IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2016

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.12770 of 2016 and
W.M.P.No.11171 of 2016

M/s.Frigoscan Post Harvest Technologies Pvt. Ltd.,
rep by its Head - Operations Balasubramanian
No.106, II Floor, Chamiers Road,
Teynampet, Chennai - 600 018. ... Petitioner

Vs.

1.Deputy Commercial Tax Officer,
Check Post Officer,
Puzhal Check Post,
Chennai - 600 066.

2.The Assistant Commissioner,
Kottupuram Assessment Circle,
Chennai. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the impugned proceedings of the 1st respondent in G.D.No.2711/2015-16 dated 02.04.2016 and to quash the same as issued contrary to the provisions of the TNVAT Act and also without jurisdiction and to further direct the 1st respondent to release the detained consignment of fabricated PUF Panels without insisting on payment of One Time Tax and Compounding Fee.

For Petitioner : Mr.P.Rajkumar
For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader (Tax)

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the impugned proceedings of the 1st respondent dated 02.04.2016 and to quash the same and to further direct the 1st respondent to release the detained consignment of fabricated PUF Panels without insisting on payment of One Time Tax and Compounding Fee.

2.The learned counsel appearing for the petitioner submitted that the impugned order passed by the respondent stating that the non-filing of the returns by the petitioner would affect the case of the petitioner, is against the Circular issued by the Commissioner of Commercial Taxes dated 17.07.2014 wherein it was clarified that when the movement of the goods is accompanied with a valid invoice, the provisions of Section 68 of the TNVAT Act is satisfied and consequently, there is no offence falling under Section 71(5)(a) of the TNVAT Act. The 1st respondent, in the said Circular, has also stated that the reason that the consignee has not filed the monthly returns cannot be an offence liable for punishment under Section 72(1)(a) of the TNVAT Act. In the case on hand, the petitioner has already filed the monthly returns for the month of February 2016 on the due date (i.e.) on 20.03.2016 and therefore, the reason given by the 1st respondent in the impugned notice that the petitioner did not file the monthly returns for the month of February 2016 is factually incorrect. Further, this Court in W.P.Nos.9174 & 9175 of 2016, by order dated 11.03.2016, held that the Check Post Officer is not an Assessing Officer and his powers are limited only to verify whether the movement of goods is duly accompanied by the requisite documents and there has been any evasion of tax. The allegation that the petitioner has not paid the tax on their sales cannot be sustained because even before the goods could move to the petitioner's customer in the other State and the sale is complete, the goods have been detained.

3.Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Tax) taking notice for the respondents submitted that the 1st respondent may be directed to release the goods on payment of the One Time Tax to be quantified by the 1st respondent.

4.On a perusal of the impugned order, it could be seen that the 2nd respondent had wrongly calculated the tax due of 5% of the value of the consignment. As per the impugned order, the value of the consignment is Rs.19,20,000/- and if 5% of tax is calculated on the said amount, it will not come to Rs.2,79,125/- as stated by the 1st respondent.

5.The learned counsel for the petitioner submitted that in the Tax Invoice dated 22.03.2016, the petitioner had paid CST @ 2% against Form-C, amounting to Rs.38,400/-, therefore, there is no necessity for paying the One Time Tax.

6.Since the 1st respondent had wrongly calculated the tax due, I am of the view that the respondent should calculate the correct amount and quantify the One Time Tax to be paid by the petitioner. In these circumstances, the impugned order dated

02.04.2016 is set aside and the matter is remanded to the respondent for fresh consideration. The 1st respondent is directed to calculate the correct amount of tax due on the value of the consignment, taking into consideration the Tax Invoice dated 22.03.2016 and inform the same to the petitioner within two days from the date of receipt of a copy of this order and on payment of the One Time Tax, the 1st respondent is directed to release the consignment forthwith. In the case of the petitioner being aggrieved by the order to be passed by the respondent, it is open to them to file revision against the said order.

7.With these observations, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Deputy Commercial Tax Officer,
Check Post Officer,
Puzhal Check Post,
Chennai - 600 066.

2.The Assistant Commissioner,
Kottupuram Assessment Circle,
Chennai.

+1 cc to M/s.P.Rajkumar Advocate sr.21354/16

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