IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.01.2017

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THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.1853 of 2017

and WMP No.1849 of 2017

M/s.Harini Agencies,
rep. by its Proptx. S.Bagyalakshmi,
1583/1, Thadagam Road,
Velandipalayam,
Coimbatore-25. .. Petitioner

vs.

The Deputy Commercial Tax Officer,
Ranipet (IN) Checkpost,
Serkadu, Vellore District. .. 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 appropriate writ by calling for the records of the respondent in his compounding order in Form No.46 in GDN No.2217/16-17 OR No.2243/2016-17, dated 15.12.2016, and quash the same as illegal and direct the respondent to refund the compounding fee of Rs.1,09,346/- paid by D.D.No.245, dated 15.12.2016, drawn on Axis Bank Ltd.,.

For Petitioner : Mr.S.Ramanathan
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 the learned counsels for the parties, the writ petition is taken up for hearing and final disposal.

2. This writ petition is directed against the compounding order dated 15.12.2016.

3. Mr.S.Kanmani Annamalai, says, having regard to the circumstances obtaining in the present case, he would argue the matter based on the record filed before this Court.

4. Briefly, the facts, which are required to be noticed, for disposal of the present writ petition are as follows :

4.1. The petitioner, who claims to be in the business of selling "skin doors" moved the goods from Coimbatore to Chennai, for sale to Star Ply, an entity located in Chennai.

4.2. The subject goods were accompanied by sales bill and lorry receipt. However, on 11.12.2016, the subject goods were detained by the respondent. The reason for detaining the subject goods was that they were not accompanied by on-line Form JJ.

4.3. Accordingly, the Goods Detention Notice was generated on the very same day, i.e., on 11.12.2016. Thereupon, a compounding notice dated 14.12.2016, was served upon the petitioner, wherein, the petitioner was called upon to pay one time tax equivalent to Rs.54,673/- and compounding fee equivalent to twice the amount of the tax. Consequently, compounding fee was pegged at Rs.1,09,346/-.

4.4. It is the petitioner's case that both the tax and the compounding fee, as demanded, was paid.

4.5. It appears that it is the claim of the petitioner that thereafter, the impugned compounding order was passed, as indicated above, on 15.12.2016.

5. Learned counsel for the petitioner says that the impugned order was passed without jurisdiction, as the goods were detained for want of documents, i.e, on-line Form JJ, which was not applicable in the instant case. As indicated above, it is the petitioner's case that the goods were meant for local sale and were detained, while being moved from Coimbatore to Chennai. The petitioner, thus, contends that Section 67-A of the Tamil Nadu Value Added Tax Act, 2006, (in short the 2006 Act), which was invoked for the purposes of issuance of Goods Detention Notice, and for issuance of compounding notice, was not applicable in the instant case.

5.1. To buttress the submission that the goods were being moved from Coimbatore to Chennai, the petitioner relies upon the extract of the Goods Detention Notice.

6. Mr.Annamalai, who appears for the respondent, says he cannot, but submit that in view of the reasons given in the Goods Detention Notice, clearly, Section 67-A of the 2006 Act could not have been applied.

7. I have heard the learned counsel for the parties and perused the record.

8. The sole question, which arises for consideration before this Court, is whether the respondent could have detained the goods for want of on-line form JJ, when goods were being ferried for local sale. For this purpose, reference may be had to the reasons for detention of goods cited in the Goods Detention Notice and the provisions of Section 67-A of the 2006 Act.

> "Transported the goods from Coimbatore to Chennai with defective records (i.e.) the consignee purchased plywoods, but not accompanied with online Form JJ in their documents (G.O.No.15, Dt.29.1.2016)
>
> To verify the genuineness of the transaction and safeguard the government revenue, the goods have been detained at Ranipet (in) Checkpost, until further orders received from this checkpost, with drivers own risk.
>
> 67-A. Production of Advance Inward Way Bill - The driver or any other person in charge of the goods vehicle entering into the State, from a place outside the State to a destination within the State, carrying any of the goods as may be notified by the Government, from time to time, shall, on demand, produce at the check post on its route or before such authority as may be prescribed in this regard, advance inward way bill in such form and in such manner as may be prescribed."

8.1. Clearly, a plain reading of the language of Section 67-A of the 2006 Act would show that the Driver of the vehicle ferrying the goods, or, any other person in charge of the goods vehicle, upon entering into the State from a place outside the state, to a destination within the state, may be asked, on demand, to produce at the check-post, an advance inward way bill, in such form and in such manner as may be prescribed in respect of such goods, which are notified by the Government.

8.2. Therefore, the only flaw which has crept in the impugned order, is that, while, the goods in issue were the notified goods, they were not entering the state from a place outside the state.

8.3. The record shows that the petitioner was ferrying the goods, even according to the respondent, from Coimbatore to Chennai, and that, the goods which were being ferried, were plywood.

8.4. Concededly, the goods fall in Entry (n) in the notification, issued by the Government, being G.O.No.15, dated 29.01.2016.

8.5. In these circumstances, as correctly argued by the learned counsel for the petitioner, Section 67-A of the 2006 Act had no application, and therefore, the petitioner could not have been called upon to produce on-line Form JJ, which is, the Form prescribed for advance inward way bill.

9. Having regard to the aforesaid, the impugned order is, clearly, unsustainable. It is, accordingly, quashed.

10. Since, the petitioner, admittedly, has already paid the one time tax and the compounding fee, the respondent will refund the same to the petitioner forthwith.

11. The captioned writ petition is disposed of, in terms of the aforesaid direction. Pending application shall stand closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commercial Tax Officer,
Ranipet (IN) Checkpost,
Serkadu, Vellore District.

+1cc to Mr.S. Ramanathan, Advocate, S.R.No.4997
+1cc to the Government Pleader, S.R.No.4875

ks(CO)
md(16/02/2017)

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