IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.17452 of 2017

M/s.Ashok Associates
Rep. By its Proprietor,
Mr.Ashok Parsram Punjwani
No.24, Narayana Mudali Street,
Chennai - 600 079. ... Petitioner

Vs.

1.The Commercial Tax Officer,
Roving Squad,
Thiruvallur - Kancheepuram
Enforcement (South)
Commercial Tax Buildings,
Chennai - 600 006.

2.The Assistant Commercial Tax Officer,
Sowcarpet Division-II,
Assessment Circle,
No.48/39, Wavoo Mansion,
2nd Floor, Rajaji Salai,
Chennai - 600 001. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue of writ of certiorari, calling for the records on the file of the 1st respondent in Goods detention release order No.70/2016-17 dated 21.03.2017 as he have collected compounding fee of Rs.8,05,107/- in D.D.No.094137 dated 21.03.2017 from the petitioner and quash the same and the said amount may be treated as advance tax.

For Petitioner : Mr.K.M.Malar Mannan

For Respondents : Mr.K.Venkatesh,
Government Advocate.

ORDER

Heard Mr.K.M.Malar Mannan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents. With the consent on either side, this writ petition is taken up for final disposal, as counter affidavit has been filed by the first respondent.

2. The petitioner is aggrieved the Goods detention Release Order passed by the first respondent dated 21.03.2017, by which, the first respondent has levied and collected one time tax of Rs.4,02,553/- (Rupees four lakhs two thousand five hundred and fifty three only) as well as a sum of Rs.4,02,553/- (Rupees four lakhs two thousand five hundred and fifty three only) as compounding fee.

3. The petitioner is a consignment sales agent of Hygienic Research Institute Private Limited, Mumbai, which is registered as a dealer on the file of the Mumbai Sales Tax Authorities. The impugned consignment moved from Punjab depot of the manufacturer to the petitioner's branch at Chennai. The goods was accompanied by a consignment note and an invoice dated 10.03.2017 giving the list of items, which were being transported, the quantity, the MRP per piece, net transfer selling value etc. By notice dated 18.03.2017, the goods were detained on the only ground that there is no invoice or stock transfer invoice and only Branch Transfer Memo has been produced. Therefore, the respondents suspected the genuineness of the transactions, detained the goods. Thereafter, the respondents did not issue any further notice, issued the Goods Detention Release Order straightaway imposing one time tax as well as compounding fee and released the goods only after collecting the said amount. The correctness of the action initiated and the orders passed by the first respondent is questioned in this writ petition.

4. On a perusal of the invoice, which was produced by the petitioner, it is seen that it is not a Branch Transfer Invoice alone, but, it is a Consignment Note/Proforma Invoice/Branch Transfer Memo/Export Invoice/Invoice. Thus it appears that the manufacturer has maintained a common format for the various types of invoices. Therefore, the first respondent ought to have seen as to what was nature of the transactions by taking note of the details furnished therein, which would clearly shows that the goods were moved by the manufacturer from the depot at Punjab to the depot of the petitioner at Chennai. Therefore, the reason given in the Goods Detained Notice for detaining the goods is not tenable.

5. In the counter affidavit, a new stand has been taken by the first respondent stating that the petitioner cannot call himself as a consignment agent of the manufacturer, since the consignment sale agreement filed by the petitioner has lapsed on 31.03.2016. This issue was never pointed out by the first respondent at any earlier point of time and has been mentioned for the first time in the counter affidavit.

6. However, on a perusal of the agreement between the parties, it is seen that in terms of Clause 28 of the agreement, the agreement stands automatically renewed for a period of one year. Therefore, the contention raised by the first respondent in the counter affidavit deserves to be rejected. That apart one more grave error committed by the respondents is by collecting one time tax and compounding fee without issuing any notice and without calling for any objections from the petitioner. This is contrary to the statutory provisions and therefore, such collections have to be held to be without sanction of law.

7. Thus for all the above reasons, the writ petition is allowed and the impugned orders are quashed. The second respondent is directed to adjust the amounts paid by the petitioner towards the future tax dues of the petitioner. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Commercial Tax Officer,
Roving Squad,
Thiruvallur - Kancheepuram
Enforcement (South)
Commercial Tax Buildings,
Chennai - 600 006.

2.The Assistant Commercial Tax Officer,
Sowcarpet Division-II,
Assessment Circle,
No.48/39, Wavoo Mansion,
2nd Floor, Rajaji Salai,
Chennai - 600 001.

+ 1 cc to Mr.K.M. Malar Mannan, Advocate SR.58052
+ 1 cc to Special Government Pleader SR.58143

W.P.No.17452 of 2017

VGII(CO)
EU 1.09.17