IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 31.01.2018
CORAM:
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.544 of 2015 and
MP No.1 of 2015

1.The Joint Commissioner (CT)
Enforcement - I, Chennai -6.

2.Commercial Tax Officer,
Roving Squad IV, Enforcement (North)
Greams Road, Chennai - 600 006. ...Appellants/Respondents

Vs

M/s.Deepak Roadways
Rep. by its Manager, Mr.Sham
No.56, Kandappa Chetty Street,
Chennai - 600 001. ...Respondent/Petitioner

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent to set aside the order dated 15.12.2014 in W.P.No.33037 of 2014.

Prayer in WP.No.33037 of 2014:Writ Petition filed under article 226 of Constitution of India, to issue a Writ of Ceritorarified Mandamus Calling for the records in relation to the Compounding notice dated 01.12.2014 bearing G.D.No. 6635/2014-15 of the 2nd respondent and to quash the same on the basis of merits with consequential direction to the respondent permitting the petitioner to delivery the goods lying in the shed of the petitioner at No.56 Kandappa Chetty Street Chennai-600 001 to the consignees in Chennai Tamil Nadu in pursuant inter state movement of goods from Delhi to Chennai under Tamilnadu under Central Sales Tax Act.

For Appellants : Mr.M.Hariharan
Addl.Govt.Pleader (Tax)

For Respondent : Mr.P.Haribabu

J U D G M E N T

(made by K.K. SASIDHARAN,J.)

The Deputy Commissioner, Enforcement, Chennai, conducted surprise inspection at the premises of the respondent on 28 October 2014 and after noticing string of violations issued a detention notice dated 29 October 2014. The goods were detained at the godown. Thereafter, a compounding notice dated 1 December 2014 was issued calling upon the respondent to compound the matter by paying the compounding fee indicated in the notice. The Compounding Notice was challenged before the writ court in W.P.No.33037 of 2014. The learned single Judge by following an order in W.P.No.29732 of 2014 directed the respondent to remit the tax and on such payment, the appellants were directed to release the goods. The respondent was directed to file revision petition with respect to the other aspects involved in the matter. The order is under challenge at the instance of the Revenue primarily on the ground that the respondent indulged in similar mal practises earlier and obtained orders for release from this Court. According to the appellants, there is a statutory remedy available to the respondent by filing a revision petition. The learned single Judge was therefore not correct in directing release of the goods pending initiation of revisional proceedings.

2. We have heard the learned Additional Government Pleader on behalf of the appellants and the learned counsel for the respondent.

3. The Detention Notice 29 October 2014 and the Compounding Notice dated 1 December 2014 would show that the first appellant noted certain statutory violations by the respondent. The inspection team alleged that the goods have been moved without TIN and with respect to certain other goods, TIN relating to the consignor and consignee was invalid.

4. The respondent without availing the statutory remedy available invoked the equitable jurisdiction under Article 226 of the Constitution of India. The learned single Judge entertained the writ petition and directed release of the goods on payment of tax. There is no question of exercising the jurisdiction by this Court partly and directing the parties to approach the revisional authority for the remaining part.

5. While considering a matter of this nature, previous conduct of the assessee must also be taken into account. The respondent had involved in a similar case earlier. The detained goods were released by the authorities pursuant to the order passed by this Court in W.P.No.13652 of 2014.

6. The revisional authority is empowered to entertain a revision and pass appropriate orders. Since the entire issue is at large before the revisional authority, it is open to the said authority to pass interim orders for release of the goods also. The jurisdiction to entertain revision petition would also include the power to pass incidental orders during the currency of the substantive proceedings. We are therefore of the view

that the respondent must approach the revisional authority at the first instance.

7. The order dated 15 December 2014 is set aside. The writ petition in W.P.No.33037 of 2014 is disposed of with a direction to the respondent to file revision petition before the competent authority. The revisional authority must register the revision and pass appropriate orders on merits and as per law. In case, interim application is filed for release of the goods pending disposal of the revision petition, the same shall be considered and disposed of within a period of three months from the date of initiation of such application.

8. The intra court appeal is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vki

To
1.The Joint Commissioner (CT)
Enforcement I Chennai-6

2.The Commercial Tax Officer
Roving squed IV, Enforcement North
Greams Road, Chennai-6

+1 cc to the Special Govt Pleader(Taxes) sr 8029
+1 cc Mr.P.Haribabu Advocate sr 7215

W.A No.544 of 2015

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