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.No.23440 of 2012
and
M.P.No.1 of 2012

Tvl.Aravind Thiru Ceramics
represented by its Proprietor
N.K.Thirugnana Sambantham
No.3, Anna Salai,
Opp.Indian Oil Petrol Bunk,
Thiruvannamalai. ..Petitioner

Versus

1. The Commercial Tax Officer,
   Roving Squad, (Engorcement),
   O/o.The Deputy Commissioner (CT), (Enf.)
   Villupuram.

2. The Assistant Commissioner (CT).
   Thiruvannamalai I Assessment Circle,
   Thiruvannamalai. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records of the st respondent in GD No.8/2012-13 dated 13.08.2012 and quash the same.

For Petitioner : Mr.S.Ravee Kumar
For Respondents : Mr. R.Swarnavel, G.A.

O R D E R

The petitioner had purchased a consignments of Ceramic Tiles from Aravind Ceramics Industries Limited, Kanchipuram. According to the petitioner, after the sale was effected and the consignment was on the move to the petitioner, the petitioner sold the purchased goods (Ceramic Tiles) to one Omsakthi Saravana and Company, Thiyakathurkkam in transit and therefore the petitioner delivered the consignment to be delivered at Omsakthi Saravana and Company, Thiyathuthurkkam.

2.While in transit, the goods were detailed by the First Respondent-Commercial Tax Officer, Roving Squad (Enforcement) on 02.08.2012 at Vikravandi Tollgate, Villupuram with the following observation:-

> "The normal route from Rettamangalam Village, Uthiramerur Taluk, Kancheepuram to Thiruvannamalai is via (1) Kanchipuram to Vandavasi, Vandavasi to Thiruvannamalai and (2) Kanchipuram to Tindivanam, Tindivanam to Thiruvannamalai. But, the vehicle was found at Vikravandi Tollgate. Only for the purpose of delivery of goods other than Thiruvannamalai. The movement of goods other than Thiruvannamalai is not covered by a valid sale bill or delivery note as required in Section 68 of the Tamil Nadu Value Added Tax Act, 2006.

3.Thereafter, the petitioner filed Writ Petition in W.P.No.21759 of 2012. By an order dated 08.08.2012, the Commercial Tax Officer released all the goods and payment of the tax amount of Rs.60,900/-. Pursuant to the aforesaid Order, an order dated 10.08.2012 came to be passed by the Commrcial Tax Officer, Roving Squad, Villupuram for releasing the consignment on payment of sum of Rs.82,000/-.

4.Thereafter, the Petitioner had been issued with the impugned order dated 13.08.201 titled as the amount paid by the petitioner was appropriated and since the petitioner had allegedly violated Section 71(3) (a), 71(3)(d) and 71(7) of the TNVAT Act, 2006, an opportunity was given to the petitioner to pay compounding amount of Rs.1,63,481/- after adjusting the amount already paid by the petitioner towards tax.

5.The learned counsel for the petitioner relied on the following decisions of this court and that of the Hon'bleSupreme Court:-

(i)Shija Rubber Vs. The Check Post Officer - made in W.P.No.22484 of 2013 dated 08.01.2018

(ii)M/s.Raj Glass & Plywoods Vs. The Assistant Commissioner (CT) - made in W.P.Nos.18409 & 18410 of 2015 dated 25.06.2015;

(iii)M/s.Manickam Edible Oils (P) Ltd., Vs. The Deputy Commissioner Tax Officer - made in W.P.Nos.27499 & 27500 of 2014 dated 15.10.2014 (iv)M/s.So.Ro.Import & Export Company Vs. The Deputy Commercial Tax Officer and Check Post Officer - made in W.P.No.31357 of 2014 dated 02.12.2014

(v)M/s.Jagadamba Traders Vs. The Commercial Tax Officer - made in W.P.Nos.39662 & 33933 of 2016 dated 14.11.2016

(vi)Circular No.33/2014 dated 17.07.2014 issued by the Commissioner of Commercial Taxes;

6.Though the repetition is of the year 2012, no counter has been filed on behalf of the respondent. However, the learned counsel for the respondent on instructions has made submission. The learned counsel for the respondent submits that the writ petition is without merits and that the petitioner has an alternate remedy. It is therefore submitted that the present writ petition is liable to be dismissed.

7.I have considered the arguments advanced on behalf of the petitioner and the respondent. The impugned proceeding in GD No. 8 but 2012-13 dated 13.8.2012 of the respondent has merely given an option to the petitioner to pay a differential amounts of 1,63, 481/-. The respondent is the prescribed authority under Section 67 of the Tamil Nadu Value added tax Act, 2006. Therefore, it is for the petitioner to take advantage of the aforesaid option given by the respondent. If the respondent do not prosecute the petitioner for the violation of the provisions of the Act, the option given in the impugned proceeding is redundant.. In any event, the goods at the time of their detention at Vikravand Check post had accompanied the relevant invoice evidencing the sale and the tax payable thereon by the petitioner. Therefore, the respondent was justified in detaining the goods at the Check Post and in demanding the tax from the petitioner. I find no merits in the present writ petition on the ground that the petitioner had no jurisdiction to. The petition is therefore dismissed. However, considering the value of the goods and the fact that the petitioner may be involved in in the transaction for the 1st time, the revenue can take sympathetic view and not initiate any prosecution proceedings..

8.Writ petition is therefore dismissed with the above observation. Connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb/Arul

To

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   O/o.The Deputy Commissioner (CT), (Enf.)
   Villupuram.

2. The Assistant Commissioner (CT).
   Thiruvannamalai I Assessment Circle,
   Thiruvannamalai.

W.P.No.23440 of 2012

LN(CO)
KKV/17/06/2020