IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.43715 of 2016
and W.M.P.Nos.37516 & 37517 of 2016

M/s.Sre Navaladhiyan Treaders,
S.Muthu Kumar, Proprietor,
2-19C, GTN Salai, Opp. SMB School,
Dindigul - 624 005, Tamil Nadu. ... Petitioner

Vs.

1.The Check Post Officer /
Deputy Commercial Tax Officer,
Katpadi Check Post, Katpadi,
Vellore District.

2.The Assessing Authority/
Commercial Tax Officer,
Pollachi Assessment Circle,
Pollachi. ... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus calling for the records on the file of the first respondent in G.D.No.1631/2016-17 dated 04.12.2016 and the subsequent compounding notice dated 05.12.2016 of the first respondent and quash the same and direct the first respondent to release the detained goods Vehicle No.TN 28 AF 9496 dated 04.12.2016.

For Petitioner : Mr.S.N.Kirubanandam

For Respondents : Mr.K.Venkatesh,
Government Advocate

ORDER

1. Issue notice. Mr.K.Venkatesh, accepts notice on behalf of the respondents. With the consent of counsels for parties, the Writ Petition is taken up for final hearing and disposal.

2. The substantive relief sought for in the Writ Petition is as follows:

> ".... to issue a writ of certiorarified mandamus calling for the records on the file of the first respondent in G.D.No.1631/2016-17 dated 04.12.2016 and the subsequent compounding notice dated 05.12.2016 of the first respondent and quash the same and direct the first respondent to release the detained goods Vehicle No.TN 28 AF 9496 dated 04.12.2016."

3.In order to adjudicate upon the Writ Petition, the following facts are required to be noticed.

3.1. The petitioner claims to be a registered dealer on the file of the second respondent. It is the petitioner's case that he has been regularly filing his returns and paying the taxes owed by him.

3.2. It appears that the petitioner, during the course of his business, had purchased Tin Oil Seeds from an entity by name of Taraknath Tradings ; an entity located in Tarakeswar, in the State of West Bengal.

3.3. The subject goods were purchased in or about 1st December 2016. Consequent thereto, an invoice dated 01.12.2016, was generated.

3.4. The petitioner avers, that he paid CST at the rate of 2% and had the goods transported to himself via Lorry No.TN 28 AF 9496.

3.5. It appears that when the goods reached Katpadi Check Post, the Lorry containing the goods was intercepted and resultantly, subjected to inspection.

3.6. It is the petitioner's stand that though the relevant documents such as the tax invoice, trip sheet, Form-JJ, etc were available with the driver, the 1st respondent thought it fit to detain the Lorry along with the subject goods. Evidently, the Lorry with subject goods was detained on 04.12.2016.

3.7. Resultantly, the petitioner was served with the Detention Notice on the very same day, in which, *inter alia*, the following reasons were set out for detaining the goods:

> ".... Transported the goods moved from Tarakeswar (W.B.) to Dindigul. Verified the Invoice Bill with Dept. website. The dealer return not filed as on date. Due to Govt. revenue safe guard, the goods are detained at Katpadi Check Post with Driver own risk.
>
> Sd/
> Deputy Commercial Tax Officer,
> Katpadi Check Post, Katpadi,
> Vellore District. ...."

3.8. Besides, the Detention Notice 04.12.2016, the petitioner was also served with, albeit, on the following day, a Compounding Notice dated 05.12.2016.

3.9. As indicated above, both the Detention Notice as well as the Compounding Notice have been assailed by the petitioner.

4. By virtue of the Compounding Notice, the petitioner has been called upon to pay tax, which has been pegged at Rs.54,310/-. Furthermore, the petitioner has been given the opportunity to compound the offence by paying the compounding fee equivalent to Rs.1,08,620/- ; which is twice

amount that the petitioner has been called upon to pay as tax.

5. The learned counsel for the petitioner says that the reasons given in the Detention Notice for detaining the goods are not sustainable. For this purpose learned counsel for the petitioner draws my attention to the Circular dated 17.07.2014, issued by the Principal Secretary/Commissioner of Commercial Tax, Chepauk, Chennai, which is extracted in the Order of the learned Single Judge, dated 26.06.2015, passed in W.P.No.18587 of 2015.

