IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.02.2020

Pronounced on : 19.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.22088 and 22089 of 2013
and
M.P. Nos.1,1,2 and 2 of 2013

Sri Venkateshwara Agencies,
represented by its proprietor
K.Somasundar,No.297, M.G.Complex,
Sivanantham Road, Rathinapuri,
Coimbatore. ..Petitioner in both petitions

Versus

1. The Deputy Commercial Tax Officer,
   Check Post Officer,
   Thoppur Inward, Kurinji Nagar,
   Dharmapuri District.

2. The Assistant Commissioner (CT),
   Thudiyalur Assessment Circle,
   Coimbatore. ..Respondents in both petitions

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records of the 1st respondent in GDR No.3170 and 3169/2013-2014 dated 24.07.2013 and quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondents : Mr. R.Swarnavel, G.A.

COMMON O R D E R

By this common order, both the writ petitions are disposed of.

2.By the impugned order titled as "Draft Compounding Notice", the 1st respondent has called upon the petitioner to pay tax and compounding/composition fee under Section 72 of the Tamil Nadu Value Added Tax Act. 2006. The petitioner has aggrieved over the same.

3.The Petitioner had purchased consignments of Vitrified Tiles etc from a Supplier/Seller from a dealer of Gujarat namely Metro City Tiles Pvt. Ltd., Morbi, Gujarat.

4. These goods were being transported in two different vehicles. The vehicles along with the consignment were detained on 19.07.2013 by the Deputy Commercial Tax Officer/Check Post Officer of Thoppur check Post, Thoppur Inward, Kurinji Nagar, Dharmapuri District.

5. The reasons given at time of detention are as follows:-

> (a) A transaction of sale liable to tax has taken place and that the tax payable in respect of the sale has not been paid.
>
> (b) The sale of the goods has, for the purpose of payment of tax, not been properly accounted for in the said documents.

6.Earlier, the Petitioner had filed Writ Petitions in W.P. Nos. 20781 & 20782 of 2013. By a common Order dated 29.07.2013 the Petitioner was given time to submit objections to the Detention Notices dated 19.07.2013 and 20.07.2013 and in case the Petitioner submits any such objections, the Respondent was directed to consider the same and pass appropriate order.

7. Under these circumstances, the Petitioner filed objections dated 29.07.2013 to the respective Draft Compounding Notices dated 24.07.2013 which has culminated in the impugned Order, wherein the Respondent has given following reasons for rejecting the revision.

> "In obedience to the orders of the Hon'ble High Court of Chennai the objections filed by the dealers are examined in detail with reference to the records available with the Department and the website of this Department. The result is as follows:-
>
> a) The goods were detained not only for the reason that the tax payments are lesser. The other reasons are

that they have not accounted for the interstate purchases as per "Check post movement" in Annexure 1/1A in monthly returns in Form I. They have not reported the sales out of interstate purchases in the monthly returns filed and they have not paid the relevant taxes on the above said sales turnover without adjusting ITC as per section 10 of TNVAT 2006. Thus they have evaded the legitimate taxes due to the Government. From this it clear that they are always moving the goods from other state with an intention to evade the payment of taxes on their 1st sale in the state of Tamil Nadu which warrants action under section 71 of the Act with the compounding option under section 72 (1) (a) of the TNVAT Act.

b) The R.Cs issued to the dealers under both acts (TIN : 33722029372 and CST 1091928) were already cancelled by the Assistant Commissioner (CT), Thudialur Circle, Coimbatore with effect from 31.12.2012 vide proceedings in TIN 33722029372/2012-2013 dated 27.02.2013 (Copy enclosed) for the reason that the dealers were not doing business for which the Registration Certificate were issued. When the goods are transported from other state after the cancellation of the registration certificate of the dealers, the dealers are not entitled to issue C forms for the Concessional levy at 2% on their interstate purchase. In the Draft compounding notices this Checkpost has not proposed any tax on their earlier transaction, instead it proposed the tax and C fees as per the compounding provisions contained in 72 (1) (a) for the earlier transaction separate action would be taken through the Assessing Officer. Further the dealers profile (Copy enclosed) in the official website clearly shows that the dealer is inactive from 31.12.2012.

c) The dealers have deliberately failed to bring the above facts before the Hon'ble High Court of Chennai while representing their case.

In view of the above it is proved beyond doubt that the dealers are indulging in clandestine activities in order to evade the legitimate taxes due to the Government and this transactions for which GDRs are issued are also one among their clandestine transaction. It is evident that there is intention of the dealers in this transactions to evade payment of tax.

Therefore the dealers are directed to pay the tax and C fees as proposed in the draft compounding notices as per the reference 2nd cited and get release the goods. (Note: Revision Petition is available before the Joint Commissioner (CT), Salem against this order as per Section 54 of TNVAT Act 2006)."

8. Thereafter, impugned Draft Compounding Notices dated 24.07.2013 bearing Reference GDR Nos.3169/2013-2014 & 3170/2013-2014 were issued which call upon the Petitioner to pay a sum of Rs. 55, 122/- as tax and the compounding fee of Rs. 1,10,244/- and tax of Rs. 91,879/- and compounding fee of Rs. 1,83,758/-.

9. It is the contention of the learned counsel for the Petitioner that the Petitioner's registration was not cancelled and to this effect the Petitioner's reference to extract from the Tax Information Exchange System taken on 05.08.2013 which shows the Petitioner's Registration was valid and subsisting events on 16.03.2013 and a similar extract from the Commercial Tax Department of Tamil Nadu Website dated 05.08.2013 showing the status of the Petitioner as active.

