IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.1713 of 2016 and
W.M.P.No.1487 of 2016

Tvl.Swamy Oil Industries,
Represented by its Partner Thiru P.Ashok,
Pullikkada, Kollam 691 001. .. Petitioner

Vs.

1. The State of Tamil Nadu
Represented by its Secretary to Government
Department of Commercial Taxes,
Fort St. George, Bench Road,
Chennai - 600 009

2. The Commissioner of Commercial Taxes
2nd Floor, Elilagam, Chepauk,
Chennai - 600 005

3. The Deputy Commercial Tax Officer (C.T.)
Ranipet Check Post
Katpadi, Vellore District. .. Respondents

Prayer:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records relating to Compounding order in Form No.046 dated 07.01.2016 issued by the 3rd respondent quash the same and to direct the 3rd respondent to refund the Tax and penalty of Rs.1,59,975-00 with interrest.

For Petitioner : Mr.M.Md.Ibrahim Ali
For Mr.A.S.Mujibur Rahman

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

O R D E R

Heard Mr.Md.Ibrahim Ali, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents. With the consent of the learned counsel appearing on either side, the writ petition itself is taken up for final disposal.

2.The petitioner has filed this writ petition challenging the order passed by the 3rd respondent collecting compounding fee from the petitioner and for a direction to refund the same.

3.The petitioner, who is a registered dealer under the Kerala Value Added Tax Act and Central Sales Tax Act, is a manufacturer of coconut oil which is an exempted commodity in the State of Kerala. The petitioner effected sale of coconut oil from Kerala to other State under three bills. In the State of Tamil Nadu, the sale of edible oil falls under Sl.No.6 of Schedule III and therefore, in terms of Section 70 of the Act, e- Transit Pass in Form LL is required to move the goods from one State to another while crossing the State. The consignment was going to Karnataka and Vijayawada and the same was handed over to the lorry driver of the lorry bearing No.KL 02 X 5126. The goods have to move through Kerala Check Post and finally at Katpadi Check Post at Tamil Nadu and the Check Post officers of Kerala State and Tamil Nadu had affixed the Check Posts seals in token of having verified the genuineness of the transactions.

4.It is the case of the petitioner that the Check Post Officer at Puliyarai refused to receive the Form LL from the driver and allowed the lorry to pass the Check Post without giving any acknowledgment in the Form LL. When the goods reached ***Katpadi** Check Post, they have been detained for the said reason and since the goods were liable for decay, the petitioner, without prejudice to their rights, had paid the tax and penalty and got the goods released. Thereafter, the petitioner has approached the authority and produced all the documents and the authority was satisfied that the petitioner has proved the genuineness of the transaction, issued a release order dated 07.01.2016. This order specifically states that the transaction is genuine. Therefore, it has to be seen as to whether the tax and penalty could not have been collected from the petitioner and in this regard, it would be worthwhile to take into consideration as to in what manner such transactions have to be dealt with and this has been considered by this Court in W.P.No.20634 of 2016 dated 23.06.2016.

5. In support of his contention, the learned counsel for the petitioner refers to a circular issued by the Principal Secretary/ Commissioner of Commercial Taxes in Circular No.26/2014 dated 16.06.2014. Apart from the same, the reliance has also been placed on the decisions of this Court in W.P.No.39776 of 2015 (M/s.Bacardi India (P) Ltd., Vs. The Deputy Commercial Tax Officer and another) dated 07.01.2016.

6. The learned Additional Government Pleader, by referring to the counter affidavit, submitted that as the goods were moved

from Vellore to Vijayawada, the movement has to be treated as interstate movement and for the inter-state movement, the goods must be accompanied with required “e” transit pass to prove the fact of sufferance of tax at the other end and the non-accompanying of the required “e” Transit Pass is an offence under Section 70(2)(a) of the Tamil Nadu Value Added Tax Act, 2006. Further it is submitted that the petitioner, instead of paying the tax and getting the goods released, has approached this Court by filing this writ petition and if aggrieved against the order of compounding, the petitioner ought to have approached the Revisional Authority under Section 55 of the Tamil Nadu Value Added Tax Act.

7. In the case of M/s.Bacardi India (P) Ltd. (cited supra), the challenge was to a Goods Detention Notice, where the goods in question were detained on the ground that it was not accompanied with transit pass as well as copies of invoices. It was contended by the petitioner therein that except the transit pass generated, the petitioner has other documents to establish the nature of transaction and there is no suspicion about the genuineness of the accompanying documents and the seal affixed on the invoice at the time of entry at the check post and hence, issuing of Goods Detention Notice is arbitrary and illegal. In the said case, the respondents took a specific stand by contending that the Authority is entitled to levy only a penalty of Rs.2,000/- for such lapses and the goods cannot be detained. In the light of the above said stand taken by the respondent, the petitioner therein was directed to pay a sum of Rs.2000/- towards fine and the goods were directed to be released. The manner in which the check post officers have to function when the goods are not accompanied by E-Transit Pass came up for consideration by the Commissioner of Commercial Taxes and a circular has been issued in Circular No.26/2014 dated 16.06.2014. On a reading of the circular, it is seen that the Commissioner has also taken into consideration the representations received from the dealers and after taking note of the decision of the Hon'ble Supreme Court in Tvl.Sodhi Transport Co. and Another Vs.State of U.P and another reported in (1986) 62 STC 381, it was held that in case of non-surrender of transit pass, if a dealer could produce sufficient legally valid and reliable documentary evidence to prove that the goods moved without the transit pass in question had actually crossed the borders of the State, such evidences may be accepted by the Assessing Authority as an evidence of inter-state movement of goods. The officers of the Department were also cautioned that this cannot be accepted for repeated violations.

8. It is submitted by the learned counsel for the petitioner that this is the first occasion where the petitioner's goods have been detained and the petitioner has not come to adverse notice of the Department on earlier occasions.

9.In the light of the above, the respondents has to consider all the documents to see as to whether the transaction is a genuine transaction and in the instant case, the authority, while passing the release order, has specifically recorded the transaction to be a genuine transaction. Therefore, this is a case where the respondents could not have collected the tax and penalty.

10.Accordingly, the Writ Petition is allowed and the impugned orders are quashed and the petitioner is directed to file a revision claim before the Competent Authority, who shall consider the same in the light of the order passed by this Court and effect a refund of the tax amount along with penalty but without any interest, within a period of three months from the date on which such revision claim is filed. No costs.

Consequently, the connected miscellaneous petition is closed.

sgl

s/d-
Assistant Registrar(CS-V)

***Corrected as per order**
of this Court dated 5/7/2016
and made herein
-s/d-
Assistant Registrar
dt:11/07/2016

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government (To be Substituted to the
   State of Tamil Nadu, (order already despatched on
   Department of Commercial Taxes,(04/7/2016)
   Fort St. George, Bench Road,
   Chennai - 600 009

2. The Commissioner of Commercial Taxes
   2nd Floor, Elilagam, Chepauk,
   Chennai - 600 005

3. The Deputy Commercial Tax Officer (C.T.)
   Ranipet Check Post
   Katpadi, Vellore District.

+ 1 cc to Mr.A.S.Mujiburahman, Advocatge SR 35432

+ 1 cc to Spl.Govt.Pleader (Taxes) SR 35481

scd(co)
prk4/7
aa11/07/2016

W.P.No.1713 of 2016