IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2015

CORAM

The Hon'ble Mr. Justice T.RAJA

W.P.No.11521 of 2015
and
M.P.Nos.1 and 2 of 2015

Sheik Mubarak ... Petitioner

Vs.

1. The Deputy Commissioner (CT),
   Enforcement (North),
   C.T. Buildings, Chennai - 6.

2. The Commercial Tax Officer,
   Central Parcel Office,
   Office of the Deputy Commissioner (CT),
   Enforcement (North),
   Chennai - 3. ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records on the file of the second respondent in GDR No.7666/CPO/NORTH/2014-15 dated 13.04.2015 and quash the same as being without jurisdiction and authority of law.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.S.Kanmani Annamalai,
Addl. Govt. Pleader (T)

ORDER

This writ petition has been filed against the impugned order passed by the Commercial Tax Officer, Central Parcel Office, Chennai under Rule 15 (8) (a) of the Tamil Nadu Value Added Tax Rules as it is passed without jurisdiction and authority of law.

2.The learned counsel for the petitioner brings it to the notice of this Court the Notification issued by the Government dated 25th March, 2015, as per which, in exercising the power conferred by sub-section (1) of Section 30 of the Tamil Nadu Value Added Tax Act, the Governor of Tamil Nadu makes a reduction in rate of tax from 14.5% to 5% in respect of tax payable under the said Act by any dealer on the sale of cellular telephone (mobile phone). Instead of bringing the said Notification to the notice of the authority concerned, the second respondent has wrongly issued the notice dated 13.04.2015, directing the petitioner to pay 14.5% tax.

3.Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents fairly submits that the petitioner's case has to be gone into afresh by the second respondent in the light of the Notification.

4.Heard both sides. It is relevant to extract Rule 15(6)(a) of the Tamil Nadu Value Added Tax Rules, which reads as follows:

> Rule 15(6)(a): If the amount of tax due or security directed to be paid, is paid, the said officer shall issue a receipt in the name of the person liable to pay tax specifying also the name and status of the person making such payment and shall release the goods.

5.The relevant portion of the Notification is also extracted hereunder:

> "In exercise of the powers conferred by sub-section (1) of Section 30 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006), the Governor of Tamil Nadu hereby makes a reduction in rate of tax from 14.5 per cent to 5 per cent in respect of tax payable under the said Act by any dealer on the sale of Cellular Telephone (Mobile Phone).
>
> 2.The Notification shall come into force on the 1st day of April, 2015."

6.A close reading of the above clearly shows that the petitioner is liable to pay 5% in respect of tax payable under the said Act on the sale of cellular phone (mobile phone). As the vital aspect has been completely overlooked by the second respondent herein, this Court is of the view that the impugned order is liable to be set aside. Accordingly, the impugned order is set aside and the matter is remanded back to the second respondent for fresh consideration, after giving notice to the petitioner. Such exercise shall be done within a period of four weeks from the date of receipt of a copy of this order.

7.In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Lok Adalat)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Deputy Commissioner (CT),
   Enforcement (North),
   C.T. Buildings, Chennai - 6.

2. The Commercial Tax Officer,
   Central Parcel Office,
   Office of the Deputy Commissioner (CT),
   Enforcement (North),
   Chennai - 3.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.21660
+1cc to the special Government Pleader(Taxes), S.R.No.21850

W.P.No.11521 of 2015

VGI(CO)
CA(24/04/2015)