IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.05.2016

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. No.18309 of 2016 and
W.M.P.No.16017 of 2016

M/s.Sivakumar Enterprises Pvt Ltd.,
Represented by its Accounts Executive,
RS No.209/1A, 1B Gingee Road,
Opposite to Maruthi Show Room,
Villupuram. .. Petitioner

Vs.

Deputy Commercial Tax Officer,
[Enf] [Roving Squad]
Tiruvannamalai. .. Respondent

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in G.D.N.No.256/2015-16 dated 17.05.2016 and quash the same and direct the respondent to release the goods.

For Petitioner : M/s.Adithya Reddy

For Respondent : Mr.V.Haribabu
Additional Government Pleader[CT]

O R D E R

This writ petition has been filed to quash the order of the respondent in G.D.N.No.256/2015-16 dated 17.05.2016 and for direction to release the goods.

2. The petitioner is a registered dealer under TNVAT Act, 2006 as well as Central Sales Tax Act, 1956 dealing in import of Cashew kernels and has processing factory at Villupuram and branch office in Cinakappalur.

3. The claim of the petitioner is that the imported cashew are first sent to the petitioner's branch in Cinakappalur for manual processing and then brought to the petitioner's factory in Villupuram for packing before being sold. Accordingly on 17.05.2016, the manually processed cashews were transported from Cinakappalur along with Form-JJ, which is the statutory

prescribed form under TNVAT Act required to be sent along with movement of goods. The vehicle was interceptd by the respondent on 17.05.2016 at 6 pm in Thiruvannamalai. The respondent detained the goods in the impugned detention order on the basis:

> "Transported goods (Cashew Kernel) moved from Consignor Villupuram to Consignee Villupuram as per JJ Form. But the goods of the vehicle moved from SEPL Cinakappalur to Villupuram. It is defect. Safeguard to Govt. Revenue. Detained the goods of vehicle in CT Campus at Tiruvannamalai with Driver own risk"

4. It is further submitted by the petitioner that though the impugned notice does not quantify the amount of tax, the respondent is refusing to release the goods without payment of 5% of tax on the value of goods as well as a huge penalty amount.

5. The petitioner would state that the inclusion of the same address in the consigner and consignee columns in Form JJ is merely a clerical mistake and does not itself lead to any presumption or suspicion of evasion of tax and in case of any doubt over the transaction, the respondent should have contacted the concerned authorities for verification, instead passed the impugned order.

6. The learned counsel for the petitioner submitted that when the goods has been accompanied by the requisite documents such as sales invoice and lorry receipt, the respondent ought to have released the consignment. It is further submitted that the impugned order has been passed by the respondent without affording opportunity and therefore the order is illegal and against the principles of natural justice.

7. The learned Additional Government Pleader (CT) on the other hand would submit that since the goods transported by the goods vehicle are not accompanied by the documents prescribed in sub section (5) of Section 67 of the TNVAT Act 2006 and on inspection of the documents the respondent has come to the conclusion that a transaction of sale liable to tax has taken place and that the tax payable in respect of the sale has not been paid and thus, has detained the goods.

8. At this juncture, the learned counsel for the petitioner would submit that the petitioner is willing to pay one time tax and on such payment, the goods detained may be directed to be released.

9. In view of the submission made by the learned counsel for the petitioner that the petitioner is willing to pay one time tax and in order to give a quietus to the issue, on payment of

one time tax by the petitioner, the respondent, shall release the goods. With regard to the compounding fee, if any, it is always open to the petitioner to challenge the same in the manner known to law.

10. With the above directions, the writ petition is disposed of No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(VI)

//True Copy//

Sub Assistant Registrar

ars/sri

To

Deputy Commercial Tax Officer,
[Enf] [Roving Squad]
Tiruvannamalai.

+2ccs to Mr.Adithya Reddy, Advocate, S.R.No.28648
+1cc to the Government Pleader, S.R.No.28645

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SCD(CO)
Eu 20.5.16