IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.11.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.9204 of 2014

M/S.BALAJI ENTERPRISES (PONDY)
PVT.LTD. REP.BY ITS ACCOUNTANT S.RAGHUNATH
S/O.SELVARAJAN NO.16 BETHORA KANAKARAYA
MUDALIAR STREET PONDICHERRY ... Petitioner

Vs

THE DEPUTY COMMERCIAL TAX
OFFICER KANDAMANGALAM CHECK POST @
LINGAREDDIAPALAYAM VILLUPUAM DISTRICT ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus calling for the records relating to the impugned proceedings dated 21.2.2014 in GDN No.100/2012-2013 of the respondent herein and quash the same and consequently direct the respondent herein to refund the sum of Rs.6 31 078/- deposited by the petitioner together with Interest at the rate of 24% p.a. from 15.2.2013 till the date of payment.

For Petitioner :Mr.AR.L.Sundaresan SC for
Mrs.A.L.Ganthimathi

For Respondent :Mr. S.Manohara Sundaram AGP

ORDER

Heard the learned counsel for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader appearing for the respondent.

2. The case of the petitioner is briefly stated as follows:

(a) Petitioner herein is engaged in the business in IMFL at Pondicherry and an assessee on the file of the Deputy Commissioner of Excise, Government of Puducherry and is a licensed importer having License/Import permit No.001704/7402/DCE/2012-13.

(b) In the course of its business, the petitioner purchased 500 cases of McDowal Ceasar Genuine GRP-Brandy from M/s. United Spirits Ltd. Distillery Division, Chertally, Varnad Post, Kerala. After duly obtaining the export permit from Kerala Excise Department, the goods were consigned through lorry bearing Registration No.TN-31/H-6581 accompanied by invoice No.90038074.

(c) However at Kandamangalam Check Post, the said goods had been detained for non production of transit pass and a notice dated 01.02.2013 was issued to the petitioner. On receipt of the said notice, the petitioner herein filed a writ petition in W.P.No.3306 of 2013 before this Court and this Court by order dated 11.2.2013 granted interim direction directing the petitioner to pay a sum of Rs.6,31,078/- for release of the goods. The said amount was remitted by the petitioner and the goods were also released. When the writ petition was taken up for final hearing and by order dated 17.4.2013, the writ petition was disposed of with a direction to file objections to the notice. Subsequent thereto, petitioner also submitted its detailed objections on 15.6.2013.

(d) Since the respondent had not passed any orders within the period granted by this Court in W.P.No.3306 of 2013, the petitioner was constrained to file a writ petition in W.P.No.3944 of 2013 praying for a writ of mandamus to direct the respondent herein to forthwith pass orders on the Goods Detention Notice dated 01.2.2013 and the consequential notice dated 01.2.2013 in GDN.No.100/2012-2013 and refund a sum of Rs.6,31,078/- to the petitioner. In the said writ petition, notice of motion was ordered by this Court on 11.2.2014. On receipt of the notice, the respondent has passed the impugned order in GDN : 100/2012-2013 dated 21.2.2014 wherein referring to Rule 15(17)(bb) of TNVAT Rules 2007, the respondent observed that the petitioner failed to generate e-transit pass and hence, rejected the claim of the petitioner.

3. Challenging the impugned proceedings dated 21.2.2014 in GDN No.100/2012-2013 of the respondent and consequently to direct the respondent herein to refund the sum of Rs.6,31,078/- deposited by the petitioner together with Interest at the rate of 24% p.a. from 15.2.2013 till the date of payment, the petitioner has come forward with this writ petition.

4. The learned senior counsel for the petitioner contended that the petitioner produced all the documents except the transit pass and there is absolutely no suspicion about the genuineness of the accompanying documents and the Seal affixed on the invoice at the time of entry at the First

Check Post at KG Chavadi. Hence, according to him, the impugned Goods detention notice is arbitrary and illegal. Further, had the respondent conducted an enquiry and given an opportunity of hearing, the petitioner would have been able to effectively represent its case before the respondent. The learned senior counsel also submitted that failure to generate E-Transit pass would be a lapse and the same shall not lead to imposition of Tax by deeming the goods to have been sold in Tamil Nadu.

5. The learned Additional Government Pleader on instructions submitted that the petitioner subsequently, produced relevant papers by which the authority is able to co-relate the entries available in the outer check post. He also fairly submitted that the petitioner is able to prove that they have taken away the goods outside the state and hence, there is no tax liability in Tamil Nadu and the authority can only levy a sum of Rs.2000/- for lapses. The said fair submission made by the Additional Government Pleader is recorded.

6. In the light of the above, the respondent is directed to pass appropriate orders accordingly. Since the department has taken a view that the petitioner is liable to pay only a sum of Rs.2000/-, necessary orders with regard to refund of tax is to be passed by the respondent. The said exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order. This writ petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
ASSISTANT REGISTRAR(CS-VII)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

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To
THE DEPUTY COMMERCIAL TAX
OFFICER KANDAMANGALAM CHECK POST @
LINGAREDDIAPALAYAM VILLUPUAM DISTRICT

+1 CC to MR.A.L.Ganthimathi Advocate. SR.NO. 61245

W.P.No.9204 of 2014 and
M.P.No.1 of 2015

CO-MP
JD 07/12/2015