IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

WRIT PETITION No.35004 of 2015
and
M.P.No.1 of 2015

M/s.Bhartiya International Limited,
Rep. By its Authorised Signatory,
Mr.C.Deenadayalan,
No.118/12, Vepery High Road,
Periamet, Chennai - 600 003. .. Petitioner

Vs.

1.The Commercial Tax Officer,
Roving Squad,
Vellore.

2.The Assistant Commissioner (CT),
Vepery Assessment Circle, Chennai. .. Respondents

Writ petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the first respondent in Goods Detention Notice No.587/2015-16 quash the impugned proceeding date 14.10.2015.

For Petitioner : Mr.V.Sundareswaran
For Respondents : Mr.S.Manoharan Sundaram, AGP

ORDER

This writ petition is filed challenging the proceedings of the 1st respondent dated 14.10.2015.

2. The case of the petitioner, according to the learned counsel for the petitioner is that the petitioner is a registered dealer in leather goods and garments, having TIN No.33050522312 on the file of the second respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and under the Central Sales Tax Act, 1956. During the course of business, M/s.ABCO Leathers Pvt. Ltd., Ranipet supplied "Sheep

Wet Blue Skins" to the petitioner. In this regard, M/s.ABCO Leathers Pvt. Ltd., Ranipet raised invoice No.0032 dated 05.09.2015 for 1152 dz of "Sheep Wet Blue Skins" for the value of Rs.34,57,152/- and the sale tax was imposed at 5%. The petitioner found that 350 dz were defective and in order to get them replaced, returned the same vide delivery challan No.008 on 30.09.2015. Thereafter, while the goods in Transit, Goods Detention Notice No.587/2015-16 dated 02.10.2015 was issued by the first respondent. Challenging the same, the petitioner had filed a writ petition in W.P.No.32060 of 2015 before this Court and this Court disposed of the said writ petition on 08.10.2015, with a direction to the first respondent to pass necessary orders on the basis of the documents produced before him in support of the transportation, within a period of eight weeks from the date of the said order.

3. Further, the learned counsel for the petitioner would submit that thereafter, on considering the required documents furnished by the petitioner, a notice dated 12.10.2015 was issued by the first respondent, for which a reply was also submitted by the petitioner to the first respondent on 14.10.2015. Even then, the goods had not been released to the petitioner. Aggrieved over the same, the petitioner has filed W.P.No.33289 of 2015 challenging the goods detention notice dated 12.10.2015 and for a further direction to release the sheep wet blue returned by the petitioner to its supplier in Lorry No.TN 23L 2777 vide form J.No.737 dated 30.09.2015 along with delivery challan No.008 dated 30.09.2015 without insisting upon any payment of tax or compounding fee.

4. Adding further, the learned counsel for the petitioner would submit that this Court, after considering the submissions made by the learned counsel on either side and after perusing the entire materials available on record, by order dated 16.10.2015 has disposed of the writ petition in W.P.No.33289 of 2015, the operative portion of the said order reads as follows:-

> " 7.Under these circumstances, since the second respondent being the Assessing Authority also made as a party here, it is always open to the second respondent to take appropriate action against the petitioner, if any violation found out and pass necessary orders in accordance with law. When such being position, there is no justifiable reason for detaining the goods in the check post. Hence, this Court finds it appropriate to direct the first respondent to release the goods forth with.
>
> 8.In the result, the writ petition is disposed of with a direction to the first

respondent to release the goods forth with to the petitioner. The second respondent is at liberty to proceed against the petitioner, if he finds that the petitioner has committed any violation of the rules and regulations, in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed".

5. It is the contention of the learned counsel for the petitioner that the 1st respondent has no jurisdiction to pass such an order and hence the same is liable to be quashed, as the same is contrary to law. That apart, according to him, when once the petitioner had decline to opt for admission of having committed an offence under Section 71 of the Act, and option is exercised to pay compounding fee, the 1st respondent is not empowered to impose and collect the same for release of the goods.

6. The learned Additional Government Pleader on the other hand supported the impugned order.

7. This Court considered the submissions made by the learned counsel on either side and perused the documents available on record.

8. Pursuant to the direction issued by this Court in W.P.No.32060 of 2015 dated 08.10.2015, the present impugned proceedings dated 14.10.2015 has been issued to pay the compounding fee which was already proposed in the notice dated 12.10.2015. It is not in dispute that pursuant to the order of this Court made in W.P.No.33289 of 2015 dated 16.10.2015, challenging the said notice dated 12.10.2015, the goods so detained were released. Since the 2nd respondent, the assessing authority is empowered to proceed in the manner known to law, if he finds that the petitioner has committed any violation of the rules and regulations and since the 1st respondent is not empowered to impose and collect the compounding fee, the impugned order dated 14.10.2015 issued by the 1st respondent is liable to be set aside and accordingly the same is set aside. It is always open to the 2nd respondent to proceed in the manner known to law for passing necessary assessment as against the petitioner.

The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(co)

True Copy

Sub-Assistant Registrar

rg
To
1.The Commercial Tax Officer,
Roving Squad,
Vellore.

2.The Assistant Commissioner (CT),
Vepery Assessment Circle,
Chennai.

+1 cc to the Special Government Pleader (Taxes) sr.454
+1 cc to Mr.V.Sundareswaran Advocate sr.476

W.P.No.35004 of 2015

kk(co)
aa19/01/2016