IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.11.2016
CORAM:
THE HON 'BLE MR. JUSTICE B.RAJENDRAN
Writ Petition No.39662 of 2016
and W.M.P.no.33933 of 2016

M/s. Jagadamba Traders,
Represented by its Proprietor, V.Prakash,
No.221/5 Thaneer Pandal Kaduvalavu,
Namagiripet, Rasipuram (Tk),
Namakkal - 637 403 ... Petitioner

Versus

The Commercial Tax Officer,
Roving Squad,
O/o. The Assistant Commissioner (CT),
Old Court Building, Opp.BSNL Office,
Mohanur Road, Namakkal - 637 001 .. Respondent

Prayer:- Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondent in Sa.Ne.Ko.No.2034/2016-17, dated 12.08.2016 and the consequential proceedings in G.D.R.No.2034/16-17, dated 12.08.2016 and to quash the same.

For Petitioner : Mr. S.Raveekumar
For Respondent : Mr. S.Kanmani Annamalai, Spl.G.P.,

O R D E R

This writ petition has been filed by the petitioner praying for the issuance of a writ of certiorari to call for the records of the respondent in Sa.Ne.Ko.No.2034/2016-17, dated 12.08.2016 and the consequential proceedings in G.D.R.No.2034/16-17, dated 12.08.2016 and to quash the same.

2. Heard the learned counsel appearing for both sides.

3. According to the petitioner, the petitioner is a registered dealer on the file of the respondent and is engaged in re-sale of scraps. The petitioner, during the course of business, sold goods to a registered dealer at Delhi, namely, M/s. Shiva Metals, and the same was transported vide Vehicle No.TN52-2428. The value of the goods was valued at Rs.35,57,490/- and 2% tax under CST Act at Rs.71,150/-. However, the vehicle was intercepted by the respondent near

Omalur and detained, vide proceedings in Goods Detention Notice No.2034/2016-17, dated 04.08.2016. The reason given by the respondent for the detention was, on verification, that the goods are with manual Form JJ (without electronically generated Form JJ) and also upon scrutiny of the returns in the Internet, the petitioner has paid less tax for the earlier assessment year. Further the goods were not loaded from Rasipuram. The petitioner approached the respondent, by way of representation dated 05.08.2016, ventilating its grievance. However, the respondent refused to accept the representation. Hence, the petitioner has approached this Court, by way of this writ petition.

4. The learned counsel appearing for the petitioner, at the outset, submitted that, the goods were released on 12.08.2016 and on the very same day, the impugned order seems to have been prepared. He further submitted that since the demand of tax for undisputed interstate transaction at higher rate is illegal, the demand of compounding fee is unsustainable. He further submitted that the provisions of Sections 71 and 72 of the Act are not applicable.

5. The learned Special Government Pleader appearing for the respondents would submit that the respondent has rightly detained the goods, along with the vehicle, on the ground that the petitioner has committed an offence under Sections 71 (5) (a) and 71 (5) (b) of the Act and the petitioner was also given an opportunity to compound the offence, hence, no interference can be called for with the impugned notice.

6. This Court is not able to see any merit in the submissions made by the learned Special Government Pleader for the respondent. In the instant case, the goods were detained for one reason and the order demanding compounding fee was passed on different grounds, not related to detention and goods in transit. Further, the respondent cannot usurp the jurisdiction of the Assessing Authority. It is only the Assessing Authority, who can decide, whether tax is leviable, whether there is an attempt for evasion, whether the explanation of the owner / agent is acceptable, whether the documents that are carried with the goods are sufficient, etc.,

7. This Court is of the considered view that, since the respondent is not the Assessing Officer, he is not entitled to levy and demand any amount of tax, in addition to the tax payable on the value of the goods. Therefore, the impugned proceedings of the respondent is against the provisions of the Act and the Rules framed therefor. Further, as per Section 67 of the Act, the verification can be only related to payment of tax and the documents in respect of the goods carried and not in

respect of the earlier assessment and amount of tax. Therefore, the impugned order demanding and collecting tax has no legs to stand. Hence, the impugned order is set-aside and the writ petition is allowed with liberty to the Assessing Authority to proceed further in accordance with law. No costs. Consequently, the connected WMP is closed.

-Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

srk

To

1. The Commercial Tax Officer, Roving Squard,
O/o. The Assistant Commissioner (CT),
Old Court Building, Opp.BSNL Office,
Mohanur Road, Namakkal - 637 001

+1 cc to Mr.S.Ravee Kumar Advocate sr 65396/2016
+1 cc to the Special Government Pleader Taxes
High Court Madras sr 65893/2016

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