IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 22.04.2015

CORAM:

THE HON'BLE MR. JUSTICE T. RAJA

W.P. Nos. 11831 to 11834 of 2015
and
M.P.Nos.1 to 1 of 2015

The Supreme Industries Ltd.,
Rep. By J.Jayakumar
Accounts Executive
Puducherry- 605 107 .. Petitioner in all WPs

Vs.

The Deputy Commercial Tax Officer,
Kandamangalam Check Post,
Lingareddypalayam. ..Respondent in all WPs

PRAYER: These Writ Petitions have been filed under Article 226 of the Constitution of India to issue an order of Writ of Certiorari, calling for the records on the file of the respondent in G.D.No.3525 to 3528/2014-2015 dated 13.04.2015 and quash the same.

For petitioner : Mr. S.N.Kirubanandam

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

COMMON ORDER

There are four writ petitions challenging the impugned orders passed by the Deputy Commercial Tax Officer, inter alia that the impugned order has resulted in total non-application of mind and without jurisdiction, as no valid reason has been assigned for composition of offence and that the same has been passed without the consent of the Assessee as mandated in Section 72 of the Tamil Nadu Value Added Act, 2006.

2. Learned counsel appearing for the petitioner would further submit that as the impugned order has been passed subsequent to the order passed by this court in W.P. Nos.10112 to 10115 of 2015 dt.09.04.2015, without following the conditions mentioned under the mandatory provisions mentioned in Section 72,

the same is liable to be set aside. Concluding his argument, learned counsel for the petitioner would further submit that when there was a specific order passed by this court in W.P. Nos.10112 to 10115 of 2015 on 09.04.2015, disposing all the writ petitions, giving direction to release the detained goods which are transported in the vehicles, subject to the condition that the petitioner shall pay tax due at the rate of 5% claimed in the compounding notice dated 31.03.2015, within one week from the date of receipt of a copy of that order, without even asking the option from the petitioner as to whether he is going for compounding offence, the impugned order ought not to have been passed.

3. Per contra, Mr. S.Kanmani Annamalai, Additional Government Pleader, representing the respondent would submit that when the petitioner complains violation of the mandatory conditions mentioned in Section 72 of Tamil Nadu Value Added Act, 2006, stating that before passing the impugned order, though the petitioner has compounded the offences, he should have been issued with notice calling upon him to show his option and yet the petitioner is not left remedy less, as he has got legal re-course by filing Revision petition before the Revisional Authority, the Joint Commissioner, therefore, he pleaded, this writ petition shall be dismissed as the impugned order is appeal able.

4. Admittedly, when the petitioner filed Writ Petition Nos. 10112 to 10115 of 2015, he had a grievance that only due to over sight in the E-transit pass the TIN Number of the petitioner's Hosur Unit (Tamil Nadu) was not mentioned and though it was an inadvertent mistake, it cannot attract the provisions of the Tamil Nadu Value Added Tax. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, appearing for the respondent also contended that the petitioner may be directed to pay tax due, at the rate of 5% as demanded in the impugned notice, with a further direction to approach the jurisdictional Regional Transport Officer for release of the goods.

5. On earlier occasion, the present writ petitioner came to this Court by filing Writ Petition No.10112 to 10115 of 2015, challenging the orders passed by the respondent in G.D. No.3525/2014-2015, G.D.No.3526/2014-2015, G.D. No.3527/ 2014-2015, G.D. No.3528/2014-2015 dated 31.03.2015, with a direction to the respondent to release the goods detained in the above said orders. This Court, by order dated 09.04.2015, while disposing of the said writ petitions, directed the respondent to release the goods, subject to the condition that the petitioner shall pay tax due at the rate of 5% as demanded in the impugned notice. Pursuant to the said order, the respondent has also released the goods on payment of tax. However, while passing the impugned

order, the respondent has neither obtained the consent nor issued any notice to the petitioner, which is a mandatory requirement for composition of offence as per Section 72 of the TN VAT Act. On that score, the impugned order is liable to be set aside.

6. Accordingly, this court, while setting aside the impugned order, remands the case back to the Deputy Commercial Tax Officer, for fresh consideration. It is needless to mention that after giving notice to the petitioner, the respondent shall consider the case on merits, in accordance with law, within a period of 8 weeks from the date of receipt of a copy of this order.

7. With this direction, all these writ petitions are disposed of. Consequently, the connected miscellaneous petition is closed. No order as to costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

avr / vrc

To

The Deputy Commercial Tax Officer,
Kandamangalam Check Post,
Lingareddypalayam.

1 cc to Spl G.P (T) SR. 22127
1 cc to Mr.S. Kirubanandam, Advocate, Sr. 21935

W.P. Nos. 11831 to
11834 of 2015
and
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RV (CO)
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