IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.39390 of 2015
and M.P.Nos.1 & 2 of 2015

M/s.Sri Guru Trader [Petitioner]
rep. by its Manager-K.Jebastin Selvan
No.2B/7-F-II Floor Mamundi Vathiyar Lane
East Masi Street Madurai 625 001
Madurai District.

Vs

1 The Assistant Commissioner (CT)
Munichalai Assessment Circle
Madurai 625 020 Madurai District

2 The commercial Tax Officer (Enf.)
Roving Squad Namakkal
Namakkal District [Respondents]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records on the file of the 2nd respondent in his impugned proceedings in Goods Detention Notice No.1695/15-16 dated 5.12.2015 and the consequential corrected Notice dated 8.12.2015 quash the same as illegal and against the provisions of the Act.

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 Goods Detention Notice No.1695/15-16 dated 5.12.2015 and the consequential corrected Notice dated 8.12.2015 as illegal and against the provisions of the Act.

3. The petitioner who is a registered dealer on the files of the 1st respondent had placed an indent with M/s S.M.Perfumers (P) Ltd., Hosur Road, Bangalore for the supply of Pan Masala (without Tobacco and Nocotine) and accordingly, the same was supplied, with duly covered invoice for Rs.11,26,204 and E Sugam Form issued by the Commercial Taxes Department, Karnataka and despatched through Vehicle bearing No.TN-54-D-6363. According to the petitioner, the transaction has been effected after being CST charging tax @ 2% against C Form. However, the vehicle was stopped for verification by the 2nd respondent at Hosur Inward Check Post and Thoppur Inward Check Post on 05.12.2015 at 0.10 a.m., and after scrutiny, the 2nd respondent on verification took an innocuous plea by stating as follows:-

"Non stop in Hosur inward checkpost and Thoppur Check post. Genuineness to be verified".

The 2nd respondent also issued Goods Detention Notice dated 05.12.2015 by stating that the goods along with the vehicle will be released only after collecting tax and penalty. Thereafter, on 08.12.2015, another corrected notice was issued wherein it has been stated that the Karnataka State Commercial Taxes Department have issued 5 Nos. E-Sugam Form and as per those forms, the goods could be transported 501-1000 Kms for a period of 5 days and for transportation of goods from Bangalore to Madurai, for a distance of 540 Kms out of 5 E Sugam Forms issued, only four forms can be found in order. The grounds raised by the 2nd respondent is vague and the detention of goods is wholly illegal, when the consignment was accompanied by all valid documents. According to the petitioner, the transaction effected was an interstate purchase accompanied by valid documents and therefore, there is no ground to detain the consignment. Hence, the petitioner is before this Court.

4.1 The learned counsel for the petitioner submitted that the 2nd respondent has failed to note that section 67(4) itself provides for release of goods on payment of tax, hence to sit tight over the matter, without affording an opportunity is high handed.

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 her, the goods have been detained since 05.12.2015 and the commodity Pan Masala has been left to vagaries of nature, which is highly detrimental to the business prospects of the consignee and hence she sought for release of goods.

5. Adding further, the learned counsel for the petitioner would submit that the petitioner is willing to pay the 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 05.12.2015. 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, if the goods detained are not prohibitory in nature, the same 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.

rg

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To
1 The Assistant Commissioner (CT)
Munichalai Assessment Circle
Madurai 625 020 Madurai District

2 The commercial Tax Officer (Enf.)
Roving Squad Namakkal Namakkal District

+ 1 cc to Mrs.R.Hemalatha, Advocate SR 67164
+ 1 cc to Spl.Govt.Pleader (Taxes) High Court, Madras SR 67216

ev(co)
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