IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.26803 of 2015
and M.P.Nos.1 & 2 of 2015

U K Knitting [Petitioner]
Rep. by its Partner P.Kandhasamy
No.699/1, R.Muthusamy & Bros. Industrial Complex
Palladam Road Tirupur-641064.

Vs

The Commercial Tax Officer
Aliyar Roving Squad
Pollachi Camp at Tirupur.
[Respondent]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the respondent in GDR No.169/2015-16 dated 20.08.2015 and the consequential proceedings in GDR. Sl.No.169/2015-16 dated 21.08.2015 and quash the same.

For petitioner : Mr.S.Prabhakaran
For respondent : Mr.S.Manoharan Sundaram, AGP(T)

O R D E R

Heard the learned counsel 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 is taken up for disposal.

2. This writ petition has been filed challenging the order of the respondent dated 20.08.2015 and the consequential proceedings passed in GDR.Sl.No.169/2015-16 dated 21.08.2015.

3. The petitioner's firm initially registered under the TNVAT Act, with TIN 33302425363. In the year 2008, the petitioner imported a machinery vide Invoice No.AAO800517 dated 30.04.2008, which was also put in use by the petitioner firm. Since the petitioner is only a works contractor, nil return was filed by them. Subsequently, since there was no transaction involving transfer of property, the registration of the petitioner was cancelled. The

petitioner intended to sell the above machinery and therefore, once again applied for registration and got registered with TIN 33746326558 with effect from 13.08.2015. The machinery was to be sold to a registered dealer by name Kanva Fashions Limited in Bangalore and accordingly the same was being transported from Tirupur to Bangalore, by a lorry. The respondent detained vide GDR.No.169/2015-16 dated 20.08.2015, on the ground of defects in the invoice and for verification of purchase bill and the registration certificate of the petitioner. Subsequently, the petitioner was issued with a compounding notice dated 21.08.2015 from the respondent on the ground that the machinery was undervalued and the sale invoice did not make a mention of the TIN No of the purchaser or serial no. and that the seller was attempting to evade tax by suppressing the purchase details of the machinery. The petitioner requested for release of the goods and vehicle by submitting a representation dated 24.08.2015 offering explanation to the grounds raised in the detention notice. Till date no order has been passed. Hence, the petitioner is before this Court.

4. It is the contention of the learned counsel for the petitioner that the petitioner firm is effecting resale of the machinery which was purchased in the year 2008. As per the original invoice, the value at the time of import was Rs.40 lakhs and after 5 years, considerable depreciation has to be taken into consideration and accordingly, they are effecting resale for a sum of Rs.20,00,000/-. But, without considering all these factors, the respondent has directed to pay a sum of Rs.1,50,000/- as tax. Hence, there is no justifiable reason for sustaining the impugned order.

5. However, the learned counsel for the petitioner would submit that the petitioner is prepared to pay 50% of the tax amount and on such payment, the goods detained may be directed to be released.

6. The learned Additional Government Pleader (Taxes) submitted that since the petitioner is willing to pay 50% of the disputed tax, on such payment, direction may be given to the respondent to release of goods.

7. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. Admittedly, the Check-post authority cannot decide the issue relating to assessment and quantify the value of the products. As per the sale invoice, the value of the product is Rs.20 lakhs and the petitioner seems to be a registered dealer. Hence, as an interim measure for release of goods, the petitioner is directed to pay a sum of Rs.75,000/- being 50% of the disputed tax and on such payment being made by the petitioner, the goods detained are directed to be released forthwith. However, it is made clear that the issue in question can be looked into by the assessing authority concerned by adopting proper adjudication process followed by a speaking order,

after affording due opportunity to the petitioner.

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

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

The Commercial Tax Officer
Aliyar Roving Squad
Pollachi Camp at Tirupur.

1 cc to Spl.Government Pleader(T).Sr.No.45705
1 cc to Mr.S.Prabhakaran , Advocate Sr.No.45696

W.P.No.26803 of 2015

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