IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2020

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.30729 of 2014
and M.P.Nos.1 and 2 of 2014

M/s.DCM Sriram Limited
Fenesta Building System
Rep. by its Authorised Signatory
Mr.Joby Thomas
Plot No.1, Area III, CMDA Industrial Complex
Maraimalainagar
Kancheepuram ... Petitioner

.Vs.

1.The Commercial Tax Officer
Roving squad Chengalpattu
Enforcement (South) Chennai
PAPJM Buildings, Greams Road
Chennai 600 006

2.The Assistant Commissioner (CT)
Broadway Assessment Circle,
Chennai 600 108 ... Respondents

Prayer: Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records of the first respondent in GOODS DETENTION No.88/2014-15 dated 07.11.2014 and the consequential proceedings issued in G.D.No.88/14-15 dated 12.11.2014, received on 17.11.2014 and to quash the impugned proceedings and further direct the first respondent to release the goods detained in the Goods Detention No.88/2014-15 without insisting upon any condition.

For Petitioner : Mr.V.Sundareswaran
For Respondents : Mr.A.N.R.Prathap
Government Advocate (Taxes)

ORDER

According to the petitioner, they are the registered dealer on the file of the second respondent. During the course of business, they sold the goods to M/s.Suia Marketing, Madurai-20 vide Invoice No.0003819-0003824 dated 06.11.2014 and the same were intended to deliver at Tuticorin. While the goods were in transit, the same were detained by the first respondent and detention notice dated 07.11.2014 was issued to the petitioner. On receipt of the same, the petitioner filed a representation dated 11.11.2014 requesting to release the goods. Without considering the same in a proper perspective, the first respondent passed an order dated 12.11.2014 to recover the tax and compounding fee from the petitioner. Feeling aggrieved over the detention notice dated 07.11.2014 and consequential recovery notice issued by the first respondent, the petitioner has filed this writ petition to quash the same and to direct the first respondent to release the detained goods without insisting upon any condition.

2.By order dated 03.12.2014, while admitting this writ petition, this Court has directed the first respondent to forthwith release the goods on payment of one time tax, which shall be given credit to the petitioner's account and the same shall be without prejudice to the rights of the petitioner. Accordingly, the petitioner paid the one time tax and got the goods released.

3.Upon notice, the respondents filed a detailed counter affidavit, wherein, it is inter alia stated that though the goods are intended for the consignee at Madurai, the goods are meant for delivery at Tuticorin and the ultimate consignee is not a registered dealer under the TNVAT Act, 2006 and hence, the goods were ordered to be detained; the goods involved are PVC doors and windows and the value of the same is Rs.6,54,296/- and taxable at 14.5% and hence, the detention is in order. It is further averred therein that since the petitioner has committed the offence under Section 71 of the Act, they were given an opportunity to have the offence compounded departmentally, but, they have filed this writ petition. Thus, according to the respondents, the present writ petition has no merits and hence, the same is liable to be dismissed.

4.Today, when the matter was taken up for consideration, the learned counsel for the petitioner, on instructions, submitted that though the petitioner disputed the compounding notice issued by the first respondent, who has no jurisdiction to demand tax as well as compounding fee, as directed by this Court, they paid one time tax and got the detained goods. Thereafter, the compounding the offence proceedings are yet to be completed. Hence, the petitioner would be satisfied, if the second respondent is directed to complete the compounding the offence proceedings.

5.The learned Government Advocate (T) appearing for the respondents has no serious objection for granting such relief to the petitioner.

6.Considering the facts and circumstances of the case and having regard to the submission now made by the learned counsel for the petitioner, which has not been seriously opposed on the side of the respondents, this Court directs the second respondent to complete the compounding the offence proceedings and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a period of six weeks from the date of receipt of a copy of this order. In the event of the petitioner being succeeded, the second respondent shall refund the tax already paid to the petitioner, within a period of two weeks thereafter.

7.This writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The Commercial Tax Officer
Roving squad Chengalpattu
Enforcement (South) Chennai
PAPJM Buildings, Greams Road
Chennai 600 006

2.The Assistant Commissioner (CT)
Broadway Assessment Circle,
Chennai 600 108.

+1cc to Mr.V.Sundareswaran, Advocate, Sr.No.21901
+1cc to Spl Government Pleader (Taxes, Sr.No.22814

W.P.No.30729 of 2014
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