IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.27354 and 27355 of 2016
and
W.M.P.Nos.23554, 23555, 23556 and 23557 of 2016

Kaveri Ginning Mills (P) Ltd.,
Rep. by Avinashbikkumalla
Authorized Representative,
Flat No.G-4, Adarsha Apartments,
Chaithanyapuri Colony,
Karimnagar - 505 001. .. Petitioner in both W.Ps

Vs

The Commercial Tax Officer (Enf)
Roving Squad, Vellore,
Tamil Nadu. .. Respondent in both W.Ps

Prayer in W.P.No.27354 of 2016: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent and quash the detention notice No.547/2016-17 dated 29.07.2016 as well as consequential Compounding Notice No.547/2016-17 dated 01.08.2016 and direct the respondent to release the vehicle along with the detained goods.

Prayer in W.P.No.27355 of 2016: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent and quash the detention notice No.546/2016-17 dated 29.07.2016 as well as consequential Compounding Notice No.546/2016-17 dated 01.08.2016 and direct the respondent to release the vehicle along with the detained goods.

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For Petitioner
in both W.Ps : Mr.T.Shanmugam

For Respondent
in both W.Ps : Mr.S.Kanmani Annamalai
Additional Government Pleader

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COMMON ORDER

Heard Mr.T.Shanmugam, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice on behalf of the respondent and with their consent, the writ petitions are taken up for disposal.

2.The petitioner in these writ petitions challenges the goods detention notice and the compounding notice issued by the respondent. During the regular course of vehicular check at Pallikonda Tollgate, a vehicle bearing registration No.AP 16 TX 0838 carrying Cotton Bales was checked and during verification, the respondent found certain defects. Therefore, the goods have been detained and a compounding notice has been issued calling upon the petitioner to pay the total amount of Rs.4,71,615/-. The petitioner's contention is that there is no jurisdiction to detain the goods as there is no evasion of any tax under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "TNVAT Act"). Further, it is stated that the respondent having admitted that the transaction is an interstate sale from Khammam to Salem, Tamil Nadu, the transaction would be liable to tax to Central Sales Tax Act (hereinafter referred to as "CST Act"), more importantly the State which shall have jurisdiction is the State from where the interstate sale commenced viz., Telangana in terms of Section 9(2) of the CST Act. Further it is submitted that the petitioner Company is a registered dealer under the provisions of the Andhra Pradesh Value Added Tax Act and the CST Act since 2008 and the tax dues for the detained goods will be reflected in the July returns to be filed by the petitioner in the month of August.

3.The learned Additional Government Pleader submitted that since the petitioner is other State dealer, though the petitioner may be ready to pay one time tax he should be directed to secure other amount mentioned in the compounding notice.

4.After hearing the learned counsels for the parties, it is seen that the respondent in the compounding notice does not dispute the fact that the goods have been originated from Karimnagar and taken to Salem. Further, the respondent accepts that it is a interstate sale and the only reason for which the goods have been detained that the goods have been sold without tax invoice by levying CST Act. Thus, the petitioner has to establish that the goods have suffered CST Act in their State, namely, the State of Telangana.

5.In the light of the above, there will be a direction to the petitioner to pay one time tax of Rs.1,57,205/- and Rs.1,52,659/- respectively in order to ensure that the

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petitioner does not escape from submitting himself to proceedings under the TNVAT Act in the State of Tamil Nadu and following directions are issued:

1. The petitioner shall remit the one time tax of Rs.1,57,205/- and Rs.1,52,659/- and on such remittance, the goods shall be forthwith released.

2. Simultaneously, the petitioner should file a revision petition before the concerned authority raising the contentions which they have raised in this writ petition and participate in the adjudication proceedings which may be initiated by the said revisional authority.

3. Subject to the compliance of both these above conditions, the petitioner is entitled to the relief of release of the goods.

6.With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer (Enf)
Roving Squad, Vellore,
Tamil Nadu.

+ 2 cc to M/s.ohammed Shaffir, Advocate, SR 44521 & 44520

+ 1 cc to the Special Govt.Pleader (Taxes), SR 44770

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