IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.30438 of 2015
and
M.P.No.1 of 2015

M/s.Simhapuri Agri Tech Co. (P) Ltd.,
rep. by its Director S.Vinodh,Karnataka .. Petitioner

Vs

The Deputy Commercial Tax Officer,
Kandamangalam Checkpost,
Linga Reddypalayam, Villupuram. .. 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 in his Goods Detention Notice No. 3581 dated 17.09.2015 in Form No.041 and consequential notice in GDN 3581/2015-16 dated 20.09.2015 and quash the same as illegal and direct the respondent to release the goods of Crude Palm Oil covered by Invoice No.138 dated 16.09.2015 and detained vide Goods Detention Notice No.3581 dated 17.09.2015 immediately.

For Petitioner : Mr.S.Ramanathan
For Respondent : Mr.S.Kanmani Annamalai,
Addl. Govt. Pleader (T)

ORDER

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who takes notice for the respondent.

2.This writ petition has been filed, challenging the Goods Detention Notice No.3581 dated 17.09.2015 in Form No.041 and consequential notice in GDN 3581/2015-16 dated 20.09.2015 issued by the respondent and to direct the respondent to release the detained goods of the petitioner.

3.The petitioner is a dealer in Crude Palm Oil and registered dealer under the Karnataka Value Added Tax Act with TIN No.29570517253. The petitioner sold 20170 kgs of crude palm oil to M/s.JR Foods Limited, Thirubhuvanai, Puducherry vide Invoice No.138

dated 16.09.2015. During transit, the respondent detained the goods vide Goods Detention Notice No.3581 dated 17.09.2015 stating that the goods were transported without transit pass. Though the petitioner approached the respondent in person by producing all the documents, the respondent issued a compounding notice dated 20.09.2015, in and by which, the petitioner was given an option of compounding the offence for a sum of Rs.45,666/- being one time tax due for the goods detained together with two times compounding fee of Rs.91,332/-. Aggrieved over the same, the petitioner is before this Court.

4.The learned counsel for the petitioner submitted that the goods detention notice dated 17.09.2015 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 failed to consider the fact that the goods were accompanied by invoice, lorry way bill and the transit pass and therefore, levy of compounding fee is illegal. He would further submit that there is no failure to pay or attempt to evade tax so as to attract levy of compounding fee. Hence 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 crude palm oil falling under Sixth Schedule of TNVAT Act, 2006, was not accompanied with transit pass as required under Section 70(1) of TNVAT Act, 2006, 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 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.45,666/-by the petitioner, the respondent, shall release the goods. With regard to compounding fee, it is always open to the petitioner to challenge the same in the manner known to law.

8.With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

mmi

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Deputy Commercial Tax Officer,
Kandamangalam Checkpost,
Linga Reddypalayam, Villupuram.

+ 1 cc to M/s.S.Ramanathan, Advocate SR 52521

+ 1 cc to Govt.Pleader (T) SR 52952

mp(co)
prk29/9

W.P.No.30438 of 2015

28.09.2015