IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.36593 of 2015 &
M.P.Nos.1 to 3 of 2015

M/s. Nilkamal Ltd.,
represented by S. Esakkiraja,
Authorised Signatory,
Furniture Division,
3rd Floor,
No.74/4, Nelson Manickam Road,
Aminjikarai,Chennai 600 029. ... Petitioner

Vs

1.The Deputy Commercial Tax Officer,
Kandamangalam Check Post,
Villupuram District,
Tamilnadu.

2. The Commercial Tax Officer,
Hosur Assessment Circle,
Hosur.

3. The Commercial Tax Officer,
Pondicherry Assessment Circle,
Pondicherry. .. Respondents.

Writ petition filed under 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus to call for the records on the file of the first respondent in G.D.No.3604 dated 12.11.2015 and quash the same and direct the 1st respondent to release the goods along with vehicle No.TN 34 U 6419 dated 12.11.2015.

For Petitioner : Mr.S.N. Kirubanandam

For Respondents : Mr.S. Kanmani Annamalai
Addl. Govt. Pleader (Tax)

ORDER

Petitioner has filed this writ petition praying for a direction to the first respondent to call for the records on the file of the first respondent in G.D.No.3604 dated 12.11.2015 and quash the same and direct the 1st respondent to release the goods along with vehicle No.TN 34 U 6419 dated 12.11.2015.

2.The case of the petitioner is that the petitioner who is a registered dealer under TNVAT Act PVAT Act and CST Act and engaged in the manufacturing of plastic goods, placed purchase orders for supply of plastic granuls from one M/s.Merit Polymers Unit-II, Nani Daman , Gujarath and on the basis of the purchase order, the above consignment was transported by a lorry bearing Registration No.TN 34 U 6419 and the movement of goods were covered with way bill, form JJ and transport documents as provided under section 69 of TNVAT Act. The said goods transported from Gujarath reached its destination to the petitioner's factory at Pondicherry.

3. After receipt of the goods transported, the petitioner noticed that in the transport documents, appropriate seal which should have been obtained from the Kandamangalam Check post was not obtained and hence the petitioner voluntarily sent the driver of the vehicle to get the seal in the said document. On noticing that no such seal was affixed, the detention order came to be passed by the authorities, against which the petitioner is before this Court .

4.According to the learned counsel for the petitioner, there is no evasion of tax noticed by the authorities at any point of time since the transaction is interstate in nature. He further submitted that the goods were transported all the way from Gujarat crossing several check posts without finding any deficiency in the documents accompanied with the goods vehicle. The learned counsel further submitted that since the driver of the vehicle was not aware of the procedure about generating é' transit pass, the required seal was not obtained, which ultimately ended in detention of goods by authorities. Hence the learned counsel sought to release the goods. The learned counsel also pointed out that the respondent, despite the request of the petitioner upon production of all the documents, refused to release the goods.

5. The learned Additional Government Pleader , on the other hand submitted that the petitioner did not produce relevant documents, hence the detention is proper, so as to collect the genuine tax from the petitioner.

6. I have heard both sides.

7. It is brought to the notice of this Court that the goods transported from Gujarath already reached the destination of the petitioner's factory at Pondicherry and the petitioner who received the goods voluntarily appeared before the authority for obtaining necessary seal in the transport documents. There is no other allegation with regard to evasion of tax pointed

out by the authority in the impugned goods detention notice.

8. Section 72(1) of Tamilnadu Value Added Tax Act, 2006, which reads as follows;

> " Section 72. Composition of offences.-(1) The prescribed authority may, whether on application made to it in this behalf or otherwise, give any person, who has committed or is reasonably suspected of having committed an offence under this Act, option to pay within a specified period, by way of composition of such offence -
>
> (a) Where the offence consists of failure to pay, or attempt to evade or evasion of, any tax payable under this Act, in addition to the tax so payable, a sum of money not exceeding rupees two thousand or double the amount of the tax payable, whichever is greater, and
>
> (b) in other cases, a sum of money not exceeding rupees two thousand."

9. As per the above section, since there is no evasion of taxes mentioned in the impugned order, the authority is entitled to collect Rs.2000/- only from the petitioner. Hence, in the interest of justice, the petitioner is directed to pay a sum of Rs.2,000/- (Rupees two thousand only) for the purpose of release of goods and on such payment, the goods along with vehicle shall be released forthwith . It is always open to the concerned assessing authorities to proceed for composition of offence, if any of the violations of the provisions of the Act is able to be unearthed.

10.The writ petition is disposed of with the above directions. No costs. Consequently the connected M.P.Nos.1 to 3 of 2015 are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

msr

To

1.The Deputy Commercial Tax Officer,
Kandamangalam Check Post,
Villupuram District,
Tamilnadu.

2. The Commercial Tax Officer,
Hosur Assessment Circle,
Hosur.

3. The Commercial Tax Officer,
Pondicherry Assessment Circle,
Pondicherry.

+1 cc to Mr.S.N.Kirubakaran, Advocate, sr.61868

W.P.No.36593 of 2015 &
M.P.Nos.1 to 3 of 2015

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