IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.33147 of 2016

Tvl. Anmol Rajendra Parcel Service,
Rep. By its Partner,
Mt. Devichand Irani,
No.7, Acharappan Street,
Chennai - 600 001. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Kottakuppam Checkpost,
Kizhuputhupattu. ... Respondent

Prayer: Writ Petition is filed under article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in G.D. No.69-1/2012-13 dated 23.10.2015 and quash the same as being without jurisdiction and authority of law and contrary to the order passed by the statutory revisional authority in R.P. No.J2/33/2014 dated 16.09.2015 (M/s.Ritco Logistics (P) Ltd Vs. Deputy Commercial Tax Officer, Villupruam Dist and further direct the respondent to pass order of refund as requested vide representation dated 12.07.2016.

For Petitioner : Mr.R. Senniappan
For Respondent : Mr.Hari Babu,
Additional Government Pleader

******

O R D E R

The petitioner has challenged the impugned order dated 23.10.2015 passed by the Deputy Commercial Tax Officer, Kottakuppam Check Post. By the impugned order, the respondent has ordered as follows in brief:

> " During check of goods vehicle TN 31 AE 0478 at this Checkpost, it was noticed that no valid transit pass has been accompanied at the time of movement of the 6th schedule goods which was transported

from Daman to Puducherry Polypropylene Compound Multibactch (R) MPH 5025TAI 25298 2000 kgs to the value of Rs.3,16,184/-. Hence the goods were ordered to be detained at Kattakuppam Check Post.

According to the provision of Sec.70 (2)(a) of TNVAT Act 2006, "when any goods specified in the Sixth schedule, are consigned or transferred by any goods vehicle to another state from any place within the state, the consignor or transferor of the goods shall obtain a transit pass in the prescribed form and in the prescribed manner, from the assessing authority having jurisdiction over the place from where from where the goods are consigned or transferred to other state."

Thus the purchaser, consignor or transferor, in all, has failed to comply with the provision of TNVAT Act 2006 for transport of the 6th schedule goods, the consigned goods were physically verified, and it came to know that it is one of the raw material of plastic product.

In view of the above position and having committed an offence under Section 70(c). Hence the following sum has to be paid as per Sec.72(1) (a) of the TNVAT Act 2006.

Value of the Goods:

.....

.....

In view of the above circumstances and false documents accompanied with the above interstate transaction, it is evident that you have willfully evade the payment of tax under section 71(2)(b) of TNVAT Act 2006.

Therefore it was proposed that the balance amount payable to the department by the dealers would be levied under Section 72(1) (a) TNVAT Act 2006 as follows:

Total Amount proposed to be levied:
Rs.57,350/-
Less: Amount paid as per High Court order:
Rs.19,101/-
Balance amount adjudicated being compounding fee equal to two times of Tax due of Rs.38,249/-
:Rs.38,249/-

The dealers filed their objection in their letters 6th read above. Their main contention is that getting of Transit Pass is only in respect of goods vehicle coming from any other place outside the state as laid down under sec.70(1)(a) and the goods under dispute is not coming from outside the state or from this state but imported from other country and the rule not in any way prescribed that transit pass has to be obtained from the Head of Assessment circle for the transport of goods from Chennai after transport to Puducherry, that as per judicial pronouncement no person can be compelled to compound an offence.

I have examined their objections carefully. The judgment of the High Court in the reference 3rd read above will meet the objection raised by them regarding necessity transit pass in Form LL while transport of Vith schedule goods wherein it was held that as per Sec.70(2) of the Tamil Nadu Value Added Tax Act 2006 petitioner viz. Tvl. Anmol Rajendra Parcel service Chennai has to necessity obtain a Transit Pass in the prescribed Form in the prescribed manner. In so far as composition of the offence, the High Court has held that as per the notice issued, it has to be dealt with independently. Hence it was rightly proposed in the notices read above to levy Compounding Fee of Rs.57,350/- on adjudication other than the tax amount of Rs.19,101/- already paid by them as per High Court Order. As per the format of compounding order in Form No.046 prescribed under TNVAT Act 2006, before they are prosecuted the officer is willing under the powers conferred on him by law to give them the option of Compounding the offence by payment to the Government of so such sum within ten days. Otherwise a complaint will be laid before Magistrate. In the notice also it was proposed to levy amount on adjudication. Hence compulsion to compound the offence does not arise as alleged by the dealers. Their objections lost their merits and have not force at all. Proceedings of Commercial Tax Officer (Roving Squad) Thiruvannamalai in G.D.No.45/2012-2013 dated 31.08.2015 does not cover your adjudication notice. It was dealt separately.

I therefore hereby levy tax and compounding fee on adjudication under Sec.72(1) (a) TNVAT Act 2006 for contravention of Section 70(1) (a) and (b), 70(2) (a) and (b) of the said Act as follows:

Total Amount proposed to be levied : Rs.57,350/-
Less: Amount paid as per High Court order :Rs.19,101/-
Balance being compounding fee payable by the dealers on adjudication :Rs.38,249/-

A Compounding Order in Form 046 is issued."

2. The learned counsel for the petitioner submits that the petitioner may be permitted to file Revision petition under Section 54 of TNVAT Act, 2006 against the impugned order. He submits that in the case of M/s.Ritco Logistics (P) Limited Vs.Deputy Commercial Tax Officer, Villupuram District in Revision petition No.J2/33/2014, the Revisional Authority has reduced the compounding fee by an order dated 16.09.2015.

3. Recording the same, the petitioner is given liberty to file revision petition before the authority concerned within 30 days from the date of receipt of copy of the order for appropriate relief. The authority concerned is directed to pass appropriate orders within 3 months from the date of filing of revision petition.

4. Registry is directed to return the certified copy of the impugned order to the petitioner herein.

5. With the above direction, this Writ petition stands disposed of. No Costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

lbm

To

The Deputy Commercial Tax Officer,
Kottakuppam Checkpost,
Kizhuputhupattu.

+1cc to Mr.R.Senniappan, Advocate, SR.No.104801.
+1cc to Government Pleader(Taxes), SR.No.104984.

W.P.No.33147 of 2016

BS(CO)
CSR: 10.03.2020