IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	02.02.2021
Pronounced On	12.02.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.28061 of 2016
and
W.M.P.No.24216 of 2016

(Through Video Conferencing)

M/s. Reliance Infratel Limited,
No.6, Haddows Road,
Nungambakkam, Chennai - 600 006.
Rep. by its Power of Attorney Holder
Mr.K.A.Sivaramakrishnan. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Katpadi Check Post,
Vellore District. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in GDN.No.97/2012-2013 dated 20.01.2016 passed by the respondent and quash the same.

For Petitioner : Mr.J.Ravikumar

For Respondent : Mr.M.Hariharan, A.G.P.

O R D E R

The petitioner has challenged the impugned order dated 20.01.2016 passed by the respondent seeking to levy a tax of Rs.7,15,278/-. The impugned order appropriates a sum of Rs.2,38,426/- paid by the petitioner pursuant to the direction of this court in its order dated 18.10.2012 in W.P.No.28980 2012 and demands a balance amount of Rs.4,76,852/- from the petitioner with a liberty to compound the alleged offence.

2. It is the case the petitioner that the petitioner is engaged in providing passive infrastructure support service to

various mobile and internet service providers and therefore in connection with its business, the petitioner had procured battery cells from a dealer in Andhra Pradesh for being deployed at various sites. The invoice raised by the supplier declared the name of the consignee as Tvl.Reliance Infratel Ltd., No. 48, Bye pass Road, Kalavasal, Madurai which was an unregistered place of business of the petitioner and therefore the documents were construed as invalid.

3. Therefore, the goods were detained at the check post at Katpadi, by the respondent Deputy Commissioner Tax Officer, Katpadi Check Post, Vellore District until further orders. Thereafter, the petitioner was issued with a notice dated 14.10.2012 for alleged violation of section 38/39 of the Tamil Nadu Value Added Tax Act, 2006.

4. Under the circumstances, the petitioner approached this court in W.P.No.28980 2012. By an order dated 18.10.2012, the petitioner was directed to pay proportionate tax demanded by the respondent Deputy Commissioner Tax Officer in Notice dated 14.10.2012 for alleged violation of Section 38/39 of the Tamil Nadu Value Added Tax Act, 2006.

5. Thereafter, an Adjudication Notice dated 20.07.2015 was issued to the petitioner. It stated that that the petitioner had not declared No. 48, Bye pass Road, Kalavasal, Madurai as additional place of its business and therefore, there was a violation of Rule 5(5)(c) of the Tamil Nadu Value Added Tax Rules, 2007 and therefore, the petitioner had wilfully evaded payment of tax under Section 71(1)(b) of the Tamil Nadu Value Added Tax Act, 2006.

6. The petitioner replied to the said Adjudication Notice dated 20.07.2015 vide its reply/objection dated 19.08.2015. In the said reply/objection, the petitioner questioned the jurisdiction of the respondent and stated that only jurisdictional Assessing Authority was empowered under the Act to adjudicate tax liability and hence requested for dropping of the proceeding.

7. Therefore, the impugned order dated 20.01.2016 was passed by the respondent. In the impugned order, the respondent has merely stated that the reply of the petitioner was an afterthought and as such deserves no consideration. In the impugned order, it has also been observed that the explanation of the petitioner cannot be accepted as there was an offence committed by the petitioner under Sections 71(3)(a) and 71(7) of the TNGST Act, 2006 and therefore, an opportunity was given to the petitioner to compound the offence under Section 72(1)(a) of the TNVAT Act, 2006.

8. The learned counsel for the petitioner relied on the decision of this Court in the case of Vestas Wind Technology Vs. The Commercial Tax Officer, Enforcement and Ors., in W.P.No.28470 of 2013, wherein, by an order dated 19.05.2020, this court had allowed writ petition under similar circumstances.

9. Defending the impugned order, the learned counsel for the respondent drew my attention to the decision of this Court in the case of Archana Industries Vs. The Asst Commissioner, Commercial Taxes, in W.P.No 20242 of 2015, wherein, by an order dated 08.07.2015, the Court upheld the action of the respondent under similar circumstances.

