenging the impugned order passed by the Deputy Commercial Tax Officer, the 2nd respondent in G.D. No. 4011/2015-16 dated 26.05.015 and the consequential notice in G.D. No. 4011/2015-16 dated 27.5.2015 of the 1st respondent and to further direct the 1st and 2nd respondents to release the consignment detained on 26.5.2015.

3.1 According to the learned counsel for the petitioner, the petitioner being the registered dealer in Kolkata has been carrying on business in Timber and Plywoods. While so, he received an order from a dealer in Chennai viz., M/s. Simplex Infrastructure, who is a registered dealer in Tamil Nadu. On receipt of the said order, the same was forwarded to a registered dealer in Gujarat to deliver the consignment directly to the Chennai dealer. It is also claimed by the petitioner that he effected E1 sales pursuant to the order received from the Chennai dealer and hence the supplier in Gujarat raised invoice on the petitioner herein and charged CST @ 2% and thereupon directed the transporter to deliver the consignment directly to the Chennai dealer to avoid freight and transportation charges to take the goods in Kolkata and then again to bring it back to Chennai unnecessarily. In the above background the grievance of the petitioner is that when the goods were duly accompanied by the sale invoice raised by the Gujarat dealer on the petitioner in Sale Invoice No. 289 dated 21.05.2015 along with the lorry receipt No. 9815, which also clearly reflects the Gujarat dealer as Consignor and the Chennai dealer as Consignee, the petitioner herein and the petitioner also rightly attached the Sale invoice raised by them in Invoice No. 045 dated 21.05.2015 and therefore when all the goods were duly accompanied by the documentary evidences as required under Section 69 of the TANVAT Act, the respondents have no jurisdiction to detain the consignment, since the goods were moving from other State of Tamil Nadu. Hence, they cannot insist that the petitioner should be a registered dealer inside the State of Tamil Nadu.

3.2 Learned counsel for the petitioner further submits that in the transit sales (E-1 sales), the goods can be transferred from any State to the dealers in Tamil Nadu and it cannot be treated as local sales to frame within the purview of TNVAT Act. The duty of the respondent is just to verify whether the consignment is accompanied by documentary evidences or not. When this aspect is not disputed in the present case, the respondent wrongly went one step further by stating that the petitioner is not a registered dealer and on that basis passed the detention order.

3.3. Learned counsel for the petitioner further submitted that when the petitioner had made a number of personal representations before the respondent with a request to release the consignment unconditionally as the purchase in Tamil Nadu would remit tax while effecting sale of goods, the respondent did not give any heed to his request and finally issued the compounding notice by quantifying the compounding fee of Rs. 4,41,517/- and also advance tax.

3.4 Concluding her argument, the learned counsel for the petitioner would submit that when the goods are rightly accompanied by lorry receipts which clearly reflect the Gujarat dealer as Consignor and the Chennai dealer as the Consignee, along with Sale Invoice No. 045 dated 21.05.2015, the impugned notice issued by the respondents proposing to levy tax, amounts to double the amount of tax is contrary to law.

3.5 Besides, taking the support from another order passed by this Court in similar circumstances in W.P. No. 15767 of 2014 dated 19.06.2014, the learned counsel for the petitioner prayed this Court to allow the writ petition.

4. Mr. Manohan Sundaram, learned Additional Government Pleader (Taxes) opposing the submissions of the learned counsel for the petitioner submitted that

since the goods have been originated from Gujarat to Chennai, the Consignor, who is in Gujarat has not come to this Court, therefore, the petitioner may be directed to pay one time tax payment of the entire tax to be processed by the petitioner without prejudice to their right to file a review before the authority concerned by furnishing bank guarantee for 50% of the said amount and on complying with such condition, the respondent shall release the goods.

5. In reply to the said submission, the learned counsel for the petitioner would submit that in the event of passing final order on completion of adjudication proceedings, the Chennai dealer would be given liberty to adjust the entire tax amount to be paid pursuant to the order.

6. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. It is needless to mention that if the Chennai dealer takes part in the adjudication proceedings on behalf of the petitioner, the Assessing Authority is at liberty to consider the adjustment of one time payment of tax amount. In such view of the matter, this Court, without going into the correctness or otherwise of the order impugned in this writ petition, direct the respondents to release the goods detained, to the petitioner, on condition that the petitioner pays the tax amount to be assessed by the authority as contemplated under the Act. Insofar as the compounding fee is concerned, if the authority fixes the compounding fee viz., one time of the tax, the petitioner is directed to produce bank guarantee for the 50% of such amount to be assessed by the authority. If the authority fixes compounding fee, viz., two times of the tax, the petitioner is directed to produce bank guarantee for 50% of such amount and for the remaining 50% of such amount, the petitioner shall produce personal bond. It is needless to mention that the petitioner company has to subject themselves to the adjudication proceedings that may be initiated by the respondents.

With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.