IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2015

CORAM:

THE HONOURABLE Mr.JUSTICE.R.MAHADEVAN

W.P.No.25533 of 2015
and M.P.No.1 of 2015

1 K. Rukmani
2 J. Manickam
3 M. Lakshmi Priya
[Petitioners]

Vs

1 The joint Commissioner (Enforcement)
Commercial Taxes Building
Dr. Balasundaram Road Coimbatore 641 018.

2 The Deputy Commercial Tax Officer (Enf.)
Roving Squad K.G. Chavadi (IN) Coimbatore. [Respondents]

Writ petition has been filed under 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records relating to the impugned show cause notice for composition of offences issued in G.D.R. No. 164/15-16/2014-2015 dt 17.7.2015 by the 2nd respondent quash the same and consequently direct the 2nd respondent not to interfere with the transportation of raw Arecanuts by the petitioners with the Statutory Certificate issued by the Village Administrative Officer.

For Petitioners : Mr.AR.L.Sunderasan, Senior Counsel for Mr.R.Bharath Kumar

For Respondents : Mr.S.Manoharan Sundaram, AGP(T)

ORDER

Heard Mr.AR.L.Sunderasan, learned Senior Counsel for the petitioners and Mr.S.Manoharan Sundaram, learned Additional Government Pleader (Taxes), who took notice for the respondents and with their consent, the main writ petition itself is taken up for disposal.

2. This writ petition has been filed challenging the show cause notice dated 17.7.2015 issued by the 2nd respondent and to direct the 2nd respondent not to interfere with the transportation of raw Arecanuts by the petitioners with the Statutory Certificate issued by the Village Administrative Officer.

3.1 The learned Senior Counsel for the petitioners submits that the petitioners are agriculturists/growers of Arecanut Plantation within the Mettupalayam Taluk, Coimbatore District. The 1st petitioner owns land to an extent of 3.70 acres in S.F.No.511/2G of Odanthurai Village,, the 2nd petitioner owns land to an extent of 7.53 acres in S.F.No.500 of Odanthurai Village, and the 3rd petitioner owns land to an extent of 5.80 acres in S.F.Nos.371, 372/1, 373 of Nellithurai Village. The learned Senior Counsel would submit that as soon as arecanuts are fully grown it would be harvested and kept in open ground for drying and husk is removed and the agricultural activities are ended only at this stage.

3.2 The learned Senior Counsel for the petitioner would further submit that there is no market for sale of this commodity in South India and it is only in North India. It is his further submission that the petitioners used to send Arecanuts without making any physical, chemical or any other process thereby changing its character as agricultural produce through lorry transportation with supporting documents as contemplated under the Relevant Statute. The Agents/dealers who receive arecanuts at Delhi would sell the commodity there and send the sale proceeds to them and this practice has been followed from time immemorial.

3.3 Adding further, the learned Senior Counsel for the petitioners would submit that the Check Post Officers attached with Commercial Tax Department were harassing the agriculturist who transport Raw Arecanuts with supporting documents to pay compounding fee, Sales Tax etc. and one such agriculturist N.Devaiah Gowder, who faced a similar kind of harassment earlier approached this Court by filing W.P.No.981 of 1959 and this Court, by Order dated 01.02.1962 [Reported inn 1962 STC 422] has held that an agriculturist merely because he happens to market his crops, will not be a dealer nor will he be a dealer because, agricultural produce was put to some kind of treatment only in order to make it marketable. This decision was followed in one another case reported in 1967 XIX STC 41 (K.S.Varadaraja Iyengar case) and in the year 1970, the case of one another agriculturist by name M.N.P.Nanjaiah, Coimbatore was also accepted by the department by proceedings dated 07.11.1970.

3.4 The learned Senior Counsel for the petitioners also brought to the notice of this Court that the Deputy Commissioner of Commercial tax (Enforcement), Coimbatore, had also issued a Circular dated 02.03.1994 to the Commercial Tax Officer/Check Post Officer and he would contend that time and again the higher officials of Commercial Tax Department have issued circulars/instructions to all the Check Post Officers and Commercial Tax Officers, instructing them not to detain the goods and for transportation of agricultural produces by the agriculturist, either a Certificate from Village Administrative Officer or Form XXB is sufficient and the Check Post Officers should not insist only on Form XXB in all cases, and following the same and the Judgments of this Court, the Deputy Commissioner of Commercial Taxes, Salem Division had also accepted the views of agriculturists by proceedings dated 12.12.2005 in the case of N.Chandappa and held that the commodity Arecanuts even subjected to peeling, shall not, lose its character and it is not taxable. Further, he drawn the attention of this Court to the subsequent circular dated 13.10.2008.

