IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.29146 of 2015
and
M.P.No.1 of 2015

Tvl. Bhawar Sales Corporation
Rep. by its Managing Director
B. Sanjay Kumar
No.200A Godown No.13
Madhavaram High Road
Madhavaram
Chennai - 600 060 [Petitioner]

Vs

The Deputy Commercial Tax Officer
Roving Squad-V
Office of the Deputy Commissioner (Enforcement)
Chennai (East) Division
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 entire records of the respondent Goods Detention Notice No. 4049/2015-16 dated 26.08.2015 and the consequential compounding notice in G.D. No. 4049/2015-16 dated 01.09.2015 and quash the orders passed therein and direct the respondent to release the detained goods of the petitioner along with the vehicle bearing Registration No.TN 22 M 3565.

For petitioner : Mr.M.R.Kuyilan

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 writ petition is taken up for disposal.

2. This writ petition has been filed challenging the Goods Detention Notice No. 4049/2015-16 dated 26.08.2015 and the consequential compounding notice in G.D. No. 4049/2015-16 dated 01.09.2015 issued by the respondent and to direct the respondent to release the detained goods of the petitioner along with the vehicle bearing Registration No.TN 22 M 3565.

3. The petitioner Company, registered under the Tamil Nadu Value Added Tax Act, 2006 with TIN No.33951502778 and CST No.865655 with effect from 15.04.1998, having its registered office at Shenoy Nagar, Chennai, is a wholesale distributor of goods manufactured by M/s Procter and Gamble (P&G). The petitioner Company is also having 7 branches across the various places in Chennai. During the course of business transactions, the petitioner purchased goods from M/s Gillette India Limited and M/s Procter & Gamble Hygine & Health Care Limited, Tiruvallur, Chennai. From the said sellers, the petitioner purchased WIL STNLS 10 blades and Vicks Vaporub through Bill dated 20.08.2015 and 23.08.2015 respectively. The petitioner submits that all the goods stored in the Madavaram branch was transported to the Shenoy Nagar Branch on 26.08.2015 along with delivery Note in Form JJ dated 26.08.2015. However, the respondent detained the goods on the ground that the consignment was not covered by delivery note or a sale bill. Though the petitioner approached the respondent in person by producing all the documents and submitting that there is no sale involved as the goods was moved from the same concern from its branches to branches, the respondent issued G.D.No.4049 of 2015-16 dated 26.08.2015, detaining the goods on the alleged ground that the goods were not supported by documents. Consequently, compounding notice dated 01.09.2015 was also issued, in and by which the petitioner was given an option of compounding the offence for a sum of Rs.3,95,142/- being one time tax due for the goods detained together with two times compounding fee of Rs.7,90,284/-. Aggrieved over the same, the petitioner is before this Court.

4.1 The learned counsel for the petitioner submitted that the goods detention notice dated 26.08.2015 is ex-facie illegal, arbitrary and unjustifiable in law. Further, according to him, when the goods are supported by documents and the consignee address was clear in all the documents and mentioning of the TIN number established the genuineness of the transactions, the detention of goods by the respondent is arbitrary and illegal. That apart, according to the learned counsel, the respondent did not consider the fact that it was the movement of goods from one branch to another branch office involving no sale or purchase in the movement and hence compelling the petitoner to pay compounding fee is illegal. Besides, since the consignor and the consignee are one and the same person, there was no evasion of tax or avoidance of tax and therefore, demanding tax as well as compounding fee for release of goods is unsustainable.

Basing on these, the learned counsel for the petitioner has sought for allowing of the writ petition.

5. The learned Additional Government Pleader (Taxes) on the other hand would submit that since the driver who was also the person incharge of the vehicle as well as the goods has deposed that there was no bill of sale of Form JJ for the goods transported, the goods were detained.

6. At this juncture, the learned counsel for the petitioner would submit that the petitioner is willing to pay one time tax and on such payment, the goods detained along with the vehicle may be directed to be released.

7. In view of the submissions made by the learned counsel for the petitioner that the petitioner is willing to pay one time tax and in order to give a quietus to the issue, for the purpose of release of goods, on payment of one time tax viz., Rs.3,95,142/-by the petitioner, the respondent, shall release the goods along with the vehicle bearing Registration No.TN 22 M 3565 forthwith. With regard to compounding fee, it is always open to the petitioner to challenge the same in the manner known to law.

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

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commercial Tax Officer
Roving Squad-V
Office of the Deputy Commissioner (Enforcement)
Chennai (East) Division
Chennai - 600 006

1 CC to Mr.M.R.Kuyilan, Advocate SR.No. 51657

1 CC to the Government Pleader, SR.No. 51725

W.P.No.29146 of 2015

PA (CO)
PSI (23.09.2015)