IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.32137 to 32139 of 2015
and
M.P.Nos.1 to 1 of 2015

E.I.Dupont India Pvt. Ltd.,
Represented by its Authorised Signatory,
Ankit Jain,
Elnet Software City, 3rd Floor, Block 2 & 9,
No.140, Rajiv Gandhi Road,
Taramani, Chennai - 600 113. .. Petitioner in all W.Ps

Vs

1.Joint Commissioner (CT)
Chennai East,
Papjm Building, Greams Road,
Chennai - 600 006.

2.Assistant Commissioner (CT),
Thiruvallikeni Assessment Circle,
No.46, Greenways Road,
Chennai - 600 002. .. Respondents in all W.Ps

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent passed in RP.Nos.49 of 2014, 60 of 2014 and 80 of 2014 dated 27.08.2015 and quash the same and further direct the first respondent to adhere with the binding precedent laid down by the Hon'ble High Court under the Writ Petition Nos.15826 to 15830 of 2014 dated 19.06.2014 on an identical set of facts of the petitioner own case by re-hearing the revision petition.

For Petitioner
in all W.Ps : Mr.A.R.L.Sundaresan
Senior Counsel
for Mr.N.Murali

For Respondents
in all W.Ps : Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)

COMMON ORDER

Heard Mr.A.R.L.Sundaresn, learned Senior Counsel, assisted by Mr.N.Murali, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) appearing for the respondents and with their consent, these writ petitions are taken up for disposal.

2.Since the issue involved in all the writ petition is one and the same, the facts of the case in W.P.No.32137 of 2015 is taken up for consideration.

3.The petitioner is a Private Limited Company incorporated under the Companies Act, 1956 and is registered as a dealer under the provisions of Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and Central Sales Tax Act, 1956 (CST Act) on the file of the second respondent. The petitioner questions the correctness of the action initiated by the second respondent, namely, the Assessing Officer in completing the assessment for the year 2013-14 by order dated 24.02.2014. By the said order, the second respondent stated that the petitioner had transported Plastic from Chennai to FCI Technology Services Limited, Kerala by utilizing the e-Transit pass generated from the Commercial Taxes Department website with reference to the Invoice of consignor Bill No.5691201382/12.11.2012 (700 quantity) to the value of Rs.1,77,293.00. It was stated that it is obligatory on the part of the consignor or the vehicle driver to hand over the transit pass to the last check post in the Tamil Nadu KG Chavady (out) check post before entering into Kerala check post. However, the consignor and the vehicle driver did not discharge the obligation and therefore, the Department has invoked the provision of section 70(1)(C) of TNVAT Act treating the transaction as local sales and assessed to take along with 150% of the penalty. The petitioner filed a revision before the first respondent which was taken on file as RP.No.49 of 2014. In the revision petition, the petitioner contended that the Assessing Officer has ignored their reply and without affording an opportunity of personal hearing, the order has been passed. Further, it was contended that none of the provisions of the TNVAT Act casts the responsibility upon the jurisdictional Tax Officer of the assessee to levy tax in cases where the movement of goods is not covered by the prescribed documents or the failure to comply with the prescribed provision. After referring to Section 70(1)(a) it was submitted that e-transit pass in Form LL is required only in cases where the goods vehicle carrying specified goods is passing through the Tamil Nadu and in their case, it is not in transit movement of goods through the State of Tamil Nadu instead it pertains to either interstate sale of goods or stock transfer (outward) of goods by the petitioner to its branches located outside the State of

Tamil nadu. Therefore, the petitioner requested to set aside the order of assessment. The revisional authority by order dated 27.08.2015 rejected the revision petitions and therefore the petitioner is before this Court.

4.The issue as to how the check post officers have to function when goods are not accompanied with e-transit pass was a recurrent issue and representations were made by the dealers to the Principal Secretary/Commissioner of Commercial Taxes, who had issued a circular bearing Circular No.26/2014 dated 16.06.2014. After taking into consideration the decision of the Hon'ble Supreme Court in the case of Tvl.Sodhi Transport Co. and another vs. State of U.P and another reported in (1986) 62 STC 381, the Principal Secretary/Commissioner of Commercial Taxes issued the following direction:

> " ....
> f) Therefore, 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 with the transit pass in question had actually crossed the borders of the State, such evidence may be accepted by the assessing authority as an evidence of Inter-State movement of goods."

5.Thus, the Commissioner had directed all the officials of the Commercial Tax Department to accept alternate evidence which the dealer may produce to substantiate the nature of transaction. However, in the instant case, the Assessing Officer could not be expected to follow the Circular because the assessment was completed much prior to the Circular. Nevertheless, when the matter went before the revisional authority/the first respondent the circular was in vogue. Therefore, the revisional authority could have remanded the matter to the Assessing Officer to consider other documents which are reliable and sufficient to examine the nature of transaction. Since this has not been done, this Court is of the view that the matter should be remanded to the Assessing Officer for fresh consideration.

6.Accordingly, the writ petition is allowed and the impugned orders passed by the first respondent dated 27.08.2015 as well as the assessment orders passed by the second respondent are set aside and the matter is remanded to the second respondent for fresh consideration. The petitioner shall appear before the second respondent within a period of two weeks from the date of receipt of a copy of this order and produce all the supporting documents to prove the nature of transaction. On production of such documents, the second respondent shall afford an opportunity of personal hearing to the petitioner and thereafter proceed to complete the assessment in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cse
To

1.Joint Commissioner (CT)
Chennai East,
Papjm Building, Greams Road,
Chennai - 600 006.

2.Assistant Commissioner (CT),
Thiruvallikeni Assessment Circle,
No.46, Greenways Road,
Chennai - 600 002.

+3ccs to Mr.N. Murali, Advocate, S.R.No.39972
+1cc to the Government Pleader, S.R.No.40203

VS(CO)
EU(04/08/2016)

W.P.Nos.32137 to 32138 of 2015
and
M.P.Nos.1 to 1 of 2015