IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.6967 OF 2017
AND
W.M.P Nos.7587 and 7588 OF 2017

M/s.Thirumoorthi Road Lines,
Rep. By its Proprietor,
11, Kadhi Complex, Kumaran Nagar,
Avinashi Road,
Tirupur 641 603. [PETITIONER]

Vs

1.The Commercial Tax Officer,
Enforcement Roving Squad I,
Dr.Balasundaram Road,
Coimbatore 641 018.

2.The Branch Manager,
Punjab National Bank,
ATPAR Branch,
Park Road,
Tirupur. [RESPONDENTS]

Prayer:-Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus to call for the impugned proceedings of the first respondent in OR NO.546/2016-2017 dated 15.02.2017 addressed to the second respondent and quash the same as issued without authority of law and contrary to the provisions of the TNVAT Act and further direct the first respondent to pass a fresh respondent to pass a fresh proceedings in accordance with law after granting reasonable opportunity to the petitioner in view of the fact that the goods released by him had been exported out of India.

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For Petitioner : Mr.P.Rajkumar

For Respondents: Mr.K.Venkatesh
Government Advocate

ORDER

The petitioner is aggrieved against the order of the first respondent dated 15.02.2017 addressed to the second respondent wherein and whereby a sum of Rs.3,60,000/- was directed to be realised from the account maintained by the petitioner at the second respondent bank and sent the same to the first respondent towards the arrears of compounding fee.

2.It is seen that while the petitioner was transporting hosiery goods on 28.12.2016, the same were detained by the first respondent followed by issuing a show cause notice for composition of offence dated 28.12.2016. On the very same day, the petitioner issued a cheque No.984935 dated 28.12.2016 for a sum of Rs.3,60,000/- to the first respondent and got the goods released, as it is evident from the release order issued on the very same day. However, the cheque issued by the petitioner was dishonored and therefore, in effect, the petitioner did not pay the compounding fees. In the meantime, after the release of the goods, the petitioner has exported the same to a foreign country. Therefore, the first respondent has issued the impugned communication for recovery of the said sum of Rs.3,60,000/-.

3.Learned counsel appearing for the petitioner contended that except issuing the notice for composition of offence, the first respondent has not issued any other proceedings indicating the quantum of tax liability and the compounding fee. Therefore, he submitted that the petitioner is not in a position to challenge the imposition before the Revisional Authority. Even though the learned counsel submitted so, he is not disputing the fact that the cheque issued by the petitioner was later dishonored.

4.Per contra, the learned Government Advocate appearing for the respondent submitted that the impugned order was issued, since the petitioner failed to honor the cheque, which was voluntarily issued by him for payment of the compounding fees. The learned Advocate further submitted that the one time tax liability involved in this case is a sum of Rs.1,20,000/- and the compounding fee is Rs.2,40,000/-.

5.Heard both sides.

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6.There is no dispute that the goods belonging to the petitioner were detained and later released pursuant to the issuance of the cheque for a sum of Rs.3,60,000/-, by the petitioner. It is also not in dispute that the said cheque got dishonored later. Further fact remains that the petitioner, in the meantime, exported the goods on getting it released from the first respondent. Assuming that the first respondent has not passed any order indicating the quantum of tax and compounding fee liability, the petitioner cannot be permitted to contend before this court that the impugned order seeking for recovery of the said sum from the second respondent bank is totally an erroneous one. Having given the cheque, it is the duty of the petitioner to see that it is honored. However, as the petitioner is entitled to challenge the imposition of one time tax and the compounding fee before the Revisional Authority, it is for the first respondent to issue fresh proceeding indicating such tax and compounding fee liability. Since the petitioner has got the goods released already, he is bound to pay the one time tax liability of Rs.1,20,000/-, however, without prejudice to their right to agitate the matter before the Revisional Authority.

7. Accordingly, this writ petition is disposed of as follows:

a) The petitioner shall pay a sum of Rs.1,20,000/- (Rupees One Lakh Twenty Thousand only) before the first respondent immediately on receipt of a copy of this order;

b) On making such payment, the order passed by the first respondent impugned in this writ petition shall be raised;

c) The first respondent shall pass orders indicating the tax and compounding fee liability;

d) On receipt of such order, it is open to the petitioner to challenge the same before the appropriate Revisional Authority.

No costs. The connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

https://hcservices.ecourts.gov.in/hcservices/

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To

1.The Commercial Tax Officer,
Enforcement Roving Squad I,
Dr.Balasundaram Road,
Coimbatore 641 018.

2.The Branch Manager,
Punjab National Bank,
ATPAR Branch,
Park Road,
Tirupur.

+1cc to Mr.P.Rajkumar, Advocate Sr.22296
+1cc to the Special Government Pleader Sr.22343

W.P.No.6967 of 2017

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srg 17/4/2017

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