IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2018

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.5313 of 2013 and
M.P.No.1 of 2013

M/s Teleflex Medical (P) Ltd.,
Rep. by its Deputy General Manager
Mr.A.M.Sridhar, .. Petitioner

Vs.

1.The Deputy Commercial Tax Officer,
Kandamangalam Check Post,
Lingareddy Palayam,
Cuddalore District.

2.The Commercial Tax Officer,
Valluvarkottam Assessment Circle,
Chennai - 600 006. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in O.R.No.3178/2012-13 (GDN.No.35/12-13) to quash the impugned proceedings dated 16.01.2013 being illegal, unreasonable and lacks jurisdiction under the provisions of the Tamilnadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran

For Respondents: Mrs.Dhana Madhri
Government Advocate

O R D E R

Heard Mr.V. Sundareswaran, the learned counsel appearing for the petitioner and Mrs. Dhana Madhri, the learned Government Advocate for the respondents.

2. The petitioner has filed this Writ Petition, challenging the order passed by the first respondent, dated 16.01.2013, who is the Check Post Officer.

3. The legal issue, which falls consideration, in this Writ Petition, is as to whether the first respondent has power to recover the tax and penalty. This issue is no longer res

integra, as the same has been answered by the Tamil Nadu Taxation Special Tribunal, in its decision rendered in Godrej-GE Appliances Limited v. Assistant Commercial Tax Officer & Ors, reported in [(1999) Vol.114 STC 570]. At this stage, it would be beneficial to refer to the operative portion of the said Judgment, which reads as follows:

> "29.Similarly, when the duplicate copy of transit pass is delivered at the last check-post or barrier belatedly without obtaining extension of time, then it may lead to an inference of rebuttable presumption of sale. However, the mere failure to obtain extension of time which resulted in belated submission alone will not convert the transaction into a deemed sale. There should be adequate material either detected at the check-post or by the assessing authority who proposes assessment on the basis of belated submission of the transit pass that the goods which crossed the last check-post are not th same goods for which transit pass was obtained art the first point. As far as the check-post officer of last check-post is concerned, for non-obtaining of extension of time before delivering the duplicate copy of the transit pass, for violation under Section 45(2)(d) of the Act, he can offer composition of the offence under Section 46(1)(b) of the Act. However, he has no power to recover any tax and penalty with reference to section 44-A91)(c) or section 44-A(2)(c) of the Act. Mere belated submission of transit pass alone will not lead to the inference of failure to pay or the evasion of any tax recoverable under this Act so as to bring the offence for composition under Section 46 (1)(a) of the Act. This offence would be covered by section 46(1)(b) of the Act alone. However, if the goods transported in the vehicle are different from the material mentioned in the transit pass, or there is any variation, then apart from intimating the fact to the officer who issued the transit pass, the officer can take independent action for violation as contemplated under Section 42 of the Act."

4. The above referred decision was specifically cited by the petitioner, in their objections dated 03.09.2012. Apart from that, the petitioner explained that the goods were accompanied by proper documents i.e., i) the invoice raised on the petitioner by M/s.Midland Rubber and Produce Company Limited, Pathanamthitta District, Kerala State, and the seller

in the State of Kerala had down loaded the Form- LL from the Official Website and produced the same before the first check-post, viz., Kumili check-post, situated in the border of Kerala State and the lower camp check post officials after perusing the goods and affixing the seal, permitted the goods to be moved to the State of Tamil Nadu to reach viz., Puducherry.

5. The petitioner's case is that, when the lorry moved through the first check-post, inside the State of Tamil Nadu, the lower camp check-post officials, after perusing the goods, affixed the seal and returned back the transit pass and informed that the transit pass is not required for the natural rubber PV Latex, since, it is not raw rubber and there is no place to sign the papers, the same shall not be signed. The petitioner further states that the entry of vehicle was marked and taken into account in the Register maintained by the lower camp check-post, and when the goods were moving through the last checkpost in the State of Tamilnadu, viz., Kandamangalam check-post, the goods were detained.

6. The learned counsel appearing for the petitioner submitted that the Commissioner of Commercial Taxes issued a circular No.26 of 2004, dated 16.06.2014, wherein, it has been stated that, in case of non-surrendering of transit pass, if the consignor is able to produce sufficient legally valid and reliable documentary evidence to prove that the goods moved when the transmit pass, in question, had actually crossed the borders of the State, such evidence may be accepted by the Assessing Officer as an evidence that caused movement of the goods.

7. The petitioner would state that there is sufficient evidence to show that the goods have reached Puducherry, and in this regard, reliance has been placed on the goods received note, dated 23.08.2012. Earlier, the petitioner had approached this Court, by filing W.P.No.22017/2012, challenging the goods detention notice, dated 01.08.2012, and the consequential proceedings, dated 04.08.2012 issued by the first respondent. The Court, while passing a conditional order, dated 16.08.2012, directed the respondent to complete the adjudication process as expeditiously as possible. The Court directed that the adjudication should be done by the Assessing Officer of the petitioner, who was impleaded as the second respondent in that Writ Petition, who is the second respondent in the present Writ Petition. However, in paragraph No.3 (iv) order, dated 16.08.2012, the Court did not specifically state that the second respondent shall complete the adjudication process, and the person, who appears to have passed the present impugned order has no jurisdiction to levy tax or penalty.

8. Thus, this Court is of the view, that the matter should be properly adjudicated by the second

respondent/Assessing Officer since the petitioner is also registered as a dealer on the file of the second respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. Consequently, the Writ Petition is disposed by directing the first respondent to transmit the files pertaining to the impugned order to the second respondent, who shall issue notice to the petitioners afford an opportunity to submit their objections and after hearing the dealer in person, pass a reasoned order on merits and in accordance with law.

9. Accordingly, the Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commercial Tax Officer,
Kandamangalam Check Post,
Lingareddy Palayam,
Cuddalore District.

2.The Commercial Tax Officer,
Valluvarkottam Assessment Circle,
Chennai - 600 006.

+1cc to Mr.Mr.V.Sundareswaran, Advocate, S.R.No.1350

+1cc to the Government Pleader, S.R.No.

(CO)
GSP(22/03/2018)