IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2015

CORAM:

THE HON'BLE MR. JUSTICE **R. MAHADEVAN**

W.P.No.35257 of 2015
and M.P.Nos.1 to 3 of 2015

M/s.Gemini Edibles & Fats India Pvt. Ltd. [Petitioner]
Rep. by its D.C.Thayagarajan Area Sales Manager
Authorised Signatory
Krishnapattinam Nellore District
Andhra Pradesh.

Vs

1 The Deputy Commercial Tax Officer
Kandamangalam Check Post
Lingareddypalayam Villupuram Dist.

2 Sales Tax Officer
Loan Square Assessment Circle Chennai-1.

3 The Assessing Authority
Krishnapattinam Assessment Circle
Nellore District.

[Respondents]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records on the file of the First Respondent in G.D.No.3599/2015-16 dated 18.10.2015 and the subsequent notice dated 21.10.2015 of the 1st Respondent quash the same and direct the 1st Respondent to release the detained goods vehicle No AP 26 TE 2228 dated 18.10.2015.

For petitioner : Mr.S.N.Kirubanandam

For respondent : Mr.S.Kanmani Annamalai, AGP(T)

ORDER

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who took notice for the respondents and with their consent, the writ petition is taken up for disposal.

2. This writ petition has been filed challenging the Goods Detention Notice dated 18.10.2015 and the subsequent notice dated 21.10.2015 of the 1st Respondent and to direct the 1st respondent to release the detained goods vehicle No AP 26 TE 2228 dated 18.10.2015.

3. The petitioner, being engaged in the business of Edible Oil, is a regular tax payer in the State of Andhra Pradesh and an assessee on the file of the 2nd respondent herein. The petitioner, during the course of its business activities, sold vegetable oil to M/s Tvl. ITC Ltd., Co. Vell Biscuits Pvt. Ltd., RS.No.4/1A2, Sanniyasikuppam Road, Thirubhuvanai, Pondy (TIN No.34890001671) under Invoice No.9500035730 dated 17.10.2015. The sales so made is an interstate sale and the same was cleared by M/s Sri Anjana Transport, vide its transport document No.1763 dated 17.10.2015. The goods consignment was accompanied by form 651, form 600 (Way Bill) Invoice and Transit pass generated on

17.10.2015 at 19.12.02 p.m. The goods vehicle crossed several check post along with documents stated supra without finding any irregularity in the documents accompanied with the goods vehicle. However, the 1st respondent on 18.10.2015, since the goods were not accompanied with Valid Transit Pass as required under Section 70(1) of the TNVAT Act, 2006, detained the goods along with vehicle by passing the impugned order of detention dated 18.10.2015. But, according to the petitioner, since the goods vehicle cross several check post, the 1st respondent has no jurisdiction to detain the goods vehicle for vexatious and untenable reasons. Therefore, the impugned detention notice is illegal, besides contrary to the circular issued by the Principal Secretary/Commissioner of Commercial Taxes in Circular dated 17.07.2014. Hence, the petitioner is before this Court being aggrieved by the issuance of goods detention notice.

4.1 The learned counsel for the petitioner submitted that the goods detention notice dated 18.10.2015 and the subsequent notice dated 21.10.2015 are illegal, arbitrary and unjustifiable in law. Further, according to him, when the goods are supported by documents and the consignor and consignee addresses at Andhra Pradesh and Pondicherry respectivley were clear in all the documents, the detention of goods by the 1st respondent is arbitrary and illegal. That apart, according to the learned counsel, the transaction is neither a sale nor a transfer from one branch to other, but the goods are in transit from the State of Andhra Pradesh to reach its destination at Pondicherry and therefore, the power to detain the goods by the 1st respondent do not arise. Hence, the impugned order of detention has been passed without application of mind.

4.2 Further, according to the learned counsel for the petitioner, the 1st respondent is not the assessing authority, the 2nd and 3rd respondents are the assessing authorities, who are conferred with the power of levy of tax and compounding fee. Hence, passing of impugned order by the 1st respondent is in violation of principles of natural justice. That apart, the 1st respondent has neither obtained the consent nor offered an opportunity of being heard to the petitioner before slapping the impugned order. Hence, the impugned order is highly arbitrary, illegal and without jurisdiction.

4.3 Further, according to the learned counsel for the petitioner, the alleged findings of the 1st respondent is only an inventory and baseless, since the consignment was accompanied with the transit pass duly generated on 17.10.2015 itself. Hence, the impugned order was passed without application of mind. That apart, according to him, the 1st respondent has failed to consider that the goods were sold on interstate sales and te consignment was accompanied with all the required documents. Hence, the impugned detention order is against Article 19(1)(g) of the Constitution of India.

Basing on these, the learned counsel for the petitioner has sought for allowing of the writ petition.

5. The learned Additional Government Pleader (Taxes) on the other hand would submit that since the consignor has failed to comply with the provisions of the TNVAT Act 2006 for transport of the VI Schedule goods, the goods were rightly detained by the 1st respondent.

6. At this juncture, the learned counsel for the petitioner would submit that the petitioner is willing to pay one time tax and on such payment, the goods detained along with the vehicle may be directed to be released.

7. In view of the submissions made by the learned counsel for the petitioner that the petitioner is willing to pay one time tax and in order to give a quietus to the issue, for the purpose of release of goods, on

payment of one time tax viz., Rs.60,000/-by the petitioner, the 1st respondent, shall release the goods along with the vehicle bearing Registration **AP 26 TE 2228** forthwith. With regard to compounding fee, it is always open to the petitioner to challenge the same in the manner known to law.

With the above directions, the writ petition is disposed of. No costs. Connected miscellaneous petitions are closed.

30.10.2015

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Note: Issue today

To

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