IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.04.2018

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The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.6461 of 2018
and
W.M.P.Nos. 7977 and 7978 of 2017

Naalvar Traders
Represented by its Proprietor M.Ganesh,
No.42, Chairman Thammannan,
Chetty Road, Arisipalayam,
Salem – 636 009. ...Petitioner

Vs.

1. The Commercial Tax Officer (Enf)
Roving Squad, Namakkal.

2. The State Tax Officer,
ST Roving Squad,
O/o. The Assistant Commissioner (ST) (ENF),
Namakkal. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records of the 1st respondent in GDN (Sa.Ni.Ko) No.2036/2016-17 dated 19.08.2016 and consequential proceedings of the 2nd respondent in GDN No.2036/2016-17 dated 29.01.2018 and to quash the same.

For Petitioner : Mr.A.P.Srinivas for
Mr.V.Krishnakumar

For Respondents : Mr.M.Hariharan
Government Advocate

O R D E R

Heard Mr.A.P.Srinivas, the learned counsel for Mr.V.Krishnakumar, the learned counsel appearing for the petitioner and Mr.M.Hariharan, the learned Government Advocate appearing on behalf of the respondents.

2. The petitioner has filed this Writ Petition, challenging the compounding notice issued by the second respondent, dated 29.01.2018, directing the petitioner to pay the compounding fee of Rs.2,29,935/-.

3. First issue to be considered in this Writ Petition is as to whether the second respondent has jurisdiction to pass the impugned order. This issue has already been settled in several cases, one such case being W.P.No.39622 of 2016, dated 14.11.2016, in M/s.Jagadamba Traders Vs. Commercial Tax Officer, wherein, in an identical circumstances, the Court held that the Check Post Officer is not an Assessing Officer, and he cannot demand any amount of tax in addition to the tax payable on the value of the goods. Further, the Court, by referring to Section 67 of Tamil Nadu Value Added Tax Act, 2006, observed that, verification can be only related to payment of tax and the documents in respect of the goods carried and not in respect of the earlier assessment and amount of tax.

4. Further, it has to be pointed out that, in the earlier Writ Petition filed by the petitioner, in W.P.No.28780 of 2016, this Court, by order, dated 18.08.2016, directed the respondents to release the goods and there were specific directions to the first respondent not to add freight charges or gross profit for arriving at the value and the Court finds that the second respondent has violated the order passed by the Court and added the gross profits and freight charges, while computing one time tax. Therefore, this Court would have been fully justified in initiating action for contempt against the second respondent. However, in the light of the inherent lack of jurisdiction on the part of the second respondent to issue the impugned notice, the proceeding have to be necessarily quashed.

5. For the above reason, the Writ Petition is allowed, the impugned compounding notice, is quashed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Commercial Tax Officer (Enf)
   Roving Squad, Namakkal.

2. The State Tax Officer,
   ST Roving Squad,
   O/o. The Assistant Commissioner (ST) (ENF),
   Namakkal.

+1 CC to Mr.R. Kubendiran, Advocate sr 29239.
+1 CC to Spl. Govt. Pleader(T) sr 29677.

Writ Petition No. 6461 of 2018

SG(CO)
SP(15/05/2018)