IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 19.01.2017
Coram
THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
W.P.No.1410 of 2017

Gini & Jony Limited,
represented by its Director,
Prakash Lakhani,
176/1, Sri Malola Apartments,
Habibullah Road,
Chennai- 600 017. .. Petitioner

vs.

The Deputy Commercial Tax Officer,
Ranipet (in) Checkpost,
Serkadu. .. Respondent

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus or any other writ, order or direction, calling for the records on the files of the respondent herein in his G.D.No.2267/2016-17, dated 08.01.2017, quash the same with the direction to release the goods detained.

* * *

For Petitioner : Mr.R.Kumar

For Respondent : Mr.S.Kanmani Annamalai, Additional Government Pleader

ORDER

1. Issue notice. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepts notice on behalf of the respondent.

1.1. With the consent of learned counsels for the parties, the writ petition is taken up for final hearing and disposal.

2. This writ petition is directed against the order dated 08.01.2017.

2.1. By virtue of the impugned order, the petitioner has been directed to pay tax in the sum of Rs.1,03,697/- along with compounding fee at the rate, twice the rate of the tax.

2.2. The compounding fee, accordingly, has been pegged at Rs.2,07,394/-.

3. A perusal of the impugned order would show that it is pivoted on the alleged failure, on the part of the petitioner, in carrying the requisite documents, while goods were being transported from Nani Daman, to Chennai.

3.1. The impugned order invokes the provision of Section 67-A of the Tamil Nadu Value Added Tax Act, 2006 (in short the 2006 Act), which, inter alia, requires the Driver, or any other person, who is in-charge of the goods vehicle, to produce, on demand, the Advance Inward Way Bill.

4. Learned counsel for the petitioner says that the goods have been moved, on transfer, from the petitioner's branch located in Nani, Daman to the, one, located in Chennai.

4.1. For this purpose, learned counsel for the petitioner relies upon two Branch Transfer Memos of even date, i.e., 04.01.2017; copies of which, have been appended at pages No.1 to 3 of the typed set of documents.

5. It is the contention of the petitioner that it is not a case of evasion of tax, as alleged at all, and therefore, the provisions of Section 72(1)(a) of the 2006 Act could not have been triggered against the petitioner. It is stated that, at the highest, the petitioner's case, if at all, would fall under Section 72(1)(b) of the 2006 Act, and therefore, the compounding fee of not more than Rs.2,000/- could have been levied.

5.1. However, learned counsel for the petitioner says that in order expedite the matter, albeit, without prejudice to the petitioner's rights and contentions, tax in the sum of Rs.1,03,697/- would be paid to seek release of the detained goods.

6. As regards the compounding fee, which is levied via the impugned order and qua tax imposed, it is stated that challenge, on merits, will be laid, by taking recourse to an appropriate remedy under the 2006 Act.

7. Mr.Kanmani Annamalai, who appears on behalf of the respondent, on advance notice, says that if, tax, as indicated above, in the impugned order, is paid, the detained goods would be released forthwith.

8. Accordingly, the writ petition is disposed of with a direction that if, the petitioner were to deposit the tax, as indicated in the impugned order, i.e., a sum of Rs.1,03,697/-, the detained goods would be released, immediately, thereafter.

8.1. This, of-course, would be subject to the petitioner having the liberty to assail the imposition of tax and compounding fee, on merits, in accordance with remedy available under the 2006 Act.

9. There shall, however, be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Deputy Commercial Tax Officer,
Ranipet (in) Checkpost,
Serkadu.

+1 cc to Special Government Pleader (Taxes) sr 3864
+1 cc to Mr.R.Kumar Advocate sr 3704

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