10. The learned counsel for the respondent also drew my attention to another decision of this Court in the case of Sri Adinath Trders Vs. Commercial Tax Officer, in W.P.Nos.23463 and 23464 of 2012, dated 19.05.2020, to sustain the impugned order of the respondent and therefore prayed for dismissal of the present Writ Petition.

11. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent. I have also considered the case laws submitted by them. I have also perused the documents filed in the present case.

12. The decision in Sri Adinath Trders Vs. Commercial Tax Officer, in W.P.Nos.23463 and 23464 of 2012, dated 19.5.2020, cannot be applied to the facts of the present case. There, the goods were being transported allegedly by a consignment agent for the importer of the goods when they were detained. There, the alleged owner of the imported goods had failed to claim the goods that were detained by the check post officer. Therefore, in the facts and circumstances of the aforesaid case, the detention of the goods was justified and therefore the writ petition was dismissed challenging the imposition of compounding/composition for.

13. On the other hand, in the case of Vestas Wind Technology Vs. The Commercial Tax Officer, Enforcement and Ors. referred to supra, the Court dealt with identical situation and observed as under:-

> 19. In my view, there was an error in assumption of jurisdiction by the 1st respondent Commercial Tax Officer namely the Check Post officer on the ground that the goods had not suffered tax as the manufacturer had indeed charged tax in the invoice raised on the petitioner. The 1st respondent not only erred in demanding tax at the Check Post from

the petitioner after wrongly detaining the goods but also erred in asking the petitioner to opt for compounding of the alleged offence under section 72 (1)(a) of the Tamil Nadu Value Added Tax Act, 2006 by asking the petitioner to pay the aforesaid amount of Rs. 2,74,048/-. Indeed, no case was made for detaining the goods in transit on the assumption that no tax was paid.

20. At the same time, the petitioner was as at fault. Though the petitioner appears to have obtained VAT registration for its head office, it had not obtained separate registration for the site office as an additional place of business under Rule 5 (1) (a)of the Tamil Nadu Value Added Rules, 2007 read with Section 38 of the Tamil Nadu Value Added Tax Act, 2006.

21. Failure to obtain separate registration for the site office attracts penal provision Section 71(1)(b). As per the aforesaid provision any person who is obliged to register himself as a dealer under the Act and does not get himself registered shall on conviction by a Magistrate, be liable to fine which may extend to Rs. 500/- as the petitioner could have been proceeded only for the aforesaid violation

22. Therefore, while upholding the invocation of Section 72(1) of the Tamil Nadu Value Added Tax Act, 2006, I am of the view that the composition fee ought to have been restricted to an amount not exceeding Rs. 2,000/- under Section 72(1)(b) of the aforesaid Act.

23. In the light of the above discussion, I modify the impugned proceeding by restricting the compounding fee Rs. 2,000/- under Section 72(1)(b) of the Tamil Nadu Value Added Tax Act, 2006. Respondents are therefore directed to refund the excess amount paid by the petitioner to towards compounding/composition amount. As far as the amount which was collected towards tax is concerned, same can beadjusted towards the tax liability of the petitioner.

24. The writ petition stands partly allowed. Accordingly, miscellaneous petition is closed. No cost.

14. The facts of the present case fall within four corners of the above case. Following the above ratio, I am inclined to allow this Writ Petition by restricting the compounding fee to be paid by the petitioner for a sum of Rs.2,000/- under Section 72(1)(b) of the Tamil Nadu Value Added Tax Act, 2006.

15. The respondent shall adjust the amount paid by the petitioner and refund the balance amount to the petitioner or in the alternative, permit the petitioner to adjust such amount for discharging its tax liability under the current tax regime.

16. Accordingly, this Writ Petition stands allowed with consequential relief to the petitioner. No costs. Consequently, the Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commercial Tax Officer,
Katpadi Check Post,
Vellore District.

+1cc to Mr.J.Ravikumar, Advocate Sr.8923
+1cc to the Special Government Pleader Sr.8544

W.P.No.28061 of 2016 and
W.M.P.No.24216 of 2016

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srg 10/03/2021