IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.27385 of 2015
and M.P.No.1 of 2015

M/s. Jaimataji Cargo (Regd.) [Petitioner]
Rep.by its Proprietor
No.12/36 Kalathi Pillai Street
Chennai-600 079.

Vs

Commercial Tax Officer
Roving Squad-IV Enforcement (North)
Greams Road Chennai-600 006. [Respondent]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the respondent in her notice in G.D.No.6546/2015-16/ RS-IV dated 20.08.2015 and quash the abnormal estimation of the value of the detained goods as illegal and direct the respondent to collect the taxes on the value of the invoices accompanied with the goods vehicle or as per the market commercial value of the goods after providing the inventory of goods noticed at the time of physical verification of goods on 13.08.2015 and release the goods.

For petitioner : Mr.C.Baktha Sironmoni
For respondent : Mr.S.Kanmani Annamalai, AGP(T)

O R D E R

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, 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 notice of the respondent dated 20.08.2015 and to direct the respondent to collect taxes on the value of the invoices accompanied with the goods vehicle or as per the market commercial value of the goods, after providing the inventory of goods noticed at the time of physical verification of goods on 13.08.2015 and release the goods.

3. The petitioner company is carrying on the business of transporting goods from Delhi to Chennai. The petitioner has transported parcel of goods belonging to various dealers in Chennai

and Pondicherry, who have purchased goods like electrical and electronics and general goods from the sellers in Delhi, who issued sales bills. Both the buyers and sellers are registered dealers in their respective State. However, the respondent, has detained the goods vehicle No.HR-46 D 4479 of the petitioner, carrying parcel of goods belonging to various parties in Chennai and Pondicherry. The vehicle was seized near Madhavaram and taken to Puzhal Check Post on 02.08.2015 for physical verification. On 02.08.2015, the goods detention notice was issued by stating the reasons as follows:-

> "1. Goods vehicle intercepted at Padianallur Toll Gate
>
> 2. On verification of the bills, the consignor's TIN have not been alive as per web report. Hence the dealer has not purchased the goods against "C" form and concession rate of rate at 2%.
>
> 3. To verify the genuineness of the transaction of the consignee's
>
> 4. G.D. issued @ Puzhal check post and after payment "C" fees the G.D. shall be released".

4. Challenging the said goods detention notice dated 02.08.2015, the petitioner has filed W.P.No.27385 of 2015 before this Court and this Court on 20.08.2015, has passed the following order:-

> ".....It is the contention of the petitioner that the entire goods in the detained vehicle are supported by proper sales invoices issued by the Sellers at Delhi. According to the petitioner, when that being the case, when the goods that transported are supported by proper invoices and sale bills and when both the sellers and purchasers are registered dealers under VAT and CST Acts, there is no justifiable reason for detention of the goods as per Sections 68 and 69 of the TNVAT Act. Further, the grievance of the petitioner is that when the sales bills were accompanied with the goods transported from Delhi, after verification of records, the respondent ought to have released the goods. However, the respondent has detained the same and the lorry was detained from 02.08.2015 to till date, without any valid reason. Hence, challenging the same, this writ petition is filed.

4. The learned counsel for the petitioner submits that the respondent has no powers to detain the goods when the goods are moved with proper records as required under the provisions of the Act. According to him, in view of detention of the goods and vehicle, the petitioner cannot operate their transport business in the State. The respondent also detained two consignments relating to the consignees who are doing business in Pondicherry State. Further, according to him, the respondent has no power to detain the goods transported from Delhi to Pondicherry as the goods are just passing through the State of Tamil Nadu and the Tamil Nadu State has no liability of any tax as the goods are transported to the two registered dealers in Pondicherry State.

5. It is the further contention of the learned counsel for petitioner that though the goods are detained on 02.08.2015, physical verification was done only on 13.08.2015 and no notice whatsoever has been issued. That apart, according to him, the petitioner has to pay Rs.4,000/- to the owner of the goods vehicle every day from 02.08.2015 and because of the inaction on the part of the respondent to conduct verification and release the goods and vehicle, the petitioner has to suffer both mentally and financially. Further, according to him, when the taxes due for the goods detained are paid, then the goods have to be released. But, as far as the case of the petitioner is concerned, the respondent has not arrived the taxes due even after 15 days from the date of detention of the goods. Hence, the learned counsel for the petitioner has prayed for allowing of the writ petition.

7. On the other hand, the learned Additional Government Pleader (Taxes) submitted that a direction may be issued to the respondent to quantify the tax and on such payment being made, the goods will be released.

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

9. Admittedly, the goods are detained from 02.08.2015. Till date, tax has not been quantified. Hence, for the purpose of release of goods, the respondent is directed to intimate the

quantum of tax to be paid on receipt of a copy of this order and communicate the same to the petitioner within a period of one week from today 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, which is yet to be made. Hence, such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

With the above directions, the writ petition is disposed of. No costs".

5. According to the learned counsel for the petitioner, on receipt of the said order of this Court dated 20.08.2015, the respondent has issued a notice dated 20.08.2015 as directed by this Court, with an option to compound the offence and directed to pay a sum of Rs.14,41,630/-. Aggrieved over the same, the petitioner has moved this Court by way of filing the present writ petition.

6. The main ground of attack in this writ petition is with regard to the value of the product adopted by the respondent so as to arrive the actual taxes to be paid.

7. According to the learned counsel for the petitioner, the respondent has adopted the commodity code number as the value of the product and arrived payment of taxes to the tune of Rs.14.41 lakhs, which is unsustainable.

8. On the other hand, the learned Additional Government Pleader (Taxes), on instructions, submitted that the value adopted by the respondent is nothing but the price available on the cover of each and every product mentioned as MRP and hence the value arrived at by the respondent is correct and on payment of such tax, goods will be released.

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

10. To give a quietus to this issue, the petitioner along with his counsel is directed to appear before the respondent on 04.09.2015 at 11.00 a.m. with all the documents and substantiate his claim. If the petitioner is able to substantiate his claim with regard to the price to be adopted, the same shall be considered and necessary calculation be arrived at by the respondent and thereafter actual tax to be paid be intimated to the petitioner and on such intimation, the petitioner is directed to pay the taxes forthwith and on such

payment, the goods are directed to be released forthwith. It is needless to mention that if the petitioner's claim is not substantiated by documents, the respondent is at liberty to proceed in the manner known to law, as per notice dated 20.08.2015.

The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

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s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer
Roving Squad-IV Enforcement (North)
Greams Road Chennai-600 006.

+ 1 cc to Mr.C.Bakthasiromani, Advocate, SR 47218

+ 1 cc to Special Govt.Pleader (Taxes) Advocate SR 47563

gj(co)
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