3.5 By citing the various circulars and notifications, the learned Senior Counsel for the petitioners would submit that the petitioners have been transporting raw Arecanuts with the aid of the above referred circulars and the Judgments of this Court without any harassment from the Commercial Tax Department till the month of June 2015. While that being the case, during 2nd week of June 2015, when the petitioners transported raw Arecanuts to Delhi, through AVG Logistics Private Limited, Coimbatore, with proper documents, the 2nd respondent made a surprise inspection and detained the raw Arecanuts being loaded into the vehicle. Though the petitioners took pain to explain that the goods in question are not liable to tax by referring to all circulars and judgments of this Court, all gone in vain and the 1st respondent instructed the petitioners to get clarification from the Commissioner of Commercial Tax under Section 48(a) of the Tamil Nadu Value Added Tax act, 2006, stating that she does not have any power to release the goods without any new circular/instructions. In the meantime, the 2nd respondent, who has no authority issued a show cause notice dated 17.07.2015 for composition of offence on the ground that Arecanuts are taxable commodity falling under Entry 6 Part B of I Schedule to the Tamil Nadu Value Added Tax Act, 2006, even before finding out as to whether any offence is committed by the petitioners. Challenging the same, this writ petition is filed.

3.6. The learned Senior Counsel for the petitioners would further brought to the notice of this Court that the Commissioner of Commercial Taxes, by letter dated 04.08.2015 had erroneously observed that the planters who effect sale of Arecanuts grown by them to other States through the Agent, have to be treated as Dealers.

4. That apart according to the learned Senior Counsel for the petitioners, the 2nd respondent has erred in law in coming to the conclusion that dealer has contravened Section 71 of the TNVAT Act and holding that the dealer is liable for punishment under Section 71 (5) of the Act, without proper application of mind and without appreciating the facts on record. It is his further contention that the Arecanuts are perishable commodity and due to illegal detention, the petitioners are incurring huge loss every day and hence pray for

setting aside of the impugned order.

5. The learned Additional Government Pleader (Taxes), has also brought to the notice of this Court that the issue in question has already been decided by this Court in a case reported in (1967) 19 STC 41(K.S.Varadaraja Iyengar vs. Deputy Commercial Tax Officer).

6. A perusal of the impugned show cause notice reveals that without invoking Section 67 of the TNVAT Act and without looking into the communication of the Principal Secretary/Commissioner of Commercial Taxes in Acts Cell-I/38513/2009 dated 13.10.2009, straight away invoking the provisions of Section 71(5)(a) of the TNVAT Act, the 2nd respondent, proceeded to compound the offence without following the procedures enunciated under the TNVAT Act, by detaining the consignments related to Arecanuts of the petitioners. Since, according to the learned Senior Counsel for the petitioners, the petitioners, who are agriculturists, transporting the Arecanuts outside the State and no change had taken place in the commodity transported and the goods in transit were accompanied by the Certificate issued by the Village Administrative Officer, certifying that the areca which is the subject matter of the transit is the product grown by the Agriculturist in his own and is transporting the same on his own accord to sell the same outside the State, this Court is of the view that the goods detained are to be released. Hence, the respondents are directed to release the goods in question forthwith on production of a copy of this order, after obtaining necessary documentary proof from the petitioners with regard to address and other required details.

7. Though it is rightly contended that the issue in question has already been decided by the decision rendered by this Court reported in (1967) 19 STC 41, after the introduction of the TNVAT Act in the year 2006, much water has flown. Hence, it is open to the respondents to decide the issue, however, after completing the required parameters enunciated under the provisions, more particularly Section 2(41) of the Act.

The writ petition is disposed of with the above directions. No costs. Connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1 The joint Commissioner (Enforcement)
Commercial Taxes Building
Dr. Balasundaram Road Coimbatore 641 018.

2 The Deputy Commercial Tax Officer (Enf.)
Roving Squad K.G. Chavadi (IN) Coimbatore

+1 cc to M/S.R.Bharath Kumar, Advocate sr.43242

W.P.No.25533 of 2015

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