IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.41137 of 2016
&
W.M.P.No.35133 of 2016

Tvl.Balu Company,
Rep. by its Managing Partner,
No.318 (Old No.174), Sivagami Complex,
Thambu Chetty Street,
Chennai-600 001. ... Petitioner

Versus

The Deputy Commercial Tax Officer,
Ranipet (Out) Check Post,
Serkadu. ... Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings in G.D.No.2549/2016-17, dated 17.11.2016 and quash this detention order and direct the respondent to release the goods detained in G.D.No.2549/2016-17, dated 17.11.2016.

For Petitioner : Mr.C.Bakthasiromoni

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.C.Bakthasiromoni, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent.

2. The petitioner in this Writ Petition is a registered Custom House Agent, who has cleared and forwarded a consignment to IFB Automotive Private Limited at Bangalore. It is stated that certain automotive parts were imported by the

said Company and they have been cleared by the petitioner and have been transported by Road to Bangalore and the goods about to cross the Ranipet Out Check Post on 17.11.2016, the vehicle along with goods have been detained. The reason for detention by the respondent being on verification of records Online Form KK and Transporter Form MM, Transporter L.R. has not submitted and therefore, the respondent wanted to verify the genuineness of the transaction and to safeguard Government revenue.

3. The petitioner submitted a representation on 20.11.2016 stating that at the time of preparation of Electronic Form KK, the Tamil Nadu VAT Website service was unavailable and to establish the same, they have produced a computer printout stating that "This service is temporarily unable to service requests. Error code 95". Therefore, they manually prepared the Form KK and all import documents and they have produced the same and thereafter, the petitioner has generated the Electronic Form KK for the goods and produced.

4. Though such a stand was taken by the petitioner, the respondent, while passing the impugned order, invoked Section 72(1)(a) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "TNVAT Act") and demanded double the amount of tax as if, there is an evasion of tax. There is no finding in the compounding notice that the petitioner evaded payment of tax. The only reason for detention of the goods is the petitioner had produced a manual Form KK instead of a computed generated Form KK. The petitioner's explanation, vide representation, dated 20.11.2016 has not been considered nor referred to by the respondent, though it has been acknowledged by the respondent as could be seen from the signature appended to the representation, dated 20.11.2016.

5. That apart in terms of Section 68 of the TNVAT Act, the owner or person in charge of the goods should carry with them, a Bill of sale or delivery note or such other documents as may be prescribed and Log book relating to the goods transported. Assuming that Form KK cannot be accepted, the other documents which are all import documents could have been considered by the respondent. Therefore, this Court has no hesitation to hold the computation done by the respondent in the compounding notice, dated 18.11.2016 is not tenable.

6. Accordingly, the petitioner is directed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) i.e., the tax calculated by applying the rate of tax under the Central Sales Tax Act at 2% and this Court has fixed the amount of Rs.50,000/-, which is approximately 2% of the value of the goods, viz., Rs.20,77,467/-. On payment of the said amount, the vehicle and goods shall be forthwith released.

7. Accordingly, the Writ Petition is disposed of. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

r n s

To

The Deputy Commercial Tax Officer,
Ranipet (Out) Check Post,
Serkadu.

+1cc to Mr.C.Bakthasiromoni, Advocate, S.R.No.69391

W.P.No.41137 of 2016
&
W.M.P.No.35133 of 2016

GJ II(CO)
CA(28/11/2016)