IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.06.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.18338 to 18341 of 2015

M/s.Pandi Devi Oil Pvt.Ltd.,
rep. by its Director,
No.94/4, & 94/5, Old Thirubuvanai Road,
Thirubuvanai,
Pondicherry - 605 107. ...Petitioner in all W.Ps.

Vs.

1. The Deputy Commercial Tax Officer,
Kottakuppam Check Post.

2. The Joint Commissioner (CT)
Enforcement, Vellore Division,
Vellore. ...Respondents 1and 2 in all W.Ps.

Prayer in W.P.No.18338 of 2015 Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in GDN No.2960/2015-16, and to quash the impugned revised compounding notice, dated 19.06.2015, as issued, without authority of law, and also without considering the detailed objections, dated 14.06.2015, filed by the petitioner, and further, to direct the first respondent to release the detained RPD Palm Oil along with goods Vehicle, bearing Registrartion No.TN 32 E 1939 without insisting on payment of tax and compounding fee for the release of the goods.

Prayer in W.P.No.18339 of 2015 Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in GDN No.2961/2015-16, and to quash the impugned revised compounding notice, dated 19.06.2015, as issued, without authority of law, and also without considering the detailed objections, dated 14.06.2015, filed by the petitioner, and further, to direct the first respondent to release the detained RPD Palm Oil along with goods Vehicle, bearing Registrartion No.TN 32 E 1876 without insisting on payment of tax and compounding fee for the release of the goods.

Prayer in W.P.No.18340 of 2015 Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in GDN No.2962/2015-16, and to quash the impugned revised compounding notice, dated 19.06.2015, as issued, without authority of law, and also without considering the detailed objections, dated 14.06.2015, filed by the petitioner, and further, to direct the first respondent to release the detained RPD Palm Oil along with goods Vehicle, bearing Registration No.TN 32 E 1867 without insisting on payment of tax and compounding fee for the release of the goods.

Prayer in W.P.No.18341 of 2015

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in GDN No.2963/2015-16, and to quash the impugned revised compounding notice, dated 19.06.2015, as issued, without authority of law, and also without considering the detailed objections, dated 14.06.2015, filed by the petitioner, and further, to direct the first respondent to release the detained RPD Palm Oil along with goods Vehicle, bearing Registration No.TN 32 D 5189 without insisting on payment of tax and compounding fee for the release of the goods.

In all W.Ps.

For Petitioner: Mr.P.Rajkumar

For Respondents: Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON O R D E R

The petitioner has filed these Writ Petitions, challenging the four revised compounding notices, in respect of four e-Transit Passes, which were issued to the petitioner, for transporting the goods, (viz., RPD Palm Oil) from Chennai Port to Puducherry.

2. Heard the learned counsel appearing for both sides

3. Admittedly, the petitioner's vehicles (viz., Trucks), which were transporting the abovesaid goods, were not authorized to enter the Kottakuppam Check Post, but, when the vehicles entered through the Check post, the same were detained along with its goods on the ground of evasion of tax, and the same was demanded from the petitioner. This order was challenged, and this Court, while considering the interim relief, regarding

release of detained goods and vehicles, heard both sides in detail, and passed an order on 25.06.2015. For better appreciation, the said order is quoted as hereunder:-

> "These four writ petitions have been filed by M/s.Pandi Devi Oil Private Ltd., challenging the impugned proceedings issued by the Deputy Commercial Tax Officer, Kottakuppam Check Post in GDN No.2960/2015-2016, GDN No.2961/2015-2016, GDN No.2962/2015-2016 and GDN No.2963/2015-2016 and the Impugned Revised Compounding Notice dated 19.06.2015 to quash the same as the respondent has not considered the detailed objection dated 14.06.2015 filed by the petitioner before the first respondent to release the detained RPD Palm Oil along with the goods Vehicle bearing Registration Nos.TN 32 E 1939, TN 32 E 1876, TN 32 E 1867 and TN 32 E 5189 without insisting on payment of Tax and Compounding Fee pending the writ petition.
>
> 2. Mr.V.Haribabu, the learned Additional Government Pleader (Tax) takes notice on behalf of the respondents.
>
> 3. The petitioner is a manufacturer and dealer in vegetable oil with their factory at Thirubuvani at Pondicherry. They have registered on the file of the Additional Commercial Tax Officer (IAC), Ellapillaichavaday, Pondicherry under the provisions of the Pondicherry Value Added Tax Act and Central Sales Tax Act, 1956. They used to buy imported RBD Palm Oil from various importers and transport the oil to their factory at Thirubuvani at Pondicherry where they have got their storage facility for further processing and packing for sales locally. Being so, when the RBD Palm Oil is transported in the lorry from Chennai Harbour to their factory accompanied by Form KK, customs documents like bill of entry, in-bond transfer invoice, e-transit pass in Form LL and other relevant documents on 11.06.2015, the first respondent intercepted the vehicle and detained the same on following defects:

