



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	02.03.2021
Pronounced On	27.05.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 28806 of 2010
and
M.P. No. 1 of 2010

M/s.Navnidhi Steel & Engineering Co. Pvt. Ltd.,
Represented by its Director,
No.1, Lehri Mansion,
236/240 SVP Road,
Mumbai - 400 004. ... Petitioner

Vs

The Commercial Tax Officer., R.S-II(FAC),
Enforcement (North),
PAPJM Building,
Chennai - 600 006. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in G.D.1832/2010-2011 and to quash the impugned Notice dated 14.12.2010 as issued contrary to the order dated 07.12.2010 passed by this Court in W.P.No.27924 of 2010 and to further direct the respondent to release the consignment containing 15 tonnes of Bullet Resistant steel plates along with the goods vehicle in TN 28 P 7072.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.M.Hariharan
Additional Government Pleader

ORDER

The petitioner has challenged the impugned notice dated 14.12.2010 calling upon the petitioner to pay sales tax at 4% of Rs.1,46,880/- as detailed in the said notice. The impugned order also calls upon the petitioner to furnish a Bank Guarantee for a sum of Rs.2,93,760/- under Rule 15(4) of the TNVAT Rules, 2007 for appropriate adjudication of the matter.



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2. The petitioner is a dealer from Mumbai who had imported consignments of declared goods namely iron and steel items from Chennai Port and effected transfer/sale in favour of a buyer in Hyderabad namely M/s.SEC Industries Private Limited by raising invoices dated 25.11.2010.

3. The imports were cleared in terms of Bill of Entry dated 18.11.2010 and were thereafter shifted to a godown in Virugambakkam, Chennai and thereafter transferred to the said buyer in Hyderabad. While the goods were in transit, they were intercepted by the respondent, near Puzhal Camp on 28.11.2010 and detained. A detention order was also issued on the said date followed by a notice dated 29.11.2010 which called upon the petitioner to pay the amounts under Section 72 (1-a) of the TNVAT Act, 2006 amounting to Rs.4,40,460/-. Under these circumstances, the petitioner filed writ petition in W.P.No.27924 of 2010 and obtained an order on 07.12.2010 in the said writ petition.

4. By the aforesaid order, the Court directed the respondent/Commercial Tax Department to release the detained goods on condition of payment of appropriate tax demanded, which was to be finally determined subject to final adjudication of the tax.

5. Under these circumstances, the petitioner enclosed a demand draft for Rs.74,909/- being 2% CST in terms of Section 8 (4) of the CST Act, 1956 along with Form-C.

6. Under these circumstances, the impugned notice dated 14.12.2010 has been issued to the petitioner. It calls upon the petitioner to pay appropriate tax at 4% amounting to Rs.1,46,880/- and also to furnish Bank Guarantee for appropriate adjudication of the matter.

7. The case of the petitioner is that the right to have the goods assessed at 2% CST cannot be denied even though the petitioner is an unregistered dealer in the State of Tamil Nadu and that as per Section 8 of the CST Act, 1956, the petitioner is still a dealer liable to pay tax and therefore entitled to pay reduced tax in terms of sub-section 4 to Section 8 of the CST Act, 1956.

8. The learned counsel for the petitioner has placed reliance on the decision of the Division Bench of the Allahabad High Court in The Commissioner, Sales Tax, Uttar Pradesh Vs The Educational Supplying Co.Ltd., (1970) 27 STC 34, wherein, it has been held that there is no requirement that the selling dealer must also be a registered dealer. There, the Court also found that it was not disputed that the purchasing dealer was a



registered dealer and the goods purchased were such as were mentioned in the Registration Certificate and had supplied requisite Form-C to the assessee.

9. The learned counsel for the petitioner further drew my attention to the following passage from the said decision, which reads as under:-

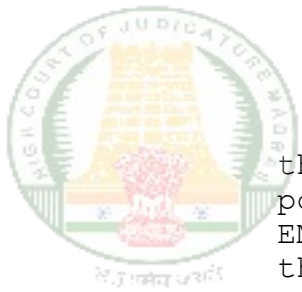
"But on his failure to get himself registered, a dealer does not forfeit the right to be assessed at the concessional rate on his turnover of inter-state sales, provided other conditions referred to above are satisfied. To put it in another way, the failure of a person to get himself registered does not in any way affect or control the rates of tax specified in Section 8."

10. On the other hand, defending the impugned order, the learned Additional Government Pleader for the respondent/Commercial Tax Department submits that the writ petition is liable to be dismissed as the petitioner has also filed a reply to the impugned notice dated 14.12.2010 and partly acquiesced into the said proceedings. He further submits that the impugned notice has merely asked the petitioner to pay the balance amount of tax in terms of the decision of this Court rendered in petitioner's case in W.P.No.27924 of 2010 vide order dated 07.12.2010 and that the impugned notice has merely asking the petitioner to furnish Bank Guarantee for appropriate adjudication under Rule 15(4) of the TNVAT Rules, 2007.

