IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.28612 of 2015

and M.P.No.1 of 2015

Sparkle Speciality Coatings & Trading Pvt. Ltd.
rep. by Manager
12 Bhagyalakshmi Street Bharath Nagar
Madipakkam Chennai-91 [Petitioner]

Vs

The Deputy Commercial Tax Officer
Ranipet (in) Check Post
[Respondent]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records of the respondent in his proceedings in GOODS DETENTION Notice No.2051 dated 23.8.2015 and quash the same and direct the respondent to release the goods.

For Petitioner : Mr.Aditya Reddy

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

O R D E R

Heard the learned counsel appearing 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 itself is taken up for disposal.

2.The writ petition has been filed under Article 226 of the Constitution of India challenging the GOODS DETENTION Notice No.2051 dated 23.8.2015 and to direct the respondent to release the goods.

3. The petitioner, being a very large player in the steel manufacturing industry with an international reputation, placed purchase orders for 200 litres of Thinner and 400 litres of paint

from one Grand Polycoats Company Pvt. Ltd., Gujarat. When the goods were in transit from Gujarat in Lorry bearing No.MH 20 DE 2612, they were detained by the respondent at Ranipet Check Post on 23.08.2015 at 10.50 hrs. The respondent issued Goods Detention Notice dated 23.08.2015 on the ground that the invoice accompanying the goods did not carry the petitioner's TIN number. It is the contention of the petitioner that when the petitioner's representative rushed to checkpost with a copy of the petitioner's registration certificate under TNVAT Act to show that there is no question of any "leakage of revenue" as claimed by the respondent, the respondent refused to release the goods. The respondent has served the petitioner compounding notice demanding to pay the tax on the value of the goods viz., Rs.1,90,485/- along with compounding fee. Aggrieved over the same, the petitioner is before this Court.

4. According to the learned counsel for the petitioner, though the goods were accompanied with all necessary documents, on the ground of non mentioning of the petitioner's TIN number in the invoice, the goods were detained, which is unsustainable, as the same does not violate any provisions of the TNVAT act and does not lead to presumption of evasion of tax, when the petitioner was able to establish that it is a registered dealer on the file of the Tambaram II Assessment Circle. That apart, according to him, the respondent has violated the principles of natural justice in reaching to the conclusion that the petitioner Company has intended to evade sale tax without giving an opportunity to the petitioner Company to explain the facts. However, after having made a final conclusion that the petitioner Company had committed an offence, the respondent offered an opportunity to compound the offence instead of facing prosecution. This opportunity granted to choose between prosecution and composition cannot cure the failure on the part of the respondent in affording an opportunity to the petitioner before concluding that it had attempted to evade tax.

5. Adding further, the learned counsel for the petitioner would submit that the petitioner is willing to pay one time tax which may be quantified by the respondent and on such payment, goods may be directed to be released and as far as compounding fee is concerned, liberty may be given to the petitioner to adjudicate the same.

6. The learned Additional Government Pleader (Taxes) submitted that a direction may be given to the respondent to quantify the tax to be paid by the petitioner and on such payment, goods may be directed to be released.

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

8. 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 such quantification, the petitioner shall pay the tax alone and on such payment, the goods shall be released forthwith. As far as compounding fee is concerned, it is always open to the petitioner to challenge the same in the manner known to law.

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

-s/d-
Assistant Registrar(CSIV)
dt:18/9/2015

True Copy

Sub-Assistant Registrar

To

The Deputy Commercial Tax Officer
Ranipet (in) Check Post

+1 cc to the Special Government Pleader (Taxes) sr.50655
+1 cc to Mr.Adithya Reddy Advocate sr.50450

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