IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2016

CORAM

The Hon'ble Mr.Justice R.Mahadevan

Writ Petition No.684 of 2016
and
W.M.P.No.505 of 2016

M/s.Saravana Stores (Tex)
rep. by its Managing Partner, R.Sabapathy
... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Roving Squad - V, Enforcement (N)
Chennai - 600 006. ... Respondent

Prayer:-
Writ petition has been 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 respondent in G.D.No.4158/15-16/RS-V/N, dated 05.01.2016, and to quash the proceedings issued thereunder.

For Petitioner : Mr.L.Muralikrishnan

For Respondent : Mr.V.Haribabu
Additional Government Pleader

O R D E R

The challenge in this Writ Petition is to the proceedings of the Deputy Commercial Tax Officer (CT)/respondent, dated 05.01.2016.

2. The facts, which led to the filing of this Writ Petition are as follows:-

i) The petitioner, viz., M/s.Saravana Stores, is a registered dealer, under the Tamil Nadu Value Added Tax Act, 2006 and Central Sales Tax Act, 1956. The petitioner, in their regular course of business, purchased ready made garments and cloth bales from Ahamadabad to be transported to Chennai. While the said goods were in transit, in a Vehicle bearing

Registration No.RJ - 19- GC 3769, supported by all necessary documents, the same were detained by the respondent at Puzhal Check Post, Padianallur Toll Plaza, on 22.12.2015, on the ground of evasion of tax, and accordingly goods detention notice was issued. Though the petitioner has filed a detailed reply, denying the allegation of evasion of tax, the respondent not being convinced with the explanation offered, issued a compounding notice, dated 05.01.2016. Impugning the same, the present Writ Petition is filed.

3. It is seen that, pending disposal of the Writ Petition, since the petitioner has sought for an interim direction upon the respondent for earlier release of the goods, this Court, in order to meet the ends of justice, by order, dated 07.01.2016, passed in W.P.No.684 of 2016 and W.M.P.No.505 of 2016, directed the respondent to release the goods subject to the condition of payment of a sum of Rs.2,25,000/- by the petitioner. This Court has also made it clear that the said payment is subject to the result of the Writ Petition.

4. When the matter is taken up today, the learned counsel appearing for the petitioner has submitted that, as per this Court's direction, the petitioner effected the payment under protest and got the goods released. Now, the only contention of the learned counsel for the petitioner is that the impugned notice issued by the respondent is wholly untenable and liable to be quashed, for the simple reason that the respondent herein is not the competent authority to issue the same, and the competent authority, who is entitled to do the same, is the assessing authority. Therefore, the learned counsel prayed for allowing the Writ Petition.

5. The learned Additional Government Pleader for the respondent has no say to the stand taken by the learned counsel appearing for the petitioner.

6. As rightly pointed out by the learned counsel appearing for the petitioner, the respondent, being a Check Post Authority, is not empowered to initiate assessment proceedings, and the competent authority, who is entitled to do the same, is the Assessing Authority.

7. For the reasons, as stated supra, this Writ Petition is allowed, the impugned order is set aside, and the matter is directed to be dealt with by the Assessing Authority. It is open to the Assessing Authority to issue proper notice to the petitioner on the basis of the subject matter now placed before this Court. On issuance of such notice, necessary objection be filed by the petitioner within a period of two weeks, and

thereafter, the Assessing Authority, after affording due of personal hearing to the petitioner, shall decide the matter and pass appropriate orders on merits and in accordance with law.

8. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

sd/-
Assistant Registrar(Cs-VII)

/TRUE COPY/

Sub-Assistant Registrar

sd

To

The Deputy Commercial Tax Officer,
Roving Squad - V, Enforcement (N)
Chennai - 600 006.

+1 CC to MR.L.Muralikrishnan Advocate. SR.NO. 4755
+1 CC to Special Govt.Pleader(Taxes). SR.NO. 4946

Writ Petition No.684 of 2016

CO-SKV
JD 16/02/2016