11. The learned Additional Government Pleader for the respondent/Commercial Tax Department further relied on the decision in M/s.VR3 Animal Fees, Dindigul Vs Deputy Commercial Tax Officer, Cuddalore vide order dated 02.03.2018 in W.A.No.171 of 2013. He respectively draws my attention to Paragraphs 4 to 6, which reads as under:-

"4. The order passed by the learned single Judge does not contain any indication that the issue raised by the appellant was taken note of and a factual finding as to whether EMU Oil is liable for tax was given. The learned single Judge taking into account the detention order passed by the check post authority directed the appellant to pay tax and get the product released.

5. The issue as to whether EMU Oil is a taxable commodity requires to be decided by the authority under the TNVAT Act. Even in the detention order,



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there is no clear indication as to how the check post authority has arrived at a conclusion that the EMU Oil is taxable under the TNVAT Act. We are therefore of the view that liberty should be given to the appellant to file revision petition before the jurisdictional Joint Commissioner.

6. We therefore grant liberty to the appellant to file a revision before the Joint Commissioner challenging the order passed by the Deputy Commercial Tax Officer, Pennaiyar Bridge Check Post, which is impugned in the writ petition in W.P.No.33566 of 2012. In case, the appellant has already paid the tax, there is no liability to make statutory deposit. It is open to the appellant to produce materials to demonstrate that there is no statutory liability to pay tax on EMU Oil. The authority shall consider the entire factual matrix and pass a detailed order on merits. The question of refund of tax paid by the appellant would depend upon the ultimate orders to be passed by the Joint Commissioner. In case revision petition is filed within a period of four weeks from today, the same shall be considered and disposed of within a period of eight weeks."

He therefore prays for dismissal of the writ petition.

12. By way of rejoinder, the learned counsel for the petitioner submits that on the date, the petitioner has paid all the taxes including the enhanced tax at 2% under the CST Act, 1956, even though the petitioner has produced Form-C before the respondent/Commercial Tax Department and therefore there is no case made out for the decision in the compounding notice under Section 72 (1-a) of the TNVAT Act, 2006.

13. Though there are no documents to substantiate that the petitioner has paid the balance amount, both the learned counsel for the petitioner and the respondent submits that the goods have been cleared, which implies that the petitioner has complied with the interim direction dated 16.12.2010 in this writ petition and the earlier order dated 07.12.2010 in W.P.No.27924 of 2010.

14. Thus, the only issue that survives for adjudication in this writ petition is whether the petitioner should be called upon to furnish Bank Guarantee for a sum of Rs.2,93,760/- being twice the amount of tax payable in terms of Section 71(a) of the TNVAT Act, 2006 read with Section 72 of the TNVAT Act, 2006.



15. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent. Admittedly, the petitioner is not registered under the provisions of the Central Sales Tax Act, 1956 for the sales effected by the petitioner from Tamil Nadu to a buyer in the erstwhile composite State of Andhra Pradesh in Hyderabad.

16. Since the petitioner is not an assessee within the jurisdiction of the respondent, the respondent was justified detaining the goods by giving an option to the petitioner to pay amounts under Section 72(1-a) of the TNVAT Act, 2006.

17. However, even if the petitioner had transferred the goods to its own registered premises in the State of Maharashtra and thereafter effected an interstate sale to a buyer in the erstwhile composite State of Andhra Pradesh in Hyderabad, the petitioner would have been liable to pay appropriate tax under Section 8 of the Central Sales Tax Act, 1956.

18. Both the local tax authorities whether within the State of Tamil Nadu or within the State of Maharashtra are empowered to collect tax for the Central Government. The power to levy and collect tax has been delegated to them. They are required to collect only appropriate tax.

19. The fact the petitioner was not an assessee is a factor. Yet, the petitioner cannot be subjected to higher tax if the petitioner was also registered under the provisions of the Central Sales Tax Act, 1956 in Maharashtra.

20. By effecting a direct sale from Tamil Nadu without obtaining registration, the petitioner at best can be said to have violated the provision relating to the procedure. By the effecting sale from State of Tamil Nadu, the petitioner avoided criss-cross movement of the goods.

21. Therefore, the petitioner cannot be subjected to higher tax as the officers acting as assessing officer under the Central Sales Tax Act, 1956 act as counterparts of each other.

22. The fact that the goods are already been released is also factor to be considered while considering they lived to be granted to the petitioner in this writ petition.

23. In my view, no useful purpose would be served by asking the petitioner to furnish bank guarantee four times the tax after the detained goods were allowed to be released by the respondents.



24. Under these circumstances, this Court is inclined to dispose this writ petition by directing the respondent to pass appropriate orders on merits based on the submission of the petitioner in its reply dated 14.12.2010 within a period of sixty days from the date of receipt of this order. Petitioner may at its discretion file additional reply, if any, within a period of thirty days from the date of receipt of this order.

25. This Writ Petition stands disposed of with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To:

The Commercial Tax Officer., R.S-II(FAC),
Enforcement (North),
PAPJM Building,
Chennai - 600 006.

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M.P. No. 1 of 2010

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