IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.12.2015

Coram :

The Hon'ble Mr.Justice K.KALYANASUNDARAM

W.P.No.40659 of 2015
and M.P.No.1 of 2015

M/s.Wood Barn Impex Private Limited,
Represented by Mr.Sachin,
Authorised Signatory,
Plot No.241, First Floor, Westend Marg,
Saidulajab,
New Delhi - 110 030. ... Petitioner

vs

The Commercial Tax Officer,
Roving Squad II, Enforcement(North),
Chennai - 6. ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India for issue of writ of Certiorarified Mandamus calling for the records on the file of the respondent in Good detention notice No.7065/2015-16 dated 12.12.2015 and quash the same as being invalid and illegal, and further direct the respondent to release the consignment immediately on payment of advance tax of Rs.2,81,148/- by the petitioners.

For Petitioner : Mr.C.Venkatraman

For Respondent : Ms.Kanmani Annamalai,
Addl. Govt. Pleader (Tax).

ORDER

By consent, this writ petition is taken up for disposal at the admission stage itself.

2. The writ petition has been filed to quash the goods detention notice No.7065/2015-16 dated 12.12.2015 of the respondent and for direction to the respondent to release the consignment immediately on payment of advance tax of Rs.2,81,148/- by the petitioners.

3. According to the petitioner, they had imported a pre-fabricated wooden house in semi knocked down condition from China and the consignment was cleared by the Clearing & Forwarding Agent. While the consignment was being moved to Nilgiris accompanied by Form KK, the respondent had detained the goods on the ground that the place of delivery namely Adhigaratty Village, Coonor Taluk was an unregistered place of business of the petitioner and demanded advance tax of Rs.2,81,148/- and compounding fees of Rs.5,62,295/- as a condition precedent for release of the consignment.

4. The petitioner would claim that it was explained to the respondent that the delivery address mentioned in Form KK was not the place of business of the petitioner, but it was the property belonging to one Gayatri Popat for whom the goods were imported. Further when the petitioner was ready and willing to pay the advance tax, the respondent had insisted the petitioner to pay the advance tax and compounding fees as a condition precedent for release of the consignment, without any authority, hence the petitioner has come up before this court.

5. The learned counsel for the petitioner submitted that the detention of goods and consequent demand of advance tax and compounding fees is without jurisdiction and contrary to the provisions of TNVAT Act and it is liable to be quashed as being contrary to the principles of natural justice. It is further submitted that Section 70 of the Act does not authorise the respondent to demand advance tax and compounding fees and hence the impugned order is invalid.

6. The learned Additional Government Pleader (Taxes) on the other hand would submit since the petitioner has failed to comply with the provisions of the TNVAT Act, 2006 for transport of VI Schedule goods, the petitioner is liable to pay as per Section 70(1)(c) of the TNVAT Act and consequent to the issue of goods detention notice on 23.11.2015, neither the driver nor the consignor/consignee appeared before the office and produced documents for the transaction in question, and having committed an offence under Section 70(1)(c), 71(3)(e) and 71(5)(a) of the TNVAT Act, an opportunity was given to the petitioner to compound the offence. Based on these, the learned counsel has prayed for dismissal of the writ petition.

7. 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.

8. In view of the submission 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, on

payment of one time tax by the petitioner, the respondent, shall release the goods. With regard to the compounding fee, it is always open to the petitioner to challenge the same in the manner known to law.

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

rgr

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer,
Roving Squad II, Enforcement(North),
Chennai - 6.

+ 1 cc to Mr.C.Venkataraman, Advocate SR 69317

+ 1 cc to Govt.Pleader SR 69633

scd(co)
prk23/12

W.P.No.40659 of 2015