

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2017

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THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.28506 of 2016

And

W.M.P.No.24615 of 2016

The Supreme Industries Ltd.,
Rep. by J.Jayakumar
Accounts Executive, Authorised Signatory ... Petitioner

Vs.

- 1 The Deputy Commercial Tax Officer
Kandamangalam Check Post
Lingareddypalayam,
Villupuram District.
- 2 The Assessing Authority
Puducherry Assessment Circle,
Puducherry.
- 3 The Assessing Authority/Assistant Commissioner (CT),
Hosur Assessment Circle,
Hosur, Tamil Nadu. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the first respondent in G.D.No.3629/2015-16 dated 07.08.2016, quash the same being illegal, without jurisdiction.

For Petitioner : Mr.S.Kirubanandam

For Respondent : Mr.S.Kanmani Annamalai for R1 and R3
Additional Government Pleader
No Appearance for R2

O R D E R

1.Pursuant to the directions issued by this Court, vide order dated 31.01.1027, Mr.C.subramanian, Deputy Commercial Tax Officer, RS (Roving Squad), Villupuram, is present in Court.

2.Mr.C.Subramanian had been directed to present himself in Court, on account of the fact that the impugned order, which he had passed and is dated 07.08.2016, was clearly beyond his jurisdiction.

2.1.This is specially so, since, the petitioner had approached this Court on an earlier occasion by way of a writ petition filed under Article 226 of the Constitution, seeking release of detained goods. The said writ petition, which was numbered as W.P.No.1437 of 2016, was disposed of by this Court vide order dated 12.01.2016.

2.2.The operative directions, which were issued by the Court, read as follows:

"3.Since the value of the goods amounts to Rs.14,21,427, and the rate of tax is 5% the petitioner is directed to pay a sum of Rs.70,000/- to the first respondent/ Department, and, on such payment, the goods of the petitioner shall be released forthwith by the respondents. It is made clear, that all other proceedings relating to composition of offences shall be gone into, in the manner known to law."

3.Clearly, if regard is had, to the operative directions contained in the order dated 12.01.2016, Mr.C.subramanian, who passed the impugned order could not have adjudicated upon the matter and crystallised the compounding fee, as reflected in the said order.

4.By virtue of the impugned order, the petitioner has been called upon to pay compounding fee equivalent of Rs.1,64,540/-. Since, the impugned order has been passed by the Check Post Officer, all that he could have done was to make his observations at best and, thereafter, place the matter before the concerned Assessing Officer, i.e., respondent no.3.

4.1.Since, the needful was not done, this order, even according to Mr.Annamalai, learned Additional Government Pleader, who appears for the respondents 1 and 3, cannot be sustained.

5.Accordingly, the impugned order dated 07.08.2016, is set aside. The matter will, now, be taken up for adjudication by respondent no.3 and, thereafter, appropriate orders will be passed, albeit, in accordance with law, after giving due opportunity to the petitioner.

6.Before I close, I may only indicate that in line with the order dated 12.01.2016, the petitioner obtained release of its detained goods, upon payment of one time tax equivalent to Rs.70,000/-.

7.Mr.C.Subramanian, is discharged from the obligation of any further appearance in the Court, in connection with the captioned matter.

8.The writ petition is disposed of in the aforementioned terms. Consequently, the connected miscellaneous petition is closed. However, there shall be no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1 The Deputy Commercial Tax Officer
Kandamangalam Check Post
Lingareddypalayam,
Villupuram District.
- 2 The Assessing Authority
Puducherry Assessment Circle,
Puducherry.
- 3 The Assessing Authority/Assistant Commissioner (CT),
Hosur Assessment Circle,
Hosur, Tamil Nadu.

+1 CC to Mr.S.Kirubanandam, Advocate Sr.No.12001

+1 CC to Government Pleader, High Court, Chennai Sr.No.11482

W.P.No.28506 of 2016

And

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NR(CO)

KP(17.03.2017)