IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2016

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.14481 of 2016 and
W.M.P.No.12668 of 2016

G.Kanagavel ... Petitioner

Vs.

The Commercial Tax Officer,
RS-V, Enforcement (North),
Chennai - 600 006. ... Respondent

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 respondent in G.D.No.Pdl.1/16, RS-V(N) dated 09.04.2016 and to quash the same and further direct the 1st respondent to release the detained consignment of 16 bundles (16500 packets) of Cigarettes without insisting on three times tax as compounding fees.

For Petitioner : Mr.P.Rajkumar
For Respondent : Mr.Manoharan Sundaram,
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 respondent dated 09.04.2016 and to quash the same and to further direct the 1st respondent to release the detained consignment of 16 bundles (16500 packets) of Cigarettes without insisting on three times tax as compounding fees.

2.The learned counsel appearing for the petitioner submitted that the respondent had passed the Goods Detention Notice dated 05.04.2016 and thereafter, issued the impugned compounding notice dated 09.04.2016 assessing the value of the Cigarettes at Rs.12,37,500/- and demanding penalty of Rs.11,13,750/- being three times of tax for the release of the detained consignment. According to the petitioner, under the Tamil Nadu Value Added Tax Act only a maximum of two times of tax as compounding fee can be levied. Since the respondent had demanded three times of tax for the release of the detained consignment, the same is liable to be set aside. The learned counsel for the petitioner submitted that the petitioner is willing to pay the One Time Tax amount of Rs.3,71,250/-.

3.Mr.Manoharan Sundaram, learned Additional Government Pleader (Tax) taking notice for the respondent submitted that the impugned order may be set aside and the respondent may be directed to release the goods on payment of the One Time Tax amount of Rs.3,71,250/-.

4.In view of the submissions made by the learned counsel on either side, since the respondent had demanded three times of tax for the release of the detained consignment, which is against the provisions of the TNVAT Act, the same is liable to the set aside. Accordingly, the compounding notice dated 09.04.2016 is set aside. The petitioner is directed to pay the One Time Tax amount of Rs.3,71,250/- and on payment of the said amount, the respondent is directed to release the consignment forthwith.

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

va 20.04.2016

This petition having been posted on 27th April two thousand and sixteen under the Caption for Being Mentioned in pursuance to the order of this court dated 20.04.2016 and made herein in the presence of this above Mr.P. Rajkumar, Advocate for the petitioner, and Mr.Manoharan Sundaram, AGP(I), appearing the respondents this court made the following order;

At the instance of the learned Additional Government Pleader, the matter has been listed under the caption "Being Mentioned".

2. The learned Additional Government Pleader submitted that since the petitioner is not a dealer, the impugned order dated 09.04.2016 may not be set aside and the respondent may be directed to adjudicate the compounding proceedings in accordance with law.

3. Mr.P. Rajkumar, learned counsel appearing for the petitioner submitted that such an observation may be given in the order dated 20.04.2016, instead of setting aside the impugned order.

4. Having regard to the submissions made by the learned counsel on either side, instead of the existing paragraph No.4, the Registry is directed to incorporate the following as Paragraph No.4.:

> "4. In view of the submissions made by the learned counsel on either side, the petitioner is directed to pay the One Time Tax Amount of Rs.3,71,250/- and on payment of the said amount, the respondent is directed to release the consignment forthwith. The respondent is also directed to adjudicate the compounding proceedings in accordance with law."

5. Registry is directed to incorporate the above paragraph as Paragraph No.4, instead of the existing 4th paragraph and issue fresh copy of the order to both sides.

6. In other aspects, the order dated 20.04.2016 shall remain unaltered.

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-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer,
RS-V, Enforcement (North),
Chennai - 600 006.

+ 1 cc to Mr.P.Rajkumar, Advocate SR 26228

+ 1 cc to The Spl. Govt. Pleader (TAXES), HCT, MADRAS-104.
S.R.No.25665 (6/6/16)

ak(co)
prk 20/4
EU 27.4.2016

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