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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-02-2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE M. VENUGOPAL

W.A. No.46 of 2015 and M.P. Nos.1 & 2 of 2015

The Commercial Tax Officer
Central Parcel Office
O/o the Deputy Commissioner (CT)
Enforcement (North)
Chennai 600 006

Appellant

Vs.

Sheik Mubarak

Respondent

Writ Appeal preferred under Clause 15 of the Letters Patent challenging the order dated 12.12.2014 passed in W.P. No.32902 of 2014. Writ Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari calling for the records on the file of the respondent in G.D.No.7666/2014-15 dated 9.12.2014 and quash the same.

For appellant Mr. V. Haribabu

Additional Government Pleader - Taxes

For respondent Mr. Adithya Reddy
for Mr. A. Suresh

JUDGMENT

(Judgment of the Court was delivered by SATISH K. AGNIHOTRI, J.)

The instant intra-Court appeal arises from the order dated 12.12.2014 passed by the Writ Court in W.P. No.32902 of 2014. Writ Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari calling for the records on the file of the respondent in G.D.No.7666/2014-15 dated 9.12.2014 and quash the same.

2 For the sake of convenience, the parties are referred to as per their rank in the instant appeal.

3 The respondent came up with the instant writ petition, questioning the legality and validity of the order dated 09.12.2014 passed by the appellant, whereunder, the respondent was informed as under:



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"Hence, it is proved that the dealer has attempted to evade tax payable under TNVAT Act, 2009 and thereby, causing huge loss to the State Exchequer and committed offences falling under Section 72(1)(a) of TNVAT Act, 2006. Therefore, the dealer is hereby intimated with an opportunity to exercise option for the composition of offence by payment of the following taxes and penalty as per Section 72(1)(a) of the TNVAT Act, within 7 days of receipt of this notice, failing which appropriate action will be initiated to recover the following amount as per the prevailing provisions of the TNVAT Act, 2006.

As per entry 13A(a) of Part C of I Schedule to the TNVAT Act 2006, tax payable on a turnover of Rs.12,40,000.00 at 14.5%	Rs.179800 .00
Compounding Fee	359600.00
Total amount payable	539400.00 "

4 The Writ Court, having considered all the aspects of the matter, disposed of the writ petition, directing the respondent to pay the tax of Rs.1,79,800/- and on payment of the said amount by the respondent, the appellant was directed to release the goods seized by him.

5 The facts, in nutshell, are that the respondent, without registering himself as a dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (for short "the TNVAT Act) and Central Sales Tax Act, 1956, engaged himself in the business of buying and selling of electronic goods. The appellant seized a consignment of three bundles of mobile phones valued at Rs.11,50,000/-, when the same was being taken outside from the Central Railway Station Parcel Office, through trolley, by two persons. Notice was issued to the respondent to produce relevant records to establish the genuineness of the transaction for releasing the goods. Admittedly, the respondent, not being a registered dealer, appeared before the appellant-authority on 05.12.2014 and requested the appellant-authority to release the goods on payment of tax. The appellant-authority issued a compounding notice dated 09.12.2014, determining the tax to the tune of Rs.1,79,800/- with compounding fee to the tune of Rs.3,59,600/-, totalling Rs.5,39,400/-. The said notice was under challenge in the writ petition.



6 The learned counsel for the respondent, pursuant to the notice issued by this Court, would submit that the respondent is ready and willing to pay the entire tax. However, according to him, so far as the question of charge of compounding fee is concerned, that can be imposed only on considering the case of the respondent after passing final orders on merits. It is further contended that this was the first consignment and as such, the respondent was not liable to get himself registered. The respondent is in the process of getting himself registered under the provisions of law. The learned counsel for the respondent relies on the provisions of Section 38(1) (b) of the TNVAT Act, in support of his contention that it is not mandatory for a person to obtain registration when he intends to start business.

7 Without going into the question as to whether registration, as a dealer, under the provisions of the TNVAT Act is mandatory or not, we are of the considered opinion that the appellant should consider the reply of the respondent pursuant to the compounding notice and pass final orders.

8 The learned counsel for the respondent undertakes that the respondent would appear before the appellant on 27.02.2015 at 11.00 a.m. to present his case.

9 Having regard to the fact that the respondent is not a registered dealer, it is not proper to direct the appellant to release the goods on payment of tax, as, in the event, the respondent is liable to pay the compounding fee, it will be difficult for the appellant to recover the same from the respondent, on account of his non-registration as a dealer.

10 Thus, without expressing any opinion on the merits of the case, we direct the appellant-authority to take a final decision in the matter, in accordance with law and on its own merits, after considering the respondent's representation, within a period of two weeks from today, as submitted by the learned counsel for the appellant. We make it clear that the appellant-authority, while taking decision in the matter, shall not be influenced by any of the observations made by us hereinabove.

11 The writ appeal stands allowed in the above terms. No costs. Connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar(CS-III)
Dt:25/2/2015

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Sub-Assistant Registrar



To

The Commercial Tax Officer
Central Parcel Office
O/o the Deputy Commissioner (CT)
Enforcement (North)
Chennai 600 006

rsk(co)
prk25/2

W.A. No.46 of 2015