IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2016

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.16376 of 2016
and
W.M.P.No.14167 of 2016

M/s.R.K.M.Electricals,
rep by its Proprietor,
K.Manivannan
No.59/84, Othavadai Street,
Kodambakkam,
Chennai-600 024. .. Petitioner

Vs.

1.The Special Commissioner &
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.
2.The Deputy Commercial Tax Officer,
Roving Squad-V (xi),
Enforcement (North),
C.T.Buildings, Greams Road,
Chennai-600 006.
3.The Assistant Commissioner (CT)
MMDA Colony Assessment Circle,
Palaniappa Maaligai,
Greams Road,
Chennai-600 006. .. Respondent

The writ petition is filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records on the file of the second respondent in Goods Release Order No.6007/16-17 dated 11.4.2016 insofar as it collects the compounding fee from the petitioner and quash the same as being illegal, without jurisdiction and authority of law and contrary to the circular issued by the first respondent in Circular No.33/2014/Q4/7752/2014 dated 17.7.2014.

For Petitioner : Mr.K.Soundararajan

For Respondents : Mr.Manokaran Sundaram, AGP

ORDER

Heard Mr.K.Soundararajan, learned counsel for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondents. With the consent of either side, the writ petition itself is taken up for disposal.

2 The petitioner in this writ petition, seeks to challenge the release order issued by the detention officer, i.e., the second respondent, dated 11.4.2016. It is not in dispute that the petitioner has paid a sum of Rs.2,29,680/- and the goods in question have been released.

3 The issue raised before this court is that the amount paid by the petitioner is towards tax and the second respondent erroneously adjusted the same as if it was the penalty / compounding fee, for which he has no jurisdiction. To support such a contention, the learned counsel for the petitioner refers to Section 67(3)(b)(i) and (ii) of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and submits that the officer is entitled to only call upon the petitioner to pay the tax and there is no power to levy the penalty. In order to appreciate the said argument, it would be necessary to take note of the said provision, which reads as under :

> "67(3)(b)(i) that the tax, if any, payable under this Act in respect of the sale or purchase of the goods carried, has not been paid; or
>
> (ii) that the sale or purchase of the goods carried has, for the purpose of payment of tax under this Act, not been properly accounted for in the documents referred to in sub-section (5),
>
> and if the said officer is satisfied, after making such enquiry as he deems fit, that with a view to prevent the evasion of tax payable in respect of the sale or purchase of the goods carried, it is necessary to detain the goods, he shall detain the goods and direct the driver or any other person in-charge of the goods vehicle or boat, or the consignor or the consignee,-
>
> (i)to pay such tax; or

(ii)to furnish adequate security in such form and in such manner and to such authority as may be prescribed, on behalf of the person liable to pay such tax."

4 On perusal of the same, it is evident that the officer concerned, if he is satisfied that with a view to prevent the evasion of tax payable in respect of the sale of goods, it is necessary to detain the goods, he can detain the goods and direct the driver or the person in-charge of the goods to pay tax or to furnish adequate security in such form and in such manner, as may be prescribed. Therefore, the plain reading of the said provision shows that there is no power on the part of the check post officer / detention officer to levy penalty.

5 The learned Additional Government Pleader, by referring to Section 71(3) of the TNVAT Act submits that any person, who willfully submits an untrue return, or not being already an assessee under this Act, fails to submit a return as required by the provisions of this Act or the rules made thereunder or fraudulently evades the payment of tax assessed on him or dishonestly objects to a notice issued to him under section 27 (1) of the Act, or fails to maintain account and records, etc., would be liable for fine, including conviction. Therefore, it is submitted that it is a penal provision and the authority would be entitled to collect the penalty / compounding fee.

6 The learned Additional Government Pleader would have been right in his submission, had such an action been initiated by the assessing officer. However, in the present case, the order has been passed by the detention officer, who detained the goods and he has exercised his power under Section 67(3)(b) of the TNVAT Act and released the goods. This is evident from the impugned order itself that he has exercised his power under the said provision. Therefore, he could have directed the petitioner to pay tax and released the goods and left it open to the petitioner to work out other remedies available under the Act. However, this was not done by the respondents.

7 With regard to the allegation that the petitioner has not paid any tax, the learned counsel for the petitioner submits that the petitioner has been regularly filing monthly Form-I Returns and they have claimed input tax credit of Rs.58,77,252/-. He further submits that the TDS amount would exceed the VAT due of Rs.63,38,048/- . Therefore, it is the contention of the petitioner that they need not pay any tax.

8 In the light of the above discussion, the amount collected from the petitioner cannot be treated as penalty, but

should be treated as tax. Accordingly, the writ petition is disposed of by directing the respondents to treat the remittance made by the petitioner, i.e., Rs.2,29,680/- as tax and it is left open to the petitioner to work out his remedies available under the Act in the event they claim for adjustment. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vvk

To
1.The Special Commissioner &
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.
2.The Deputy Commercial Tax Officer,
Roving Squad-V (xi),
Enforcement (North),
C.T.Buildings, Greams Road,
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3.The Assistant Commissioner (CT)
MMDA Colony Assessment Circle,
Palaniappa Maaligai,
Greams Road,
Chennai-600 006.

+1cc to Mr.K. Soundararajan, Advocate, S.R.No.32364
+1cc to the Government Pleader, S.R.No.32586

SVI(CO)
EU(28/06/2016)