IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.467 of 2016

Kulandaivel ... Petitioner

Vs.

1. The Designated Officer,
   Deputy Director of Health Services Campus,
   Old District Board Building,
   Salem 636 001.

2. The Joint Commissioner of Commercial Taxes,
   Office of Commercial Taxes,
   Hasthampatti, Salem-7. .. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to release the goods which was detained from the vehicle bearing Registration No.TN 59/BU 0268 by the 1st respondent by considering the representation of the petitioner herein dated 29.11.2015 within a reasonable period.

For Petitioner : Mr.R. Nalliyappan
For Respondents : Mr. R.A.S.Senthilvel
Addl. Govt . Pleader

ORDER

The Petitioner has filed this Writ Petition seeking for a mandamus upon the respondents to release the goods which was detained from the vehicle bearing Registration No.TN 59/BU 0268 by the 1st respondent by considering the representation of the petitioner herein dated 29.11.2015 within a reasonable period.

2. Heard Mr.R.Nalliyappan, learned counsel appearing for petitioner and Mr.R.A.S.Senthilvel, learned Additional Government Pleader, who took notice for the respondents.

3. According to the petitioner, the petitioner is nominated as a representative for South India for Dhanalaxmi Enterprises, dealing with wholesale dealers in Tobacco and Hans Etc. The said company is engaged in supply of Tobacco Products all over India where, it is not prohibited for selling.

4. It is the case of the petitioner that on 18.10.2015, when the goods from the above said dealers were transported to Dhuruvam Trading Company, No.89, 4th Cross Street, J.J.Nagar, Moolakulam, Pondicherry through a vehicle bearing Registration No.59 BV 0268, the 2nd respondent has seized the vehicle near Omalur, Salem District to ensure the goods were transported with payment of taxes. After verifying with documents, the 1st respondent sent a letter to the 2nd respondent dated 19.11.2015 stating that the goods which are detained by the 2nd respondent are products of Tobacco, hence they were asked to hand over the goods to them and accordingly the 2nd respondent, without following the due procedure, handed over the vehicle along with goods to the 1st respondent and in turn, the 1st respondent seized the goods transported by the petitioner holding that the goods transported are prohibited sales goods. Aggrieved against the order of the 1st respondent, the petitioner filed an appeal before the 1st respondent and the same is now pending.

5. It is the further case of the petitioner, even as per the proceedings of the 1st respondent, the petitioner herein has not intended to sell the products which is now under detention in the State of Tamilnadu and the goods were initially detained by the 2nd respondent during transit on its way to Pondicherry and the 2nd respondent after perusing the records, while inclined to release the vehicle, the 1st respondent detained the goods by erroneously holding that the goods are prohibited for sales in the State of Tamilnadu, which is not sustainable under law since the petitioner herein has only transported the goods through the state of Tamilnadu and not intend to sell the same at Tamilnadu. Further the 1st petitioner is not an authority to detain the goods under Section 26 of Food safety and Standards Act, 2006. Narrating the entire facts, the petitioner herein has made a detailed representation before the respondents on 29.11.2015 requesting them to release the goods forthwith, but the respondents herein have not considered the same so far. Hence the petitioner is before this court with this writ petition.

6.When the matter is taken up for consideration, learned counsel for the petitioner submitted that the petitioner has only transported the goods under detention through the State of Tamilnadu and he has not intended to sell the same (tobacco) in Tamilnadu. He further submitted that infact, though the 2nd respondent was satisfied that the goods were transported with proper documents and inclined to release the vehicle, the 1st respondent erroneously detained the goods by holding that the goods are prohibited for sales in the State of Tamilnadu which is not legally sustainable. Hence he prayed for release of goods seized by the 1st petitioner by considering the representation of the petitioner herein dated 29.11.2015 within a time frame that may be fixed by this Court.

7. In view of the submissions of learned counsel for petitioner, this Court is constrained to pass the following order.

8. This Court directs the 1st respondent to consider the representation of the petitioner dated 29.11.2015 by permitting the petitioner to produce all the relevant documents pertaining to transportation of Tobacco to Pondicherry and on production of such documents, if the 1st respondent after verifying the documents satisfies 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.

9. With the above direction, this Writ petition is disposed of. No costs.

msr

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Designated Officer,
Deputy Director of Health Services Campus,
Old District Board Building,
Salem 636 001.

2. The Joint Commissioner of Commercial Taxes,
Office of Commercial Taxes,
Hasthampatti, Salem-7.

+ 1 cc to Mr.R.Nalliyappan, Advocate SR 7017

+ 1 cc to Govt.Pleader SR 7223

lrs(co)
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