10. On behalf of the Respondents, it was also submitted that the Petitioner has an alternate remedy under these Statute.

11.Heard the learned counsel for the petitioner and the respondent and perused the affidavit and counter affidavit filed on behalf of the respective parties. It is the case of the petitioner that the exercise of power under section 72 of the Tamil Nadu Value Added Tax Act, 2006 for alleged violation of section 71 of the said Act was arbitrary and illegal and without jurisdiction.

12.It is the contention of the petitioner that only the 2nd respondent was competent to conclude whether there was any evasion of tax. It is further submitted that under rule 15 of the Tamil Nadu Value Added Tax Rules, 2007, the 1st respondent was incompetent to deal with Section 71 and 72 of the Tamil Nadu Value Added Tax Act, 2006. That are part, the petitioner’s counsel made several of the submissions on merits.

13.Per contra, the 1st respondent has filed a common counter and justified the exercise of power in detaining the goods at the check post and in passing the impugned compounding notices. It is submitted that the petitioner is a dealer in interstate purchase of tiles and transported the same

14.The notice in TIN No. 33722020372/2012-13 dated 28.9.2012 issued by the Assistant Commissioner (CT),Thudaliyur Assessment Circle, Coimbatore for the release of the goods from the check posts but were returned by the postal authorities with an endorsement “left”. It is further submitted that on further verification of the place of business of the petitioner by the office of the the Assistant Commissioner (CT),Thudaliyur Assessment Circle, Coimbatore revealed that the petitioner was not doing business at M.G Complex, 297 SivanathamRoad,Rathinapuri Coimbatore which is the place of business in the registration issued to the petitioner.

15.It is further submitted that the name of the consignee was Metro Tiles Private Limited, Morbi and Sunshine Tiles Co Private Limited Gujarat and on verification it was noticed that the petitioner had effected interstate purchase for a value of Rs. 28, 20, 715 and Rs. 6, 98, 019/-during the assessment years 2012-13 and assessment years 2013-14. For the aforesaid interstate transaction the petitioner was required to have paid tax at 14.5% for an amount of Rs.4, 09, 65/-and Rs.1, 01, 212 respectively for the assessment years 2012-13 and assessment year 2013-14.

16.It is submitted that the petitioner has not accounted for the interstate purchase in the monthly returns Form 1 filed for the above said and is yet to pay VAT at 14.5% as compounding tax.

17.Mere entry of the goods from another state into Tamil Nadu ipso facto does not attract levy under the provisions of the Tamil Nadu Value Added Tax Act, 2006 unless there was a prior sale within the State of Tamil Nadu and no tax was paid or charged.

18.Therefore 1st respondent as the "prescribed authority" under section 67 of the Tamil Nadu Value Added Tax Act, 2006 was competent to detain goods and vehicle and verify the records and documents which accompanied the goods. For the same reasons, the 1st respondent was also competent to demand tax at the check post, if the first respondent was of the view that the detained goods was liable to tax but no tax was paid or charged.

19.Against such summary assessment, the petitioner has an alternate remedy under the provisions of the Act. The tax paid and collected at the check post can be treated as advance tax and will be subject to future adjustment and outcome of revisional proceedings if the petitioner so chooses to avail.

20.The 1st respondent asan officer in charge of the Check Post is also the "prescribed authority" for the purpose of section 72 of the Tamil Nadu Value Added Tax Act, 2006. Therefore, 1st respondent was competent to issue impugned draft compounding notices dated 24.7.2013 for compounding of the of the offences specified in Section 71 of the Act.

21.There are however several disputed questions of fact on several counts. There is a disputeas to whether the petitioner's VAT and CST registration were valid and subsisting or were cancelled at the time of the detention of the goods.

22.Therefore, while upholding the exercise of power by the 1st respondent, I am inclined set aside the impugned order in so far as it seeks to demand compounding/composition fee. I therefore remit the case back to the 2nd respondent to pass appropriate order on merits in accordance with law.Accordingly, the impugned order is partially set aside to that extent.

23.The petitioner may file a detailed objection within 30 days from the date of receipt of a copy of this order. If the petitioner did not hold a valid registration on the date of the detention of the goods, there is a strong presumption that future transaction were intended to be without payment of tax and thus attract Section 71 of the Act.

24.Therefore, liberty is given to the petitioner to approach the "prescribed authority" namely the 1st or the 2nd respondent for compounding of the offence under Section 72 of the Tamil Nadu Value Added Tax Act, 2006, in case the 2nd respondent ultimately concludes that the conduct of the petitioner attracted Section 71 of Tamil Nadu Value Added Tax Act, 2006.

25.The petitioner may furnish such particulars as may be required by the 2nd respondent for conduct of the case through videoconferencing in furtherance of this order, if the situations so warrant on account of continuance of Covid19 pandemic.

26.The 2nd respondent is directed to pass appropriate orders in accordance with law after giving opportunity of hearing to the petitioner. Such order may be passed within a period of three months from the date of receipt of a copy of this order.

27.These writ petitions stand disposed with the above observation. Connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Arul

To

1. The Deputy Commercial Tax Officer,
   Check Post Officer,
   Thoppur Inward,
   Kurinji Nagar,
   Dharmapuri District.

2. The Assistant Commissioner (CT),
   Thudiyalur Assessment Circle,
   Coimbatore.

W.P.Nos.22088 and 22089 of 2013

LN(CO)
KKV/12/06/2020