IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2016
CORAM

The Hon'ble Mr.Justice R.Mahadevan

Writ Petition No.25155 of 2015
and
M.P.No.1 of 2015

M/s.Sree Shanthosh Steels Pvt. Ltd.,
rep. by its Director, P.K.P.Narayanamurthy
No.132 (New No.71) Rasappa Chetty Street,
Chennai - 600 003. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Pattanur Check Post,
Morattandi Villupuram District.
Pin - 605 006. ... Respondent

Prayer:-

Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records on the file of the respondent in O.R.No.95/2012-2013, G.D.No.56/2012-13, dated 19.07.2015 and to quash the same as illegal

For Petitioner : Mr.T.Pramodkumar Chopda

For Respondent : Mr.V.Haribabu
Additional Government Pleader

O R D E R

The challenge in this Writ Petition is to the proceedings of the Deputy Commercial Tax Officer/respondent, dated 19.07.2015.

2. The facts, which led to the filing of this Writ Petition are as follows:-

i) The petitioner is a registered dealer, under the Tamil Nadu Value Added Tax Act and Central Sales Tax Act. The petitioner, in their regular course of business, received purchase order from M/s. KMV Project Ltd., for supply of iron and steel bars, to be delivered at their site address at M/s.KMV Projects Ltd., Rites, Pondicherry University Campus, Kalapet, ECR Road, Pondicherry. The petitioner effected delivery through a public carrier, accompanied with proper documents. But the same were detained by the respondent on the ground of evasion of tax, and accordingly goods detention notice was issued. The petitioner, upon receipt of the goods detention notice, filed a reply, dated 14.07.2012, along with copies of required transport documents, seeking release of the goods. But the respondent issued a compounding notice, dated 16.07.2012, to the petitioner. Challenging the same, the petitioner approached this Court, by filing W.P.No.18296 of 2012, and sought for direction upon the respondent to release the goods forthwith. This Court, by order, dated 17.07./2012, disposed of the said Writ Petition, by directing the respondent to release the goods, subject to the payment of 5% of the tax, i.e. 23,24,000/- by the petitioner. Thereafter, the respondent issued the adjudication notice, dated 26.01.2013, under Sections 70(1)(c), 71 (3) (d), 71 (3)(e) and 71 (5) (a) of TNVAT Act, and called upon the petitioner to show cause as to why the difference of compounding fee should not be levied on him, for which, the petitioner filed reply, dated 14.02.2013, denying the offences. Now, the respondent, by the impugned order, confirmed the proposal made in the adjudication notice. Impugning the same, the petitioner is onceagain before this Court, by the present Writ Petition.

3. Learned counsel appearing for the petitioner has submitted that the impugned order passed by the respondent is wholly untenable and liable to be quashed, for the simple reason that the respondent herein is not the competent authority to pass the same. The learned counsel in support of his contention, placed reliance on the unreported decision of this Court, in W.P.No.18587 of 2015, dated 26.06.2015, wherein, it is held that the checkpost authority has no jurisdiction to levy tax and penalty, and the competent authority, who is entitled to do the same, is the assessing authority, and once the goods were detained by the check post authority, it is his bounden duty to place all the materials before the assessing authority for passing the assessment order. Therefore, the learned counsel prayed for allowing the Writ Petition.

4. The learned Additional Government Pleader for the respondent has submitted that since the petitioner has failed to subject themselves to the composition of offences, the respondent has proceeded to initiate compounding proceedings. Hence, the learned counsel submitted that the order passed by the respondent is sustainable.

5. I am unable to accept the contention of the learned Additional Government Pleader for the respondent. As rightly

pointed out by the learned counsel appearing for the petitioner, the authority, who is entitled to assess and levy penalty, is the Assessing Authority, and not the Check Post Authority. Therefore, the impugned order is liable to be quashed. Further, when all the documents are produced and the legality of the transaction is proved, there is no question of invoking the provision for composition of offences. Accordingly, the impugned order is set aside and the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

sd/-
Assistant Registrar(Cs-V)

/TRUE COPY/

Sub-Assistant Registrar

sd

To

The Deputy Commercial Tax Officer,
Pattanur Check Post,
Morattandi Villupuram District.
Pin - 605 006.

+1 CC to MR.T.Pramodkumar Chopda Advocate. SR.NO. 1159
+1 CC to Special Govt.Pleader. SR.NO. 1360

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CO-SK
JD 01/02/2016