IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.4.2015.

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.11780 of 2015
and
M.P.Nos.1 and 2 of 2015

TCI Hi-ways Pvt. Ltd.
C/o. Gati Ltd.
No.98A Menambedu Road
SIDCO Industrial Estate
Ambattur Chennai 600 098. ... Petitioner

vs.

The Commercial Tax Officer
Roving Squad-III Enforcement (Central)
Office of the Deputy Commissioner (CT)
First Floor PAPJM Buildings
1 Greams Road
Chennai 600 006 ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records on the file of the Respondent in G.D. No.1006/RS-III/C/2014-15 dated 13.04.2015 and the consequential compounding notice dated 17.04.2015 and quash the same and direct the respondent to forthwith release the goods vehicle bearing AP 11 W 3344 with the consignment.

For Petitioner : Mr.J.Ravikumar

For Respondents: Mr.S.Kanmani Annamalai,
Additional Government Pleader (T)

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ORDER

This writ petition is directed against the impugned notices viz., goods detention notice in form No.041 dated 13.4.2015 and compounding notice in form No.043 dated 17.4.2015 on the ground that the same are reflecting arbitrary exercise of the power since the goods in question are accompanied with proper documents and therefore, the allegation made by the respondent under section 69 of the Tamil Nadu Value Added Tax Act, 2006 cannot be accepted as the said section is not attracted at all.

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2. Learned counsel appearing for the petitioner would submit that admittedly, the petitioner is a transporter and in course of business, M/s.Apollo Tyres Limited entrusted the goods viz., tyres and tubes from its Cochin Plant to Patna Branch which is a routine stock transfer and due to non availability of vehicles of the petitioner, the goods were loaded in a vehicle bearing registration No.TN 73 C 4599 on 11.4.2015 alongwith statutory documents viz., Form No.15, Delivery Note and Form 8F issued by the Commercial Tax Department, Kerala to declare that the goods are transported as part of stock transfer. Subsequently, the said consignment was shifted to another vehicle bearing registration No.AP 11 3344 belonging to the petitioner. While the same was proceeding to Patna to alongwith all documents issued by Kerala State, the respondent intercepted the vehicle at Chennai on 13.4.2015 and detained the goods for alleged verification of the documents and thereupon issued the impugned notices on the ground that the goods are transported without proper documents.

3. The learned counsel appearing for the petitioner, drawing the attention of this court to section 67(3)(b)(2), would submit that as per the aforementioned section, the respondent can direct the driver or any other person in charge of the goods vehicle to pay such taxes or to furnish adequate security in such form or in such manner on behalf of the person liable to pay such taxes and when there is a proviso, the petitioner may be directed to pay the taxes any under protest for release of goods due and with regard to penalty they may be permitted to adjudicate the matter in accordance with law.

4. By opposing the above prayer, Mr.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent, in support of the order impugned in the writ petition, submitted that the petitioner, being a transporter, should not be allowed to pay tax alone as there is no guarantee for the respondent to recovery penalty in future if the matter is finally decided against him. Adding further, he would submit that the petitioner shows any urgency for release of the goods on payment of tax, he should also be directed to furnish bank guarantee.

5. This court, considering the facts and circumstances keeping in mind the order passed in a similar case in MOHAN SHARMA v. THE DEPUTY COMMERCIAL TAX OFFICER (CDJ 2012 MHC 6343) wherein I could see that a direction was issued to the respondent to release the goods forthwith if the tax is paid voluntarily or under protest in the light of section 67(3)(b)(2) which is extracted hereunder:-

> "that the sale or purchase of the goods carried has, for the purpose of payment of tax under this Act, not been properly accounted for in the documents referred to in sub-section (5), and if the said officer is satisfied, after making such enquiry as he deems fit, that with a view to prevent the evasion of tax payable in respect of the sale or purchase of the goods carried, it is necessary to detain the goods, he shall detain the

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goods and direct the driver or any other person in charge of the goods vehicle or boat, or the consignor or the consignee-
(i) to pay such tax; or
(ii) to furnish adequate security in such form and in such manner and to such authority as may be prescribed, on behalf of the person liable to pay such tax."

6. In view of the above decision, the petitioner, being a transporter, carrying on business in the State, is hereby directed to pay tax for release of the goods. Insofar as the compounding fee is concerned, the authority will proceed in accordance with the provisions of section 72 of the Tamil Nadu Value Added Tax Act and the amount demanded under the compounding fee shall not be made a pre-condition for release of the goods and the authorities are to proceed in accordance with law for compounding fee following the procedure prescribed and the petitioner is entitled to file revision under section 54 of the Act, if so advised.

7. The writ petition is disposed of accordingly. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Commercial Tax Officer
Roving Squad-III Enforcement (Central)
Office of the Deputy Commissioner (CT)
First Floor PAPJM Buildings
1 Greams Road
Chennai 600 006

+1 cc to Mr.J.Ravikumar, Advocate,SR.23305

+1 cc to Spl.Government Pleader,SR.22874.

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