IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.6491 of 2014
& MP.No.1 of 2014

M/s Meenakshi Paper Stores,
Rep. By its Propx
Mrs.SP, Rajeswari ...Petitioner

Vs.

1.The Deputy Commercial Tax Officer,
Roving Squad III, Enforcement
Chennai (Central), Chennai-600006
2.The Joint Commissioner (CT),
Chennai (South) Division,
PAPJM Buildings, Chennai-600006 ...Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in G.D.No.110/2010-11/RS-III, OR.No.1963-A/2010-11/RS-III 21/10/2011 and consequential proceedings of the second respondent in RP.No.12/2011 dt 21/08/2011, quash the same as being without jurisdiction as envisaged under the Tamil Nadu Value Added Tax, 2006 and further direct the first to refund the amount of Rs.58,880/- collected by way of compounding fee.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.Mohd Shafiq
Special Government Pleader(T)

O R D E R

The petitioner challenges an order passed by the first respondent dated 20.01.2011 and an order passed by the second respondent in revision petition dated 21.08.2011 and seeks a direction to the first respondent to refund the amount of Rs.58,880/- collected by way of compounding fee.

2. The petitioner is a registered dealer in paper both under the provisions of the Tamil Nadu Value Added Tax, 2006 (in short 'Act') and the provisions of the Central Sales Tax Act, 1956 (in short 'CST Act'). According to the learned counsel for the petitioner, in the course of business, the petitioner had purchased paper from Andhra Pradesh Paper Mills Limited under an invoice dated 17.01.2011. The invoice discloses the location of the consigner as Andhra Pradesh and that of the petitioner as Tamil Nadu and the factum of levy of Central Sales Tax. The goods had been sent to Tamil Nadu from Andhra Pradesh, according to the petitioner, accompanied with all requisite documents.

3. While this is so, the vehicle was intercepted on 20.01.2011 and the documents in regard to the consignment sought. The transport document i.e., lorry receipt and the sale invoice were produced by the lorry driver, despite which, the goods were detained under an order reading as follows:

GROUNDS FOR DETENTION

> Consignment of Paper Rolls from Andhra Pradesh to Anderson Street Chennai 600001 was intercepted at Palavakkam Chennai. At the time of the check the driver submitted the Invoice No.95025021 Dt. 17.01.2011 amounting to Rs.637221-00 in which the consignment from Tvl.The Andhra Pradesh Paper Mills Limited Andhra Pradesh to Tvl. Meenakshi Paper Stores, 39 Anderson Street Chennai 600000. On further enquiry, the driver dated that he has taken the vehicle from Arumbakkam to Palavakkam as per instruction to download. To verify the genuineness of the transaction goods are detained.

4. Compounding notice dated 21.01.2011 was issued granting opportunity to the petitioner to compound the offence in terms of Section 72 of the Act and seek release of the consignment by payment of appropriate compounding fees. The invoice value plus 5% of freight and 10% of gross profit was taken as the basis for levy of tax at 4%, being Rs.29,440/-, doubled to arrive at the tax payable in terms of Section 72(1)(a) at Rs.58,880/-. The petitioner remitted the amount and had the consignment released.

5. Thereafter, a petition was filed before the Revisional Authority seeking revision of the compounding order on the ground that all requisite documents had accompanied the consignment, there was no specific violation alleged and thus the compounding order was without the authority of law and liable to be set aside.

6. The Revisional Authority vide order dated 21.08.2012 dismissed the petition. According to the Authority, the petitioner had mis-declared the destination of the consignment insofar as the invoice mentioned the addressee as Tvl.Meenakshi Paper Store, No.39, Anderson Street, Chennai-01 but the lorry carrying the consignment had been found in Palavakkam.

7. The petitioner has relied on a series of cases to establish that detention cannot be resorted to except if a specific violation had been found in the consignment transported.

8. No counter has been filed in the matter despite several opportunities having been extended. The submission of the learned counsel for the respondent is to the effect that the petitioner has remitted the compounding fee and filed a petition for revision, challenging the compounding order. Thus the present writ petition is not maintainable and the petitioner ought to have availed of the statutory remedy available before the Joint Commissioner.

