IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2016

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THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.No.311 of 2016 and
W.M.P.Nos.207 and 208 of 2016

B.Kolandaivel [Petitioner]

Vs

1 The Commercial Tax Officer
(Enforcement)
Pitchards Road,
Hasthinampatty, Salem 7.

2 The Commissioner,
Food and Safety, 5th Floor,
DMS Building,
359, Anna Salai, DMS Campus,
Teynmapet, Chennai 600 006.

3 The Food Safety Officer,
Nathamai Building
Collector's Office Building,
Hasthampatty, Salem. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the records relating to the detention notice No.1246/2015-2016 dated 09.12.2015 of the 1st respondent herein and quash the same and consequently direct the 1st respondent herein to forthwith release the 100 bags of hanschhap tobacco products detained under the impugned proceedings and the petitioner's vehicle bearing Regn.No.KA 01 AE 3002.

For Petitioner : Mr.A.R.L.Sundaresan, Senior Counsel
for M/s A.L.Ganthimathi

For Respondents : Mr.S.Kanmani Annamalai, AGP (R1)
Mr.M.S.Ramesh, AGP (R2 &3)

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorarified mandamus, to call for the records relating to the detention notice dated 09.12.2015 of the 1st respondent and to quash the same and consequently direct the 1st respondent to forthwith release 100 bags of hanschhap tobacco products detained under the impugned proceedings and the petitioner's vehicle bearing Regn.No.KA 01 AE 3002.

2.1 It is the case of the petitioner that he is carrying on business as Goods Transport Operator within the country. On 30.121.2015, M/s Dhanalaxmi Enterprises, New Delhi, had sold a consignment of tobacco of 50 bags to M/s Dhuruvam Trading Company, Puducherry. The said purchaser M/s Dhuruvam Trading Company is a registered dealer in Tobacco and also registered under the Certificate of Registration (Central) in CST No.3417002243 dated 24.08.2015 and under Tin No.34170022243 under the provisions of Value Added Tax Act, Government of Puducherry.

2.2 The seller of the goods M/s Dhanalaxmi Enterprises is also a registered dealer under the Department of VAT and Government of NCT Delhi. The said M/s Dhanalaxmi Enterprises booked the consignment to M/s Dhuruvam Trading Company through M/s Bharat Transport Fleet Owners and Transport Contractor to be transported to Puducherry. The said Bharat Transport had engaged the services of the petitioner for the purpose of transport of the said consignment and accordingly the consignment of 100 bags of tobacco of "Hans Chhap" was entrusted to the petitioner for transportation from Delhi to Puducherry.

2.3 On 09.12.2015, when the vehicle was crossing the check post at Omallur Tollgate, the 1st respondent herein intercepted the vehicle and seized 100 bags of Hans Chhap tobacco and gave a goods detention notice dated 09.12.2015 in Form 41, alleging that the product was a banned product.

2.4 It is the case of the petitioner that the consignment is not intended for sale within the State of Tamil Nadu, but, is intended for transportation to the State of Puducherry. Further, according to the petitioner, the seizure of the goods and the vehicle is erroneous.

2.5 According to the petitioner, when he contacted the 1st respondent for release of the vehicle and the goods, the 1st respondent stated that the vehicle has been entrusted to the 3rd respondent herein and reiterated that the goods are prohibited goods and hence he would not release the same. When the petitioner contacted the 3rd respondent for release of the goods, the 3rd respondent also reiterated the same stand.

3. Mr.A.R.L.Sunderasan, learned Senior Counsel appearing for the petitioner submitted that in similar circumstances, this Court, by order dated 03.02.2016 in W.P.No.467 of 2016, directed the 3rd respondent in the present writ petition, to consider the representation of the petitioner by permitting him to produce all the relevant documents pertaining to transportation of Tobacco to Pondichery and on production of such documents, if the 3rd respondent herein, after verifying the documents satisfied with the same, he shall allow the petitioner to transport the tobacco to Pondicherry.

4. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, appearing for the 1st respondent and Mr.M.S.Ramesh, learned Additional Government Pleader appearing for the 2nd and

3rd respondents submitted that the issue involved in the present writ petition is similar to the issue involved in W.P.No.467 of 2016. Therefore, the 3rd respondent may be directed to consider the petitioner's grievance and decide the matter in accordance with law.

5. Having regard to the submissions made by the learned counsel on either side, I direct the 3rd respondent to consider the grievance of the petitioner by permitting him to produce all the relevant documents pertaining to the transportation of tobacco to Puducherry and on production of such documents, if the 3rd respondent, after verifying the documents, satisfied with the same, he shall allow the petitioner to transport the tobacco to Pondicherry. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the petitioner shall not distribute the tobacco which has been transported from New Delhi to Puducherry within the State of Tamil Nadu. The petitioner shall also give an affidavit of undertaking before the 3rd respondent to that effect.

With these observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To
1 The Commercial Tax Officer (Enforcement)
Pitchards Road,
Hasthinampatty, Salem 7.
2 The Commissioner,
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359, Anna Salai, DMS Campus,
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3 The Food Safety Officer,
Nathamai Building
Collector's Office Building,
Hasthampatty, Salem.

+1cc to M/s. A.L. Gandhimathi, Advocate, S.R.No.14552
+1cc to Special Government Pleader (Taxes) S.R.No.14687
+1cc to the Government Pleader, S.R.No.15032

VGI(CO)
EU(22/03/2016)