IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.03.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.171 of 2013 and
MP.No.1 of 2013

M/s.VR3 Animal Feeds,
No.89/2B, N/A, Kalingampatty
Dindigul. ... Appellant/Petitioner

-Vs-

Deputy Commercial Tax Officer,
Pennaiyar Bridge Check Post,
Cuddalore. ... Respondent/Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P No.33566 of 2012 dated 14.12.2012.

WP.No.33566 of 2012: Filed under Article 226 of Constitution of India praying to issue a Writ of certiorarified mandamus, calling for the records of the respondent in his proceedings in G.D.No.155/2012-13 dated 6.12.2012 and quash this notice as illegal and direct the respondent to release the goods detained.

For Appellant : Mr.C.Baktha Siromoni

For Respondent : Mr.M.Hariharan
Govt.Advocate (Tax)

J U D G M E N T

[Judgment of the Court was delivered by
K.K. SASIDHARAN,J.]

The EMU Oil transported by the appellant from Puducherry to Dindigul was detained by the check post authorities at Pennaiyar Bridge Check Post on 29 November 2012 on the ground that applicable tax was not paid. Even though the appellant pleaded that there is no liability to pay tax for EMU Oil, the same was not entertained by the check post authorities. The authority directed the appellant to pay the tax assessed at Rs.2,71,440/- and the compounding fee of Rs.8,14,320/-. The appellant filed a writ petition before this Court challenging the order dated 6 December 2012. The learned single Judge issued a direction to the respondent to release the goods forthwith, in case, the tax has already been paid. The said order is under challenge in this intra court appeal.

2. We have heard the learned counsel for the appellant. We have also heard the learned counsel for the respondent.

3. The appellant has come up with a contention that there is no statutory liability for payment of tax under the TNVAT Act, 2006 for possession or transportation of EMU Oil. The appellant has placed reliance on certain circulars issued by the Government and the Government order in G.O.Ms.No.122 Animal Husbandry, Dairying and Fisheries Department, dated 30 September 2009 in support of the contention that the poultry would include the EMU Oil. Poultry is an exempted commodity under the TNVAT Act. Therefore, it is the contention of the appellant that there is no statutory liability to pay tax to EMU Oil.

4. The order passed by the learned single Judge does not contain any indication that the issue raised by the appellant was taken note of and a factual finding as to whether EMU Oil is liable for tax was given. The learned single Judge taking into account the detention order passed by the check post authority directed the appellant to pay tax and get the product released.

5. The issue as to whether EMU Oil is a taxable commodity requires to be decided by the authority under the TNVAT Act. Even in the detention order, there is no clear indication as to how the check post authority has arrived at a conclusion that the EMU Oil is taxable under the TNVAT Act. We are therefore of the view that liberty should be given to the appellant to file revision petition before the jurisdictional Joint Commissioner.

6. We therefore grant liberty to the appellant to file a revision before the *** appropriate authority** challenging the order passed by the Deputy Commercial Tax Officer, Pennaiyar Bridge Check Post, which is impugned in the writ petition in W.P.No.33566 of 2012. In case, the appellant has already paid the tax, there is no liability to make statutory deposit. It is open to the appellant to produce materials to demonstrate that there is no statutory liability to pay tax on EMU Oil. The authority shall consider the entire factual matrix and pass a detailed order on merits. The question of refund of tax paid by the appellant would depend upon the ultimate orders to be passed by the *** appropriate authority**. In case revision petition is filed within a period of four weeks from today, the same shall

be considered and disposed of within a period of eight weeks.

7. The intra court appeal is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)
06.03.2018

*** Corrected as per the order of this court dated 27.03.2018 in WA.No.171 of 2013**
sd/-
Assistant Registrar (CS VII)
20.04.2018

//True copy//

Sub Assistant Registrar

svki

To

To be substituted to the order already dispatched on 07.03.2018

1.The Deputy Commercial Tax Officer,
Pennaiyar Bridge Check Post,
Cuddalore.

+1cc to Mr.C.Bathasironmani,
Advocate SR.No.16560
+1cc to Special Government Pleader(T)
SR.No.**24095**

2. The Additional Commissioner of
Commercial Taxes, Chennai.

W.A No.171 of 2013

RSK(CO)
GN(06/03/2018)
CS/20/04/18