9. Heard both sides.

10. The provisions of Section 67 provide for the establishment of a check post or barrier and for the inspection of goods while in transit, with a view to prevent or check evasion of tax under the Act within the State. The purpose of such interception is for examining the contents of the vehicle and inspection of the documents relating to the goods carried for the purpose of ascertaining whether there has been any sale or purchase of the goods carried and in case there was sale or purchase of the goods carried, whether such sale or purchase is liable to tax under this Act, and if so— (a) whether such tax has been paid, or (b) whether the sale or purchase of the goods carried has, for the purpose of the payment of tax under this Act, been properly accounted for in the documents referred to in sub-section (5) of the provision. Sub-section (5) refers to the documents required, being, bills of sale, or delivery notes, or such other documents, as may be prescribed.

11. In the present case, the goods have suffered CST, being an inter-state sale. As regards the subsequent transaction of sale, a return of income is placed on record for the period January 2011 wherein the annexure makes a specific reference to this transaction at serial no.72 as follows:

72	11802 dt 17.01.2011	PAPER OF ALL SORTS, PAPER BOARD, NEWSPRINT AND WASTE PAPER	The Andhra Pradesh Paper Mills Ltd., Rajamudhry	95025021 dt. 17.01.2011	637221.00	Savani Carrying Ltd.	28/01/2011	19/01/2011	126447/28-01-2011	677840.00	KP Agency and Printing Department Sivakasi

12. The stand of the petitioner is that the transaction is not liable to be taxed in terms of Section 62B of the CST Act, being a sale in the course of transit.

13. In the light of the factual position as aforesaid, the documents statutorily required having been produced by the petitioner, I see no justification whatsoever for the impugned action of the revenue in imposing the compounding fee. No doubt the same has been remitted by the petitioner and also challenged by way of statutory revision, but that fact by itself does not militate against the relief sought in this writ petition.

14. I also draw support in this regard from the following judgments which settle the position unequivocally to the effect that though the statute confers sufficient authority upon the officers to detain a consignment upon a reasonable suspicion of evasion of tax, such power cannot be exercised arbitrarily and the order of detention/compounding should reveal the mind of the authority, as to what is specific legal infirmity found in the consignment.

(i) Rajasthan Investment Corporation Vs. The Deputy Commercial Tax Officer [(1968) 21 STC 500]
(ii) Bangalore Distributing Company Pvt. Ltd. Vs. The Assistant Commercial Tax Officer, Check Post Thirumanglam and Ors [(1983) 54 STC 140]
(iii) Orient Paper and Industries Ltd. Vs. State of Orissa [(1991) I OLR 91]
(iv) Indore-Kolhapur Roadlines Vs. Assistant Commissioner of Sales Tax and Anr. [(1994) 95 STC 141]
(v) United Polymer Industries Vs. State of Punjab and Ors. [(2006) 146 STC 571)
(vi) Assistant Commissioner Anti Evasion Commercial Taxes, Bharatpur Vs. M/s.Amtek India Limited dated 22.02.2007 in C.A.No.896 of 2007.

15. In the present case, the order of detention, as extracted above, merely states that the lorry was found in a different location than the address in the invoice which by itself does not constitute sufficient justification for detention.

16. The provisions of Section 67 do not provide for or envisage a roving enquiry where the proper officer is merely seeking to fish for information without any concrete evidence of violation in his possession. In the present case, admittedly, the sale invoice containing the address for destination is available. The only reason set out in the impugned order is that the lorry was found in the Palavakkam, which is not on route to Anderson Street, Chennai. This reason does not impress me as the route taken by a transporter cannot be the sole parameter to determine evasion of tax or otherwise.

17. In the light of this discussion, this writ petition is allowed. The amount of compounding fee paid shall be refunded within a period of four (4) weeks from date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1.The Deputy Commercial Tax Officer,
Roving Squad III, Enforcement
Chennai (Central), Chennai-600006.

2.The Joint Commissioner (CT),
Chennai (South) Division,
PAPJM Buildings, Chennai-600006.

+1cc to Mr.V.Sundareswaramn, Advocate, SR.No.78060.
+1cc to Government Pleader, SR.No.78087.

W.P.No.6491 of 2014
& MP.No.1 of 2014

SSI (CO)
CSR(19/12/2019)