IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.12.2015

CORAM:
THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.NO.33971 of 2013 and
M.P.Nos.1 to 3 of 2013 and
M.P.No.1 of 2014

Kapesh Babubhai Patel,
Proprietor of JK Exim. ...Petitioner

Vs

1. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

2. The Assistant Commissioner (Commercial Taxes)
(Enforcement) No.4, Bharathiyar Salai,
Fort Round, Vellore - 632 001.

3. The Commercial Tax Officer (Enforcement)
Roving Squad Vellore
Office of Assistant Commissioner (Commercial Taxes)
(Enforcement) No.4, Bharathiyar Salai,
Fort Round, Vellore - 632 001.

[Respondent]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the impugned goods detention notice vide G.D. No.92 of 2013-14, dated 10.10.2013, issued by the third respondent and to quash the same and consequently to direct the third respondent to release the seized materials within a time stipulated by this Court.

For petitioner : M/s.Nathan & Associates
For respondents: Mr.V.Haribabu,
Additional Government Pleader (Tax)

O R D E R

Heard the learned counsel appearing for the petitioner and learned Additional Government Pleader (Taxes) for the respondent.

2. This writ petition has been filed challenging the order, dated 10.10.2013, passed by the third respondent and to direct the third respondent to release the goods seized.

3. The petitioner is a Firm, dealing with textiles and knitted cotton and other import and export of related textiles and apparels in and around India as well as overseas, possessing IEC Code No.3512004237, issued by the Joint Director General of Foreign Trade. The petitioner brought in carpets from Delhi to Chennai with an intention to export the same to Germany. While the goods were in transit, the same was detained for the purpose of verification of genuineness of the transaction. Accordingly, goods detention notice was issued to the petitioner. Seeking release of the goods, the petitioner approached the concerned Authority for passing appropriate order. But the same was denied. Thereafter, compounding notice dated 11.10.2013, has been issued to the petitioner, increasing the value of the goods to Rs.10,20,821/- in addition to freight charges at Rs.20,416/-, 20% profit and tax. In toto, the petitioner was directed to pay a total sum of Rs.1,81,175/-. + Compounding Fee of Rs.5,43,525/-. Aggrieved by the same, the petitioner is before this Court, seeking for the aforesaid relief.

4. Learned counsel appearing for the petitioner has submitted that the goods are not meant for sale in Tami Nadu and they are likely to be exported to Germany. In the meanwhile, the goods were detained by the respondent-Commercial Tax Department, for the purpose of verification of genuineness of the transaction. The learned counsel further submitted that the third respondent has no power to detain the goods, which were meant for exportation to Germany. Simply because, the goods passed via., Tamil Nadu, the petitioner cannot be made liable to pay tax, as the transaction took place with outside the territory of India.

5. However, the learned counsel for the petitioner would submit that the petitioner is prepared to pay the actual tax for earlier release of the goods, and on such payment, the goods detained may be directed to be released.

6. The learned Additional Government Pleader (Taxes) has no serious objection for passing such an order to release the seized goods.

7. In view of the submissions made on either side, this Court, without going into the correctness or otherwise of the order impugned in this writ petition, directs the third respondent to release the goods to the petitioner forthwith, upon the petitioner pays a sum of Rs.2,00,000/- (Rupees Two Lakhs only) towards tax. Insofar as the compounding fee is concerned, it is open to the petitioner to file revision petition before the appropriate authority. It is made clear that the petitioner has to subject themselves to the adjudication proceedings that may be initiated by the respondents.

8. With the above directions, the writ petition is disposed of. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

True Copy

Sub Assistant Registrar

To

1. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

2. The Assistant Commissioner (Commercial Taxes)
(Enforcement) No.4, Bharathiyar Salai,
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+ 1 CC TO M/S.NATHAN & ASSOCIATES, ADVOCATE SR 68825.(04/01/16)
+ 1 cc to Special Government Pleader Sr.69037[12.2.2016]

W.P.No.33971 of 2013

AR II
srg 18/12/2015