IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.16453 of 2016
and
W.M.P.No.14221 of 2016

M/s.Covestro (India) Private Ltd.,
Bayer House, Central Avenue,
Hiranandani Estate,
Thane (West) - 400 60. .. Petitioner

..Vs..

1.The Assistant Commissioner (CT)
Anna Salai Assessment Circle,
Chennai - 600 006.

2.The Commercial Tax Officer (Enf. Roving Squad)
Vellore
Tamil Nadu. .. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 2nd respondent culminating in his order bearing reference G.D.No.584/2015-16 dated 02.10.2015 and consequent compounding notice dated 05.10.2015 and to quash the same as being without jurisdiction, violative of principles of natural justice and contrary to sections 67 and 72 of the TNVAT Act.

For Petitioner : M/s.L.Maithili Associates
For Respondents : Mr.S.Kanmani Annamalai, A.G.P.,

ORDER

Heard Ms.L.Maithili, learned counsel for the petitioner and Mr.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents and with the consent of either side, the writ petition is taken up for final disposal.

2.The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act] and Central Sales Tax Act, 1956 [CST Act]. The challenge in this writ petition is to the goods detention notice dated 02.10.2015 and the consequent, compounding notice dated 05.10.2015. The vehicle bearing registration number TN-04-E-2055 carrying 4000 Kgs of Polycarbonate Resin was checked by the second respondent as to whether the goods were accompanied with proper documents. The second respondent detained the goods stating that the goods are transported from Chennai to Bengaluru with defective documents; Stock transfer note is raised but the consignee address varied with that of the original company; In the stock transfer note purchase order number and date along with sale contract number and payment condition has been clearly mentioned and hence, it is clear that it is a sale to some dealers.

3.According to the petitioner, they have explained to the second respondent about the genuineness of the transaction. Nevertheless, the second respondent issued a compounding notice and due to the fact that the good had to be immediately cleared, without prejudice to the petitioner's rights, they remitted the compounding fee and one time tax and the goods were released. Simultaneously, the petitioner's had also made a representation to the respondent on 05.10.2015 stating that they have made stock transfer of goods from 'Sriperumbudur-Chennai Warehouse (Tamil Nadu) to Bangalore Warehouse (Karnataka) and all they need to create is a stock transfer order and with the same, they can shift the material from one warehouse to another warehouse and able to generate other documents related to stock transfer such as stock transfer invoice, packing slip and excise invoice. The snapshot of the stock transfer order was also attached for the reference of the second respondent. The snapshot of the stock transfer order was attached to show that the purchase order number in the stock transfer invoice is not a purchase order number but it is a stock order (intent number).

4.The petitioner further clarified that the due date for payment is appearing automatically because of its global system and the global system does not allow the petitioner to do any kind of modification in their systems. The petitioner had also enclosed the copies of the relevant invoices to prove the authenticity of the transaction. But inspite of such representation, since the compounding notice was not withdrawn, the petitioner has approached this Court by way of this writ petition.

5.As rightly pointed out by the learned Additional Government Pleader, the challenge to the impugned detention notice and the consequent compounding notice has become academic, due to the fact that the goods have been released on the petitioner effecting payment of one time tax and the compounding fee under protest. Therefore, the petitioner should be permitted to agitate the correctness of the action taken by the second respondent and the petitioner cannot be left without any remedy.

6.As against the compounding notice issued by the second respondent, the petitioner has an effective remedy by way of revision before the concerned Joint Commissioner of Commercial Taxes and the said revisional authority would be in a position to examine the correctness of the action taken by the second respondent as to whether there was any justifiable cause to detain the goods. Likewise, the revisional authority can also examine the stand taken by the petitioner to prove the authenticity of the transaction.

7.The learned counsel appearing for the petitioner submitted that in the event of the petitioner succeeding before the revisional authority, not only the tax paid by the petitioner but also the compounding fee should be refunded or adjusted. In my view, if the Joint Commissioner is convinced that there were no valid or justifiable ground to detain the goods, then automatically the entire proceedings will stand vitiated and whatever amount which the petitioner has paid, that too under protest would automatically have to be refunded. The one time tax collected, if held to be without authority of law, the same cannot be retained by the first respondent nor forfeited to the Government.

8.So far as the compounding fee is concerned, the payment made by the petitioner is under protest and they have not accepted their guilt and to escape from the prosecution had requested for compounding the offence. The sequence of events would clearly show that on the same date, even though a representation was given on 05.10.2015, the second respondent without considering any of the averments made therein had issued the compounding notice. Therefore, the entire amount paid by the petitioner i.e., one time tax as well as the amount collected under the head 'compounding tax' and all other amounts are the payments made without prejudice to the petitioner's rights. Thus, in the event of the petitioner succeeding before the Joint Commissioner, the petitioner's assessing officer namely, the first respondent should obviously consider adjustment of the entire amount paid by the petitioner under protest.

9.With the above observations, the writ petition stands disposed of directing the petitioner to file a revision before the concerned Joint Commissioner, who shall afford an opportunity of personal hearing to the petitioner and pass a reasoned order of merits and in accordance with law. Consequently, connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

1.The Assistant Commissioner (CT)
Anna Salai Assessment Circle,
Chennai - 600 006.

2.The Commercial Tax Officer (Enf. Roving Squad)
Vellore
Tamil Nadu.

+ 1 cc to Mrs.L.Mythili Associates, Advocate SR 38774

+ 1 cc to Spl. Govt.Pleder SR 38948

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