IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.8282 of 2018
&
W.M.P.No.10241 and 10242 of 2018

M/s.Phenix Building Solutions Pvt.Ltd.,
Rep.by its Managing Director – B.Viney Kedia,
Amba Arcade,
Shop No.14, Malviya Chowk,
Ganeshpur – 247 667,
Gujarat State. ... Petitioner

Vs.

1.The Deputy Commercial Tax Officer,
Pattanur Check-post,
Villupuram District – 605 006.

2.The Joint Commissioner [CT],
Vellore Division,
Vellore, Vellore District. ...Respondents

Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records on the files of the 2nd Respondent in his impugned proceedings made in R.P.No.78 of 2015 dated 27.02.2017 quash the same as illegal and arbitrary.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.M.Hariharan
Additional Govt. Pleader

ORDER

Heard Mr.S.Rajasekar, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing for the respondents.

2.The petitioner has filed this writ petition, against the order passed by the second respondent, challenging levy of compounding fee under Section 72(1)(a) of the Tamil Nadu Value Added Tax Act, 2006 in respect of Goods Detention Notice dated 30.03.2015. The respondent, after paying the compounding fee, has released the goods. The petitioner, thereafter filed a revision petition. Their contention is that the goods cannot be classified as item falling under Entry 16 of the sixth schedule to the Act as they are steel structural product manufactured out of iron and steel. Further, only one check post is involved, namely Pattanur check post, where the goods were detained. If at all transit pass is required, it has to be obtained from the said check post. The petitioner further submitted that goods were fabricated and were taken to Pondicherry for being erected at site. This was the sum and substance of the revision petition.

3. The second respondent passed a nine page order extracting the grounds of revision. The respondent has extracted Section 70(1)(a) of the TNVAT Act and referred to various decisions of the Hon'ble Supreme Court, this Court as well as other High Courts which primarily deal with the effect of the forms prescribed under the various State enactments to be produced when the goods go outside the State. The finding for rejecting the revision petition is contained only in last paragraph in Page 9 of the order, where the respondent without going into the merits of the claim made by the petitioner, rejected the revision petition on the sole ground that the petitioner admitted the offence committed by him and gave a willingness letter to pay the compounding fee.

In my considered view, this is not the manner in which the respondent ought to have concluded his finding. Be that as it may, since only issue involved is, the allegation that only one check post requires to be verified by the Authority, this can be done by the second revisional Authority viz., Assistant Commissioner (CT)(RP), Chennai before whom the second revision petition is maintainable. Therefore, this Court is of the view that since disputed questions of fact are involved, the petitioner should be relegated to the revisional Authority.

In the light of the above, the writ petition is disposed of by directing the petitioner to file a revision petition before the Assistant Commissioner (CT) (RD), O/o. Commissioner of Commercial Taxes, Chepauk, Chennai-5 within a period of 30 days from the date of the receipt of a copy of this order. If the revision is filed, the second revisional Authority shall entertain the revision without rejecting the same on the ground of limitation and decide the matter on merits and in accordance with law. The second revisional authority shall go into the factual aspects and not carried away by the decisions quoted in the order passed by the second respondent. No costs. Consequently, the connected miscellaneous petitions are closed.

11.06.2018

To

1.The Deputy Commercial Tax Officer,
Pattanur Check-post,
Villupuram District – 605 006.

2.The Joint Commissioner [CT],
Vellore Division,
Vellore, Vellore District.

T.S.SIVAGNANAM.J.,

gpa

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