IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.31983 of 2015
and M.P.Nos.1 & 2 of 2015

M/s. Sarnita Compactors Private Limited [Petitioner]
Rep. by its Managing Director-D.Venkatesh
No.3 College Cross Road
Near Postal Colony Avarankadu
Tirupur-641602 Coimbatore Dt.

Vs

1 The Commercial Tax Officer
Tirupur (North) Tirupur
Coimbatore District.

2 The Commercial Tax Officer
Aliyar Roving Squad Pollachi
Coimbatore District.

[Respondent]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records of the impugned Show Cause Notice for Composition of Offence in GDR No.29636/2014-15 dated 29.09.2015 issued by the 2nd Respondent quash the same as illegal and against the provisions of the Act in so far as the petitioner is concerned.

For Petitioner : Ms.R.Hemalatha

For Respondents : Mr.V.Haribabu, AGP(T)

O R D E R

Heard the learned counsel appearing for the petitioner and Mr.V.Haribabu, 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 Show Cause Notice for Composition of Offence in GDR No.29636/2014-15 dated 29.09.2015 issued by the 2nd Respondent, in so far as the petitioner is concerned.

3. The petitioner, dealing in Hoisery Cloth, Yarn, Art Silk Yarn, Zip, Zap Fastener, Sewing Thread etc., is an assessee on the file of the 1st respondent. The petitioner, is using a Tabular Machine for processing and controlling the fabric and removing shrink in the fabric. On 29.09.2015, the petitioner has moved the above machinery to a place at G.T.Process, Arulpuram, Kunnangalpalayam at Tirupur from Avarankadu in a vehicle bearing Registration No.TN-39-T-9892 with proper documents. However, at 17.30 hrs, the 2nd respondent intercepted the above said vehicle and detained the same along with machinery on the following ground:-

> "The above goods transported from Avarankadu to Kunnangalpalayam, Tirupur along with Form JJ, Sl.No.5 dt.29.09.2015 as noted invalid TIN and noted for Labour Work/Process. Hence the transaction is suspected the goods is detained with vehicle".

According to the petitioner, since no sale is involved in the said transportation and they have only shifted the machinery, which they are entitled to do, detention of goods on mere suspicion of the 2nd respondent is unsustainable. Further, though the 2nd respondent has estimated the cost of machinery, no compounding order has been passed quantifying the tax payable by the petitioner. He has just stated that the petitioner has contravened the provisions of Section 71 of the TNVAT Act and committed an offence punishable under Section 71(5)(a) of the Act. That apart according to the petitioner, the commodity has been left to vagaries of nature, which is highly detrimental to the business prospects of the consignee and hence the petitioner is before this Court.

4.1 The learned counsel for the petitioner submitted that the seizure of the vehicle along with the machinery is totally unwarranted and uncalled for, since no wilful suppression or mala fide intention can ever be made out as against the petitioner.

4.2 According to the learned counsel for the petitioner, though the goods were accompanied with proper documents, the 2nd respondent has passed the impugned order mechanically with no acceptable reason. That apart, according to him, since the machinery was shifted for doing labour work/process and no sale is effected, detention of goods is highly arbitrary and illegal.

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 2nd 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 2nd 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. Admittedly, the goods are detained from 29.09.2015. Till date, tax has not been quantified. Hence, for the purpose of release of goods, the 2nd respondent is directed to quantify the tax to be paid by the petitioner in consultation with the assessing authority 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. Connected miscellaneous petitions are closed.

-Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1 The Commercial Tax Officer
Tirupur (North) Tirupur
Coimbatore District.

2 The Commercial Tax Officer
Aliyar Roving Squad Pollachi
Coimbatore District.

+1 CC to MR.R.Hemavathy Advocate. Sr.No. 54691

W.P.No.31983 of 2015

CO-SVI
JD(08/10/2015)