a) The driver of the vehicle has not produced the interstaste transport permit for movement of vehicle from Chennai via ECR Road with exit at Kandamangalam Checkpost.

b) The movement in the Transit pass does not specify the route of the transport of goods.

c) The existence of the registered place of business at Pondicherry and filing of returns is not proved when surreptious movement of oil taxable at 5% in Tamil Nadu state and taxable at Pondicherry Union Territory is unearthed by the Checkpost Officer.

d) Original of import duty payment certificate for import in Chennai Harbour and transport to Pondicherry Union Territory is produced to the Checkpost Officer.

e) The transport on import is not entered into and verified by the Commercial Tax Officer stationed at the Harbour exit gate which suggests unloading of imported oil in Tamil Nadu and substitute other goods for transport to Pondicherry.

f) Form KK Delivery Challan is not signed by the Authorised signatory of the Forwarding and clearing agent and the Load Number of the transport is not mentioned.

4. The Defect No.(a) prima facie appears to be not correct since the petitioner has been transporting the goods from Chennai Harbour through ECR route to their factory at Pondicherry through Kottakuppam checkpost in stead of Tindivanam route. So far as Defect No.(b) is concerned, the respondent has mentioned that the movement in the Transit pass does not specify the route of the transport of goods. No doubt, the transit pass does not specify

> the route. If the transit pass does not specify the route, the first respondent cannot find fault with the petitioner that there is violation of conditions mentioned in the transit pass. With regard to Defect No.(c), it has been mentioned that the existence of the registered place of business at Pondicherry has not proved. The same may not be correct because he is not the Assessing Officer. With regard to Defect No.(d), it has been mentioned that the original of import duty payment certificate for import in Chennai Harbour and transport to Pondicherry Union Territory is not produced to the Checkpost Officer. The same is not required under Section 69 (7)(d) of the TNVAT Act. Defect No.(e) that the transport on import is not entered into and verified by the Commercial Tax Officer stationed at the Harbour exit gate and Defect No.(f) that Form KK Delivery Challan is not signed by the Authorised signatory of the Forwarding and clearing agent and the Load Number of the transport is not mentioned, also irrelevant. Therefore, the respondent is directed to release the goods on production of the order copy pending disposal of the writ petitions. "

4. From the above referred order, it is evidently clear that the Court has considered all the issues, and held that the demand was wholly unjustified. Pursuant to the above order, the goods have been released, and the Department also not challenged the above referred order.

5. In the light of the above, the challenge to the impugned proceedings itself, have become academic, and the respondent cannot, in any manner, enforce the impugned proceedings. As the reasons assigned in the interim order will always hold the effect for the final relief.

6. In the light of the above facts, the impugned orders have to be necessarily set aside, accordingly, the same are set aside, for the reasons mentioned above.

7. In the result, the Writ Petitions are closed. No costs. Consequently Miscellaneous Petition are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Commercial Tax Officer,
Kottakuppam Check Post.

2. The Joint Commissioner (CT)
Enforcement, Vellore Division,
Vellore.

+1cc to Mr.P.Rajkumar, Advocate Sr.30612
+1cc to the Special Government Pleader Sr.30768

Writ Petition Nos.18338 to 18341 of 2015
(4 Cases)

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srg 24/06/2016