IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.12.2016
CORAM:
THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
W.P.No.43815 of 2016
and W.M.P.Nos.37630 & 37631 of 2016

M/s.Sri Maruthi Enterprises,
rep by its Proprietor Mr.Baalaji,
No.2, Kalaivani,
Adhi Nagar, Tambaram East. ... Petitioner

Vs.

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

2.The Assistant Commissioner (CT),
Selaiyur Assessment Circle,
Selaiyur, Chennai – 600 073. ... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, to call for the records of the first respondent in G.D.No.2194/2016-17 dated 05.12.2016 and quash the same as arbitrary, unreasonable, illegal being ultravires to the statutory provisions of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.K.Venkatesh,
Government Advocate

O R D E R

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

2. By virtue of this Writ Petition, challenge is laid to the order dated 05.12.2016, passed by the first respondent.

2.1 To be noted, via, the impugned order, the first respondent has imposed a tax on the petitioner in the sum of Rs.1,11,292/-. Furthermore, by the very same order, the first respondent has given opportunity to the petitioner to compound the offence, purported to have been committed under Section 71 (3) (e) of the Tamil Nadu Value Added Tax, 2006, by paying a compounding fee equivalent to Rs.2,22,584/-. As is evident, the compounding fee levied on the petitioner is equivalent to twice the amount of tax imposed on the petitioner.

3.For the purposes of adjudicating upon the issue raised in the instant Writ Petition, the following brief facts are required to be noticed.

3.1 The petitioner claims that he had purchased the goods described as tiles from an entity by the name, M/s.AsianGranito India Limited, which is, located in Thane in the State of Maharashtra.

3.2 According to the petitioner, the subject transaction is an inter-state purchase and that the movement of goods from Thane to Chennai was occasioned by sale, via Invoice No.4218, dated 28.11.2016.

3.3 Evidently, upon the subject goods reaching Ranipet Check Post, in Tamil Nadu, on 02.12.2016, they were detained. Consequently, a Detention Notice dated 02.12.2016, was served on the petitioner. In the Detention Notice, the reasons given for detention were briefly as follows: first, the subject goods were not accompanied by "On-line Form-JJ"; and secondly, the monthly returns had not been filed. According to the first respondent, the monthly returns had, only been filed, till June 2016.

4.The petitioner, however, claims that, on 05.12.2016, On-line Form-JJ was filed, despite which, the first respondent proceeded to pass the impugned order.

5.Mr.K.Venkatesh, who appears for the respondents says that perusal of the order shows that the On-line Form-JJ was not filed by the petitioner.

5.1 Mr.K.Venkatesh, however, concedes, that, if the contention of the petitioner is correct that it is an inter-state purchase, then, the transporter need not file Form-MM.

6. At this juncture, I must note, that, it is the submission of the learned counsel for the petitioner, that, as matter of law, the insistence on filing Form-JJ by the first respondent is not in accordance with the provisions of Section 69 of the Tamil Nadu Value Added Tax, 2006 (2006 Act). Learned counsel submits that if a dealer is able to demonstrate that no local sale is made by relying upon the Bill of Sale or the Delivery Note or such other document as may be prescribed, the first respondent cannot compel submission of Form-JJ.

7.It is therefore the say of the learned counsel for the petitioner that apart from Form-JJ, which in this case was filed after the impugned order was passed, there were other documents in possession of the transporter/the driver, which included the invoice which would have established, that, it is an inter-state purchase.

8.Having heard the learned counsel for the parties and perused the record, according to me, the matter needs to be revisited by the first respondent. The first respondent needs to re-examine the contentions of the petitioner, in the light of the provisions of Section 69 of the 2006 Act and the documents, as also, Form-JJ, which was filed, according to the petitioner, on 05.12.2016.

9.Consequently, the impugned order is set aside. The petitioner will appear before the first respondent on 22.12.2016 at 12.00 noon. The first respondent, after affording a personal hearing to the petitioner, will pass a fresh reasoned order, as expeditiously as possible, though, not later than 26.12.2016.

10.Resultantly, the Writ Petition is disposed of in the aforesaid terms. There shall, however, be no order as to costs. The connected application are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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

2.The Assistant Commissioner (CT),
Selaiyur Assessment Circle,
Selaiyur, Chennai - 600 073.

+1 cc to Mr.V.Sundareshwaran Advocate sr 74680/16
+1 cc to Special Government Pleader Taxes sr 74667/16

W.P.No.43815 of 2016
and W.M.P.Nos.37630 & 37631 of 2016

aa21/12/2016