IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.30190 of 2016
and
WMP.No.26168 of 2016

Elgi Rubber Company Ltd.,
P.O. Box No.1820,
2000, Trichy Road,
Coimbatore-641 005. ... Petitioner

vs.

The Commercial Tax Officer,
Roving Squad,
Office of the Deputy Commissioner
(CT) (Enf),
Villupuram. ... Respondent

Prayer:Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, calling for the records of the respondent in G.D.No.1154/2016-17 dated 17.08.2016 and to quash the same and consequential notice dated 20.08.2016 and to direct the respondent to release the detained goods of the petitioner in lorry No.TN-34-F-9798.

For Petitioner : Mr.M.V.Swaroop
For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

1. The petitioner, by virtue of this writ petition, has challenged the compounding notice dated 17.08.2016.

2.The challenge to the compounding notice is based on two broad grounds.

2.1. Firstly, the transaction, qua which, the impugned notice has been issued is not amenable to sales tax, i.e., tax under the Tamil Nadu Value Added Tax Act, 2006 (in short 'the 2006 Act'). In other words, the petitioner's case is that the subject transaction was an inter-state sale and therefore, no local tax was payable.

2.2. Secondly, a perusal of the impugned notice would show that the petitioner has been charged with an offence said to have been committed under Section 71(3)(d), 71(3)(e) and 71(5)(a) of the 2006 Act, and the compounding fee has been calculated at twice the amount, which is imposed by way of tax.

2.3. According to the counsel, under Section 72 of the 2006 Act, for all offences, except, those which relate to evasion of taxes, the compounding fee of only Rs.2,000/- could have been charged. Thus, the respondent, without charging the petitioner with an offence for evading payment of tax, has proceeded to calculate and thereupon, impose a compounding fee, equivalent to twice the amount of tax imposed on the petitioner.

3. A perusal of the impugned notice would show that the tax imposed on the petitioner is a sum of Rs.33,413/-, (which is rounded off to Rs.33,500/-). The compounding fee, which is, calculated at twice the amount of tax imposed, is crystallised at Rs.67,000/-.

4.Mr.K.Venkatesh, who appears for the respondents, says that, since, a remedy by way of revision petition is available to the petitioner, these as well as other aspects could be agitated before the concerned authority.

5. Mr.Venkatesh, conceded, though, that compounding fee could be levied at twice the amount of tax imposed, only if, the offence, with which the petitioner was charged, fell within the provisions of Section 72(1)(a) of the 2006 Act. In other words, Mr.Venkatesh, could not, but submit that, only if, the petitioner was charged with an offence, which tantamounts to failure to pay or attempt to evade or amounts to evasion of tax under the 2006 Act, could the compounding fee be levied, at a rate, equivalent to twice the tax imposed.

6. Having heard the learned counsel for the parties, I am of the view that the petitioner should be relegated to an alternate remedy by way of a revision petition, since, the impugned notice clearly reflects that the offence, which the petitioner, is alleged to have committed, falls under Section 71(3)(d), 71(3)(e) and 71(5)(a) of the 2006 Act, and therefore, compounding fee could not have been calculated, at least, prima facie, at a rate twice that of the tax imposed on the petitioner. Therefore, I intend to dispose of the Writ Petition with the following directions:

i) The petitioner is given liberty to file a revision petition. The needful will be done within a period of two (2) weeks from the date of receipt of a copy of the order.

ii) Pending the adjudication of the revision petition, there shall be an order stay of recovery of compounding fee, as reflected in the impugned notice.

iii) In case, the revision petition is not filed within the time stipulated above, the interim protection granted by this Court with regard to recovery of compounding fee shall stand dissolved automatically.

iv) Needless to say, the concerned authority will dispose of the revision petition with due expedition, though, not later than eight (8) weeks from the date of institution of revision petition.

v) The concerned authority, while dealing with the matter on merits, will examine the tenability of both the imposition of tax and compounding fee, given the stand articulated by the petitioner before me.

7. Insofar as the WMP.No.26168 of 2016 is concerned, a perusal of the order dated 30.08.2016 shows that the petitioner was given liberty to seek release of the subject goods on payment of one time tax.

7.1. I am informed, that the petitioner, upon payment of Rs.33,500/-, towards tax, has obtained the release of the subject goods.

8. Accordingly, the captioned application has worked itself out and therefore, no further orders are called for in the application, as well.

9. The Writ Petition and the Miscellaneous Petition are disposed of with the aforesaid terms. There shall, however, be no order as to costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

DP/sl
To

The Commercial Tax Officer,
Roving Squad,
Office of the Deputy Commissioner
(CT) (Enf),
Villupuram.

+1cc to Mr.Swaroop, Advocate Sr.No.73200.

W.P.No.30190 of 2016
and
WMP.No.26168 of 2016

NM(CO)
GN(19/01/2017)