IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.30612 of 2015

Navbharat Marbles [Petitioner]
ECR 100 Feet Road
Rs.No.146/5 Kottupalayam
Puducherry-605 007.

Vs

The Deputy Commercial Tax Officer
Roving Squad-III Enforcement
Chennai-600 006. [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 GD.No.1065/2015-2016/Rs-III CC dated 16.09.2015 and quash the same and direct the Respondent to release the goods.

For Petitioner : Mr.Adithya Reddy
For Respondents : Mr.S.Manoharan Sundaram, AGP(T)

O R D E R

Heard the learned counsel appearing for the petitioner and Mr.S.Manoharan Sundaram, learned Additional Government Pleader, (Taxes), who took notice for the respondents 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 proceedings dated 16.09.2015 and to direct the respondent to release the goods.

3. The petitioner, dealing in marbles and tiles registered under the Pondicherry VAT Act. The petitioner has placed orders for ceramic tiles from two suppliers in Gujarat. The tiles had been consigned by the said suppliers along with necessary documents on 29.08.2015 and 30.08.2015. When the tiles were moved from the harbour to the petitioner's location at Puducherry by Goods Vehicle bearing No.TN 21 AY0204 through Chennai, the vehicle was intercepted by the respondent on 16.09.2015 at 01.15 p.m. and the goods were detained on the ground that the goods delivery address was noted as Panruti. It appears that the driver of the vehicle has handed over

some wrong invoice pertaining to some other goods of the respondent due to inadvertence. Actually, the goods were accompanied with correct invoices and the same were addressed to the petitioner. However, the respondent has served the impugned detention notice on the driver demanding the petitioner to pay tax at 14.5% on the value of the goods along with compounding fees. Aggrieved over the same, the petitioner is before this Court.

4.1 The learned counsel for the petitioner submitted that the driver of the vehicle has inadvertently shown the wrong invoice whereas the goods were accompanied with correct invoices showing the address of the petitioner.

4.2 That apart, according to the learned counsel for the petitioner, the respondent ought to have seen that Section 71(3)(d), (e) and 71(5)(a) have no application to the facts of the case, since the petitioner's goods were accompanied with all the documents including sale invoice.

4.3. Adding further, learned counsel for the petitioner would submit that the respondent has violated the principles of natural justice in coming to the conclusion that the petitioner Company has intended to evade Sales Tax on the sales in question without giving any opportunity.

4.4. Besides, according to the learned counsel for the petitioner, the respondent has grossly erred in demanding not only payment of tax, but also payment of compounding fee as conditions for release of the goods.

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 goods have not been accompanied with correct documents, the impugned detention notice came to be passed.

6. At this juncture, 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.

7. 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.

8. This Court has 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 16.09.2015. Till date, tax has not been quantified. Hence, for the purpose of release of goods, the respondent is directed to quantify the tax to be paid by the petitioner and intimate 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. As far as the compounding fee is concerned, it is open to the petitioner to adjudicate the same in the manner known to law.

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

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s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Deputy Commercial Tax Officer
Roving Squad-III Enforcement
Chennai-600 006.

+ 1 cc to Spl.Govt.Pleader (Taxes) SR 55762

+ 1 cc to M/s.Adithya Reddy, Advocate SR 55289

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