IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM :

The Hon'ble Mr.JUSTICE Dr.VINEET KOTHARI

AND

The Hon'ble Mr.JUSTICE C.SARAVANAN

W.A.No.969 of 2017

and CMP No.13341 of 2017

M/s Elgi Rubber Company Ltd
P.O.Box No.1820,
2000, Trichy Road,
Coimbatore - 641 005 .. Appellant

-vs-

Commercial Tax Officer,
Roving Squad,
Office of the Deputy Commissioner (CT) (Enf),
Villupuram .. Respondent

Writ Appeal filed under Clause 15 of Letter Patent against the order dated 15.12.2016 passed in W.P.No.30190 of 2016.

W.P.No.30190 of 2016:
Writ Petition 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 respondent in G.D. No. 1154/2016-2017 dated 20.08.2016 and to direct the Respondent to release the detained goods of the Petitioner in lorry No. TN-34-F-9798.

For Appellant : Mr.M.V. Swaroop
For respondent : Mr.Mohammed Shafiq
Spl. Government Pleader

JUDGMENT

(Judgment of the Court was delivered by Dr.VINEET KOTHARI, J.,)

M/s Elgi Rubber Company Ltd has filed the present writ appeal aggrieved by the order dated 15.12.2016 passed in W.P.No.30190 of 2016.

2. Mr.M.V.Swaroop, learned counsel for the appellant/assignee submits that the sale of goods in question

was inter state and the goods moved from Tamil Nadu to Kerala. But the respondent authority viz., Commercial Tax Officer, Roving Squad, Office of the Deputy Commissioner (CT), (Enf), Villupuram did not accept the said contention and detained the goods in question and the appellant was issued the Compounding Notice on 17.08.2016. Therefore, the appellant approached this Court by Writ Petition, seeking for release of goods. For the Compound Notice dated 17.08.2016 and the subsequent Notice issued by the respondent on 20.08.2016, reply was filed by the appellant/assessee on 22.08.2016 and 24.08.2016. Further, the said issue could not be decided by the adjudicating authority at the check post of the Revenue Department. The learned counsel further submits that the issue relating to intra-state sale or inter-state could be decided only by the regular Assessing Authority and no adjudication order has been passed therefore a revision petition under Section 54 of the Tamil Nadu Value Added Tax Act, 2006 could not be filed. Therefore, the order of the learned Single Judge deserves to be modified. The learned counsel for the appellant relies on the order of the learned Single Judge of this Court in Jakson Engineers Limited vs The Commercial Tax Officer, Roving Squad-II reported in MANU/TN/2064/2017 (WP.Nos.5433 and 5443 of 2017 dated 03.07.2017).

3. Per contra, Mr.Mohammed Shafiq, learned Special Government Pleader submits that Section 54 of Tamil Nadu Value Added Tax Act, 2006 is attracted and therefore, the appellant may be relegated to the concerned authority.

4. Having heard the learned counsel for the parties, we are of the opinion that it would be more appropriate that the original Assessing Authority of the appellant/assessee is directed to decide the issues arising in the present case.

5. The appellant has already secured the release of goods from the Revenue Authorities on payment of tax during the pendency of the writ petition. Therefore, the question as to whether the sale in question was an intra-state or inter-state remains to be adjudicated by the concerned regular assessing authority.

6. We agree with the submission of the learned counsel for the appellant that such issues cannot be decided by the Check Post authorities. Therefore, we dispose of the Writ Appeal by modifying the direction of the learned Single Judge slightly to the extent of relegating the appellant back to the regular Assessing Authority to decide the mixed question of fact and law, in the present case in the above contract of sale and movement of goods.

7. Accordingly, we direct the appellant/assessee to appear before the Assessing Authority at the first instance on 10.12.2019 and thereafter, the regular Assessing Authority shall consider and pass appropriate orders on merits and in accordance with law after affording an opportunity of hearing to the appellant.

8. With the above direction, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

sr
To

The Commercial Tax Officer
Roving Squad,
Office of the Deputy Commissioner (CT) (Enf),
Villupuram

+1 CC to Mr.M.V.Swaroop Advocate sr 96895.
+1 CC to The Spl. Govt. Pleader(T) sr 97798

W.A.No.969 of 2017

SS(CO)
SP(07/01/2020)