IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.25713 of 2015

Tvl Zenith Birla India Ltd [ Petitioner ]
Represented by its Vice President (Operations)
Thiru Rajendra Prasad Gaur Survey
No: 782 Kalugur Village
Kulithalai Taluk
Karur District-639 120

Vs

The Deputy Commercial Tax Officer
The Check Post Officer
K.G. Chavdi Check Post (Outgoing)
Coimbatore-641 105. [Respondent]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records in respect of the Draft Compounding Notice TIN:33061582468 / 2014-15 : GDR No 504/2015-16 Dated 30.07.2015 issued by the Respondent quash the same order release of the Goods and Goods Vehicle continued to be detained in pursuance of that Notice order payment of adequate monetary compensation for the inconvenience and financial loss caused to the Petitioner on account of such unlawful detention of the Goods Vehicle and the goods transported in that vehicle.

For Petitioner : Mr.S.P.Asokan
For Respondent : Mr.S.Manoharan Sundaram, AGP(T)

ORDER

Heard the learned counsel appearing for the petitioner and Mr.S.Manoharan Sundaram, learned Additional Government Pleader, (Taxes), who took notice for the respondent and with their consent, the main writ petition itself is taken up for disposal.

2.The writ petition has been filed under Article 226 of the Constitution of India challenging the Draft Compounding Notice in TIN:33061582468 / 2014-15 : GDR No 504/2015-16 dated 30.07.2015 issued by the Respondent and to direct the respondent for release of the Goods and Goods Vehicle continued to be detained pursuant to the notice.

3. The petitioner, being a Public Limited Company, incorporated under the Companies Act, 1956, having factory at Kalugur Village, Kulithalai Taluk, Karur District, in which, the petitioner carries on the activity of manufacture of steel pipes, is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 with TIN:33061582468. The petitioner Company effected an inter-state sales of Coated Steel pipes form their factory at Kalugur Village, Kulithalai, Karur District vide invoice No.113 dated 24.07.2015. Pursuant to the said sales, the goods were transported in a Goods Vehicle to the consignee at Ernakulam, Kerala State, accompanied by Sales invoice, Lorry receipt and Form JJ. However, the Check Post Officer, K.G.Chavadi Check Post, detained the goods after issuing show cause notice for composition of offence, stating that goods were not accompanied with transit pass. On receipt of the said notice, the petitioner, produced the same, which was verified and accepted by the respondent. After acceptance, the respondent ought to have released the goods and the vehicle, but without doing so, the respondent issued the impugned notice dated 30.07.2015, wherein, it has been alleged that there was a turnover difference between the purchase turnover reported by the petitioner in the monthly returns filed for the year 2014-15 and the sales turnover reported by the selling dealers and hence, they propose to levy tax and penalty, with a direction to the petitioner to file their objections or to pay the tax and penalty. Challenging the same this writ petition is filed.

4. According to the learned counsel for the petitioner, only the assessing officer has the power under the relevant provisions of the Act to levy tax and penalty and not the Check Post Officer, whose power is restricted to the demand of advance tax under Section 67 of the Act in respect of the goods involved in the particular transport checked by him, when the conditions prescribed in that section are satisfied and to detain the goods till such advance tax is paid. Further, according to him, on producing transit pass, the goods ought to have been released and the alleged defects in the returns filed by the petitioner for the previous year cannot be the reason to detain the goods under Section 67 of the Act and such action of the respondent is absolutely unjustified and unwarranted. Based on these, the learned counsel for the petitioner has prayed for allowing of the writ petition.

5. The goods said to have been transported without transit pass and hence the same are detained by the respondent. Hence, without going into the merits of the case, for the purpose of release of goods, the petitioner is directed to appear before the respondent, who shall quantify the tax to be paid on the basis of the invoices. On such quantification, the petitioner shall pay the tax alone and on such payment, the goods and the vehicle shall be released forthwith. Any violation in respect of the transactions shall be placed by the respondent before the Assessing Authority, who shall proceed in accordance with law.

The writ petition is disposed of with the above direction. No costs.

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s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Deputy Commercial Tax Officer
The Check Post Officer
K.G. Chavdi Check Post (Outgoing)
Coimbatore-641 105.

+ 1 cc to Mr.S.P.Asokan, Advocate SR 43939

+ 1 cc to Spl. Govt.Pleader (Taxes) SR 43978

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