IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.28161 of 2016

Oppo Mobiles TN Private Limited
2, First Cross, Jancy Nagar,
Mudaliarpet, Puducherry
Pincode 605004
Rep. By its authorized signatory
Mr.Ramu Ramakrishnan ... Petitioner

Versus

Deputy Commercial Tax Officer
Pennaiyar Bridge Checkpost
Cuddalore-607 001. ... Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondent to refund the compunding fee of Rs.47905/-.

For Petitioner : Mr.S.Raveekumar

For Respondents : M/s.Vasudha Thiyagarajan
Additional Government Pleader

O R D E R

Heard Mr.S.Raveekumar, learned counsel appearing for the petitioner and M/s.Vasudha Thiyagarajan, learned Additional Government Pleader appearing for the respondents.

2.As the pleadings are complete and the parties have requested that the Writ Petition itself taken up for disposal, the same was heard by this court.

3.The Petitioner seeks for a direction upon the respondent to refund the compounding fee of Rs.47,095/-. Under normal circumstances, a Writ of Mandamus cannot be issued for a money claim. But, however, in the instant case, the petitioner has challenged the action of the respondent who is the checkpost officer who has detained the petitioner's consignment and collected Rs.49,095/-. Though such an amount has been collected as a tax liability, it has not been specifically mentioned as to under what head the amount has been collected.

4.The petitioner would state that there are three issues pointed out by the respondent in the Goods Detention Order, namely, (1) the consignee did not file their returns; (2) Form JJ of State of Tamil Nadu was accompanying the consignment and Form JJ of Union Teritory of Pondicherry was not accompanying the consignment and (3) it is contended that there is no sale involved, since the goods which were transported from Pondicherry to Chidambaram were promotional materials and this was clearly stated in the invoice dated 11.07.2016, wherein, the value was given as Rs.1,00,590/- and it is not known as to how the respondent had collected Rs.49,095/-.

5.In the counter affidavit except paragraph No.8, all other paragraphrs pertain to the facts of the case which are mentioned in the Goods Detention notice. The only contention raised by the respondent in paragraph No.8 of the counter is that as against the payment of tax is concerned, the petitioner has to file a revision under Section 54 of the Tamil Nadu Value Added Tax Act.

6.So far as the first issue is concerned as to whether the respondent could have detained the consignment on the ground that the consignee did not file their return, the only answer to the question should be in favour of the assessee and for that reason, the goods could not have been detained. Secondly, if Form JJ issued by the Sales Tax Authorities of the Union Territory of Pondicherry was not accompanying the consignment, then it would be a mistake on the part of the dealer and in terms of the Circular issued by the Commissioner in Circular No.33/2014 dated 17.07.2014, the respondent could have imposed a penalty of Rs.2,000/- only and could not have detained the goods. The third contention is that the materials which were transported by the petitioner were promotional materials not intended for sale. Though this is a specific stand taken by the petitioner right through including in this Writ Petition, the respondent in the counter affidavit has not denied the same.

7.In the light of the above, this court is of the view that the respondent could not have collected a sum of Rs.49,095/- from the petitioner. Though in the counter affidavit in paragraph No.8, it is stated that it is a tax component and compounding fee, the release order does not specifically say so nor there is a quantification of tax. Thus, the respondent himself is not clear as to under what head the amount has been collected. So far as the second issue, namely, that the goods were not accompanied by Form JJ issued by Sales Tax Authorites of the Union Territory of Puducherry is concerned, the petitioner would admit the mistake. If that be so, then the petitioner is liable to pay a fine of Rs.2000/- as directed by the Commissioner in the circular dated 17.07.2014. Infact, the petitioner has accepted the same and that is why the petitioner has restricted their claim to only Rs.47,095 out of Rs.49,095/- collected from them. So far as the contention raised by the respondent that the petitioner has voluntarily paid the money is concerned, the petitioner's case is that the amount has been paid under protest and so that the petitioner would able to clear the goods immediately as it was a promotional material intended to launch a product in that particular area.

8.In the light of the above, the writ petition is allowed and the respondent is directed to refund a sum of Rs.47,095/- which was collected from the petitioner pursuant to the Goods Detention Notice dated 11.07.2016. The above direction shall be complied with by the respondent within a period of eight weeks from the date of receipt of a copy of this order.

9.The Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commercial Tax Officer
Pennaiyar Bridge Checkpost
Cuddalore-607 001.

+1cc to Mr.S.Raveekumar, Advocate, S.R.No.49457
+1cc to the Special Government Pleader(T), S.R.No.48935

W.P.No.28161 of 2016

PPA(CO)
CA(14/09/2016)