In the High Court of Judicature at Madras

Dated: 21.02.2017

Coram

The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition No.4236 of 2017
and WMP No.4390 of 2017

Tvl. South India Metal Industries
represented by its Partner,
Sidharth A.Mehta
.... Petitioner

Vs

1. The Commercial Tax Officer (Enf),
Roving Squad,
Office of the Assistant Commissioner (CT),
(Enforcement), Vellore.

2. The Assistant Commissioner (CT),
Harbour - II Assessment Circle,
Chennai - 600 001.
.... Respondents

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records on the files of the 1st respondent in G.D.No.638/2016-17 dated 15.02.2017 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
For Respondents: Mr.K.Venkatesh

O R D E R

1. Issue notice. Mr.K.Venkatesh, accepts notice on behalf of the respondents.

1.1. With the consent of counsels for parties, the Writ Petition is taken up for final hearing and disposal.

2. By virtue of this Writ Petition, challenge is laid to the compounding notice dated 15.02.2017.

2.1. The allegation against the petitioner is that he moved the subject goods, from Dadra to Chennai, without the Advance Inward Way Bill accompanying the same. In otherwords, the online Form JJ, which was required to accompany the subject goods, was not available.

2.2. The record shows that, the petitioner has not made any representation, even though, it is the consignee of the subject goods, which, evidently, were purchased in an inter-state transaction.

3. Counsel for the petitioner says that online Form JJ was generated on 14.2.2017 and is, presently, available with the petitioner.

3.1. It is also the case of the learned counsel for the petitioner that, even though, attempts were made to place on record the Form JJ, the same has not been accepted by the respondents.

4. To be noted, there is, however, nothing on record to suggest that, attempts were made to furnish Form JJ, as is contended before me, by the learned counsel for the petitioner.

4.1. However, counsel for the petitioner says that the petitioner is willing to pay a one time tax, in order to expedite the release of the subject goods, albeit, without prejudice to its rights and contentions, to challenge the imposition of tax and compounding fee.

5. Mr. Venkatesh, who appears for the respondents, says that, if, one time tax is paid, the subject goods will be released to the petitioner.

6. Having regard to the submissions made before me and the record, as presently available, I am of the view that, without prejudice to the rights and contentions of the petitioner, upon payment of one time tax, as reflected in the impugned compounding notice, the subject goods can be released to the petitioner.

6.1. It is ordered accordingly.

6.2. The respondents will, forthwith, release the subject goods, once, one time tax, equivalent to Rs.42,101/- is paid by the petitioner.

6.3. Needless to say, the payment made by the petitioner towards tax will be without prejudice to its rights and contentions in the matter concerning tenability of tax and compounding fee.

6.4. The petitioner will, thus, be entitled to challenge the imposition of compounding fee via the impugned notice.

6.5. The challenge, if any, made qua tax and compounding fee, shall be in accordance with the extant provisions of law.

7. The Writ Petition is disposed of in terms of the aforesaid directions. Consequently, the connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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1. The Commercial Tax Officer (Enf),
Roving Squad,
Office of the Assistant Commissioner (CT),
(Enforcement), Vellore.

2. The Assistant Commissioner (CT),
Harbour - II Assessment Circle,
Chennai - 600 001.

+1cc to Mr.R. Senniappan, Advocate, S.R.No.10996
+1cc to the Spl.Government Pleader (Taxes), S.R.No.11006

rj(CO)
md(21/02/2017)

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