IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2018

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.4408 of 2018

M/s.K.Pattabhirama Mudaliar
Rep by its Proprietor
N.Muthurathinam
No.135/9, 135/7 ECR Road
Lawspet
Puducherry - 605 008 ... Petitioner

vs.

1 The Deputy Commercial Officer
Pattanur Check Post
Villupuram District

2 The Joint Commissioner (CT)
Vellore Division
Government Building
4, Bharathiyar Street, Fort Round
Vellore 632 001 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of directing the 1st respondent to refund the compounding fee of Rs.6,89,000/- levied and collected by him on 14.8.2016 vide G.D.No.2824/2016-17, dated 11.8.2016.

For Petitioner : Mr.A.Ravichandran

For Respondent : Mr.M.Hariharan
Addl. Government Pleader

ORDER

Heard Mr.A.Ravichandran, learned counsel appearing for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing for the respondent. With consent, the writ petition itself is taken up for disposal.

2. The petitioner is aggrieved by an order passed by the 2nd respondent-revisional authority in remanding the matter to the Check Post Officer for fresh consideration. While doing

so, the 2nd respondent has stated that the contention raised by the petitioner with regard to Form LL, which was downloaded by HPCL, cannot be accepted, as they have not filed any explanation for the mistake committed. In other words, the 2nd respondent came to such conclusion because, there was no communication issued to the said effect with regard to the mistake in TIN number from HPCL. However, the 2nd respondent could have directed the petitioner to produce the necessary records and granted time to do so. This would have been a reasonable approach because the petitioner is not a registered dealer within the State of Tamil Nadu. That apart, no useful purpose would be served in remanding the matter to the Check Post Officer, as the said Check Post have now been abolished after GST Act came into force, which is evident from the para-wise remarks given by the 1st respondent to the learned Additional Government Pleader.

3. The learned counsel for the petitioner pointed out that HPCL has now given a letter addressed to the 1st respondent dated 08.05.2017 pointing out that the mistake had crept in. The contents of the said letter is as follows:-

> "We have sold 10 KL of MS and 10 KL of HSD vide Invoice number 16003790, dated 10.08.2016 to M/s.Pattabirama Mudaliar with TIN 34910002339. The correct TIN to be printed invoice was 34860023367. However, while
>
> preparing the transit pass, his old TIN 31910002339 was entered. It may be noted that the change of TIN was due to reconstitution from Partnership to Proprietorship.
>
> The sale was made to the dealer as mentioned in the invoice."

4. In my considered view, the correctness of the above letter cannot be doubted because it is being given by the Government of India Enterprise. Thus, if the letter is accepted, then, the question of collecting compounding fee from the petitioner does not arise. For the above reason the matter requires to be re-examined by the 2nd respondent.

5. In the result, the writ petition is allowed and the impugned order is set side and the matter is remitted back to the 2nd respondent for fresh consideration. The petitioner is directed to appear before the 2nd respondent and produce the letter dated **08.05.2017** given by the HPCL and after considering

the same, the 2nd respondent is directed to pass fresh orders, on merits and in accordance with law, within a period of four weeks from the date on which the petitioner appears before the 2nd respondent, to enable the petitioner to secure refund of the compounding fee paid by the petitioner, which is now lying in deposit on the file of the Joint Commissioner (CT), Enforcement Wing. No costs.

-s/d-
Assistant Registrar(CCC)
Dated: 21.05.2018

* Corrected as per order
dated 18.06.2018 and made in
W.P.No.4408 of 2018.
Sd/- Assistant Registrar(CS II)
Dated: 19.06.2018.

True Copy

Sub-Assistant Registrar

Rj

To

1 The Deputy Commercial Officer
Pattanur Check Post
Villupuram District

To be substituted to the order already despatched on 28.05.2018.

2 The Joint Commissioner (CT)
Vellore Division
Government Building
4, Bharathiyar Street, Fort Round
Vellore 632 001

+1 CC to Mr.A. Ravichandran, Advocate sr 37984.

SSI(CO)
SP(21/05/2018)
SP(19/06/2018)