IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM

THE HON'BLE MR. JUSTICE T. RAJA

W.P.No.13052 of 2016
and WMP No.11396 of 2016

Tvl.Star Plastics,
represented by its Managing Partner,
V. Nandakumar,
No.168/1, Kolathupalayam,
Gangapuram Post,
Erode - 638 102 ... Petitioner

Vs.

1. The Special Commissioner and Commissioner of Commercial Taxes,
   Ezhilagam,
   Chepauk,
   Chennai - 600 005

2. The Commercial Tax Officer,
   Roving Squad,
   Poonamallee,
   Office of the Deputy Commissioner (CT),
   Enforcement (South),
   Greams Road,
   Chennai - 600 006

3. The Assistant Commissioner (CT),
   Chithode Assessment Circle,
   Erode District ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari to call for the records on the file of the second respondent in O.R.No.7698/2015-16 dated 02.03.2016 / G.D.No.63/2015-16 and connected proceedings dated 01.02.2016 and quash the same as being without jurisdiction and authority of law and contrary to the circular issued by the first respondent in Circular No.33/2014/Q4/7752/2014 dated 17.07.2014.

For Petitioner : Mr.R. Senniappan

For R.1 to R.3 : Mrs.G. Dhana Madhri
Govt. Advocate (Taxes)

ORDER

The petitioner has suffered the impugned order dated 02.03.2016 passed by the Commercial Tax Officer, Roving Squad, Poonamallee/the second respondent herein. In the impugned order, it is stated that during vehicle check on 01.02.2016, the consignment of the petitioner, clearing import purchase of PVC resin, bound to Erode, was intercepted at Ambattur Toll gate and on comparison of the VAT monthly returns of the dealer with the import purchase details of the dealer available in the department website found that the dealers have not disclosed any of their import purchases made so far in their VAT returns.

2. Assailing the impugned order, the learned counsel for the petitioner submits that the petitioner is a registered dealer under the TNVAT Act, 2006 and regular assessee under the jurisdiction of the Assistant Commissioner (CT), Chithode Assessment Circle, Erode District, the third respondent herein. The petitioner has been regularly filing monthly returns in Form-I with payment of tax without any default till now. While so, while transporting PVC resin imported from Taiwan through Chennai Port, the Commercial Tax Officer, Roving Squad, Poonamallee, the second respondent herein has detained the same on 01.02.2016 on the ground that the petitioner had failed to disclose import purchase of Annexure-I of VAT return, for which, the petitioner was made to pay advance tax of Rs.76,705/- and two times tax of Rs.1,53,410/-as compounding fees for releasing the goods, failing which, the second respondent informed the petitioner that the goods would be detained and would not be released.

3. The learned counsel for the petitioner further submitted that although repeated requests and representations were made that the VAT return has been properly filed with all particulars, the Commercial Tax Officer, Roving Squad, the second respondent herein has no power to detain the consignment in the light of the Circular No.33/2014 dated 17.7.2014 issued by the Special Commissioner and Commissioner of Commercial Taxes, Ezhilagam, the first respondent herein making it clear that failure to file monthly return for previous months is not an offence relating to movement of the goods and for this lapse, the assessing authority has powers to book offence under 71(1)(1) of the Act and if necessary, he may also make provisional assessment under Sec.25 of the Act and the second respondent ought not to have passed the impugned order.

4. Again the petitioner was wrongly directed to approach the Joint Commissioner (CT), Chennai South Division by filing Revision Petition. It is again contended that when there is no assessment made by the third respondent, no purpose would be served by filing Revision Petition with the Joint Commissioner (CT), Chennai South Division.

5. Concluding his argument, the learned counsel for the petitioner submitted that when the petitioner is filing VAT return with all particulars, the second respondent ought not to have detained the consignment on the ground that the petitioner had failed to disclose import purchase in Annexure-I of VAT return, for which, the petitioner was made to pay advance tax of Rs.76,705/- and two times tax of Rs.1,53,410/-as compounding fees. Therefore, the amount of Rs.1,53,410/-, collected towards compounding fee is liable to go in the light of the Circular No.33/2014 dated 17.7.2014 issued by the first respondent.

6. A detailed counter affidavit has been filed by the second respondent.

7. The learned Government Advocate appearing for the respondents submitted that the petitioner's vehicle was intercepted on 01.02.2016 and on comparison of the VAT monthly returns of the dealer with the import purchase details of the dealer available in the department website, it was found that the dealers have not disclosed any of their import purchases made so far in their VAT returns, which is mandatory. Therefore, in the light of the provision of Section 71(3) (a) of the TNVAT Act 2006, finding that the VAT returns were incorrect and incomplete and considering it as an attempt to evade tax payment, fine amount was collected in accordance with Section 72 (1) of the TNVAT Act 2006 and hence the impugned order cannot be found fault with. Moreover, the second respondent also has given liberty to the petitioner to file Revision Petition for redressal, if any, by approaching the Joint Commissioner (CT), Chennai (South). Therefore, without filing a revision, if he is aggrieved, he cannot approach this Court under Article 226 of the Constitution of India.

8. As a matter of fact, the learned counsel for the petitioner submitted that without passing any final assessment order by the third respondent, the petitioner may not be able to substantiate his case before the Joint Commissioner (CT), Chennai (South) Division, Chennai in his Revision Petition. The reason is that the petitioner is entitled to file his monthly return on or before 20th of every month. Unless the Assistant Commissioner (CT), Chithode Assessment Circle, Erode District, the third respondent herein considers his claim whether the petitioner has filed his monthly return in Form No.I with

payment of tax, showing PVC resin consignment imported from Taiwan through Chennai Port, even the Joint Commissioner (CT), may not be able to appraise the revision petition.

9. Therefore, the third respondent is directed to consider the case of the petitioner and while passing the final order, if the third respondent agrees that the petitioner has imported the goods from Taiwan in the manner known to law, there may not be any impediment for the third respondent to pass an order in favour of the company. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

10. With the above observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

sr Sub Assistant Registrar

To

1. The Special Commissioner and Commissioner of Commercial Taxes,
   Ezhilagam,
   Chepauk,
   Chennai - 600 005

2. The Commercial Tax Officer,
   Roving Squad,
   Poonamallee,
   Office of the Deputy Commissioner (CT),
   Enforcement (South), Greams Road,
   Chennai - 600 006

3. The Assistant Commissioner (CT),
   Chithode Assessment Circle,
   Erode District

+1cc to M/s.R.Senniappan, Advocate, SR No.80560

+1cc to the Special Government Pleader, SR No.80123

W.P.No.13052 of 2016

svn(co)
ssm(27/12/18)