6. Based on the aforesaid Circular, the learned counsel for the petitioner says that the respondent could not have detained the goods based on an allegation, even if true, that the monthly returns have not been filed by the petitioner.

7. As indicated above, the case of the petitioner is that the monthly returns have been filed regularly. Furthermore, it is also the contention of the learned counsel for the petitioner that the respondent could not have acted as an Assessing Officer and assessed the petitioner to tax via Compounding Notice dated 05.12.2016.

8. Mr.K.Venkatesh, who appears for the respondents, cannot, but

argue, that the Circular referred to by the petitioner, binds the respondent.

9. On being queried, Mr.K.Venkatesh, fairly says that if provisions of aforementioned Circular were to be applied, the reason given in the Detention Notice cannot hold water. It is also fairly conceded that, the respondent, who is discharging the duty of a Check Post Officer, could not have acted as an Assessing Officer and issued the Compounding Notice dated 05.12.2016.

10.I have heard the learned counsel for the parties.

11.The relevant part of the Circular dated 17.07.2014 makes good the submission advanced before me by the learned counsel for the petitioner. For the sake of convenience, the same is extracted herein below:

> *“.... "1.It has been brought to the notice of the undersigned that, in one case, a consignment of cotton yarn was intercepted by a Roving Squad. The consignment was accompanied with proper invoice. However, on verification, it was found by the R.S. officers that the consignees have not filed monthly return for the month of April and May 2014. This was treated as an offence liable under Sec.72(1)(a) of TNVAT Act and tax payable and two times of tax payable as*

C. Fee was collected before the release of goods.

2. <u>The above movement of goods accompanied with a valid invoice satisfies the provision of Sec.68 of TNVAT Act and consequently, there is no offence falling under Sec.71(5)(a) of TNVAT Act. Composition of offence under Sec.72(1)(a) of TNVAT Act is possible only in the case of a dealer's failure to pay or attempt to evade or evasion of, any tax payable under the Act. Failure to file monthly return for previous months is not an offence relatable to movement of the goods. For this lapse, the assessing authority concerned has powers to book offence 71(1)(a) of the Act and if necessary, he may also make provisional assessment under Sec.25 of the Act.</u> Therefore, the Roving Squad officers have invoked the composition provisions under 72(1)(a) of TNVAT Act, without valid grounds and for an offence not relatable to the said movement of the goods.

3. The above illegal act of the Roving Squad amounts to harassment of dealers/transporters concerned and tarnish the image of the department.........

4. Any complaint of harassment during vehicular check will be viewed seriously. If the complaint is found to be correct on enquiry, appropriate action will be taken against the erring officials.......".”

(Emphasis is mine)

12. A perusal of the extract would show that the respondent could not

have detained the goods by comparing the contents of the Invoice, which accompanied the subject goods with the Department's website, and then, gone on to detain the goods on the ostensible ground that the petitioner has not filed his returns.

12.1. Furthermore, as indicated above, it is quite clear that the Compounding Notice issued by the respondent is beyond his jurisdiction, as he has donned the robes of an Assessing Officer, which is not permissible in law.

12.2. In such like case, where, returns are not filed, the Department has the power, as noticed in the Circular, to proceed against a defaulting Assessee under the provisions of Section 71(1)(a) or, even, carry out a provisional assessment in accordance with the mandate of Section 25 of the Tamil Nadu Value Added Tax Act, 2006.

12.3. Therefore, for the aforementioned reasons, the impugned orders are quashed. The respondents will, forthwith, release the aforementioned Lorry along with the subject goods to the petitioner. Needless to say, that, if, there is any infraction of the provisions of the Tamil Nadu Value Added Tax, 2006, by the petitioner, the order passed today will not come in the way of appropriate proceedings being taken against the petitioner, albeit, in accordance with law.

13. The Writ Petition and the pending applications are consequently, closed. There shall, however be, no order as to costs.

Index : Yes/No
Internet : Yes
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19.12.2016

Note: Issue order copy on 19.12.2016.

To

1.The Check Post Officer /
Deputy Commercial Tax Officer,
Katpadi Check Post, Katpadi,
Vellore District.

2.The Assessing Authority/
Commercial Tax Officer,
Pollachi Assessment Circle,
Pollachi.

RAJIV SHAKDHER, J.

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