IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.11.2016

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THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.36700 of 2015
and MP.Nos.1 and 2 of 2015

M/s.B.R.B.Distributors,
Rep. by its Proprietor,
B.F.Bilal Ahmed
.. Petitioner

Vs

1.The Commercial Tax Officer,
[Roving Squad],
Vellore Enforcement,
No.4, Fort Round Road,
Barathiar Salai, C.T.Complex,
Vellore - 632 001.

2.The Assistant Commissioner [CT],
Vellore South,
Vellore District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the 1st respondent dated 30.09.2015 in GD.No.25/2011-12 and to quash the same.

For Petitioner : Mr.N.Murali Kumaran
for M/S Mcgan Law Firm

For Respondent : Mr.S.Kanmani Annamalai, AGP

O R D E R

Heard Mr.N.Murali Kumaran, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepts notice on behalf of the respondents and perused the materials placed on record including the counter affidavit filed by the respondents.

2. The order impugned in this writ petition is dated 30.09.2015 and by which, the compounding fee, which was originally levied on the petitioner was confirmed by the impugned order. The petitioner approached this Court, on earlier occasion and file a writ petition in W.P.No.10624 of 2001, challenging the Goods Detention Notice. The said Writ Petition was disposed of, by order dated 14.08.2012, by issuing the following direction:

> "4. In view of the submissions made by the learned counsels appearing on behalf of the petitioner, as well as the respondents, and on a perusal of the records available, this Court finds that the first respondent had only issued a show cause notice, dated 10.4.2012, contrary to the claim made by the petitioner. Therefore, it would be open to the petitioner to raise its objections, if any, in respect of the issues raised in the show cause notice issued by the first respondent, dated 10.4.2012, including the issue relating to the jurisdiction of the first respondent to deal with the issues referred to in the said show cause notice. The petitioner shall file its objections to the show cause notice issued by the first respondent, on 10.4.2012, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such objections to be filed by the petitioner, the first respondent shall consider the same and pass appropriate orders thereon, within a period of four weeks thereafter."

3. Pursuant to which, the petitioner has submitted his objections on 15.09.2012 and to prove that the same was received by the office of the 1st respondent, a copy of the letter delivery book has been produced, which shows that the Office Assistant has acknowledged the letter on 18.09.2012. It is not known as to why, the 2nd respondent put the entire matter in cold storage for almost two years after issuance of show cause notice in 2015.

4. The petitioner in the affidavit filed in support of the writ petition, in paragraph No.14 in page No.5, has stated that since he received notice during the year 2015, he sent a communication to the 1st respondent stating that already objections were filed on 15.09.2012. However, the 1st respondent has passed the impugned proceedings stating that no objection has been filed.

5. Counter affidavit filed by the respondent does not specifically deny the allegation made by the petitioner in paragraph No.14 of the affidavit. This is sufficient to hold

that the contention of the petitioner remains uncontroversed. Thus, there is no explanation for the delay. This is a sufficient ground to set aside the impugned notice and the matter is remanded to the 1st respondent for fresh consideration, who shall consider the objections dated 15.09.2012 filed in page No.17 of the typed set of papers, afford an opportunity of personal hearing to the petitioner and decide the matter afresh and pass orders on merits in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

With the above direction, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Commercial Tax Officer,
[Roving Squad],
Vellore Enforcement,
No.4, Fort Round Road,
Barathiar Salai, C.T.Complex,
Vellore - 632 001.

2.The Assistant Commissioner [CT],
Vellore South,
Vellore District.

+1cc to M/S.Mcgan Law Firm, Advocate Sr.64046
+1cc to the Government Pleader Sr.64088

W.P.No.36700 of 2015
and
MP.Nos.1 and 2 of 2015

ca[co]
srg 15/12/2016