In the High Court of Judicature at Madras

Dated : 20.9.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.25119 & 25120 of 2017
& WMP.Nos.26559 and 26560 of 2017

M/s.Transolutions Pvt Ltd., rep.
by its Authorized Signatory
and Branch-in-charge
Mr.G.Subbubharathi ...Petitioner(in both WPs)

Vs

The Deputy Commercial Tax Officer
& Check Post Officer, K.G.Chavadi
Check Post (Outgoing),
Coimbatore - 641 105. ...Respondent(in both WPs)

PETITIONS under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus

(i) to call for impugned proceedings of the respondent in GDR No. 1801/2016-2017 dated 21.3.2017 and the consequential release order in GDR No.1801/2016-2017 and O.R.No.1792/2016-2017 dated 30.3.2017, quash the same and further direct the respondent to refund the compounding fees of Rs.2,89,868/- to the petitioner (WP.No.25119 of 2017) and

(ii) to call for impugned proceedings of the respondent in GDR No. 1802/2016-2017 dated 21.3.2017 and the consequential release order in GDR No.1802/2016-2017 and O.R.No.1791/2016-2017 dated 30.3.2017, quash the same and further direct the respondent to refund the compounding fees of Rs.2,86,085/- to the petitioner (WP.No.25120 of 2017).

For Petitioner : Mr.P.Rajkumar
For Respondent : Mrs.Narmadha Sampath, SGP

C O M M O N O R D E R

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mrs.Narmadha Sampath, learned Special Government Pleader accepting notice for the respondent. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is before this Court challenging the show cause notices issued by the respondent for composition of offence under Section 71(3)(e) of the Tamil Nadu Value Added Tax Act, 2006.

3. The goods, which were moving from Kolkatta to Kerala were detained in the K.G.Chavadi Check Post at Coimbatore. The respondent pointed out four defects namely

(i) that the Tamil Nadu Entry Check Post seal was not updated;

(ii) that there was no proof for movement of goods;

(iii) that Form JJ was not produced for stock transfer; and

(iv) that invoice number was suspected.

4. The petitioner's case is that the goods, being perishable in nature namely tea, had to be immediately moved and that therefore, they paid the compounding fees of Rs.2,89,868/- and Rs.2,86,085/- respectively, though no specific orders compounding the offence and issuing a demand were served on the petitioner. Pursuant to the payments effected by the petitioner, the respondent issued release orders on 30.3.2017.

5. Immediately, the petitioner approached a sales tax consultant and prepared revision petitions on 25.4.2017 to be presented before the Joint Commissioner (CT), Coimbatore Division. However, it appears that the revision petitions were not immediately presented, but presented only on 21.8.2017. Further, the Joint Commissioner, by orders dated 21.8.2017, returned the revision petitions on the ground that they are being filed beyond the period of limitation and that he has no jurisdiction to condone the delay beyond 60 days. In such factual situation, the petitioner is before this Court challenging the show cause notices for composition of offence dated 21.3.2017.

6. In my considered view, the impugned show cause notices have worked themselves out, in as much as the release orders have been issued on 30.3.2017. Under normal circumstances, when goods are detained and show cause notices are issued, the owner of the goods or the transporter files objections before the Check Post Officer and the objections, on being considered and if the Check Post Officer is satisfied, he would issue release order or otherwise issue an order compounding the offence and indicating the one time tax to be paid along with penalty.

7. However, in the instant case, no such compounding orders were issued. But, the Check Post Officer collected the said sum of Rs.2,89,868/- and Rs.2,86,085/- respectively. It is not known as to how the computation was done. If a compounding order is passed, then the petitioner could have challenged the same

before the Revisional Authority and if that has not been done, obviously the revision petitions would have been within the period of limitation.

8. Considering the peculiar facts and circumstances of the case and taking note of the fact that no compounding orders were passed by the Authority concerned and only show cause notices for compounding the offence were issued, this Court is inclined to grant liberty to the petitioner to present the revision petitions before the Revisional Authority, who can consider and re-appreciate the factual dispute.

9. For the above reasons, the writ petitions are disposed of by directing the petitioner to represent the revision petitions along with a copy of this order before the Joint Commissioner (CT), Coimbatore Division. On such representation, the Joint Commissioner shall take on file the revision petitions and take a decision on merits and in accordance with law after affording an opportunity of personal hearing to the authorized representative of the petitioner. No costs. Consequently, the connected WMPs are closed. Since the Joint Commissioner (CT), Coimbatore Division is not a party to these writ petitions, a copy of this order is directed to be communicated to him.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

RS
To
1.The Deputy Commercial Tax Officer &
Check Post Officer, K.G.Chavadi.
Check Post (Outgoing),
Coimbatore - 641 105.

2.The Joint Commissioner (CT),
Coimbatore Division.

+ 1 cc to Mr.P. Rajkumar, Advocate SR.68577

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GJII(CO)
EU(22/09/2017)