IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.2701 of 2022
and W.M.P.Nos.2871 & 2873 of 2022

M/s.Kalin Engineering Industries
Rep.by its Partner U.Adaikalaraj
No.576/A, Opposite to Anna
University, Mandaiyur
Pudukkottai District 622 515. ... Petitioner

-Vs-

The State Tax Officer-II (Intelligence)
Adjudication Cell-II, Vellore. ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for records in G.D. N. No. 1718 / 2016 - 2017 dated 07.02.2017 / O. R. No. 6 / 2021- 2022 dated 19.11.2021 on the file of the The State Tax Officer -II (Intelligence) Adjudication Cell- II Vellore respondent herein and quash the same as illegal arbitrary, unreasonable and against statutory provisions.

For Petitioner : Mr.A.Thiyagarajan, Senior Advocate
For Mr.S.Karunakar

For Respondents: Mr.Richardson Wilson
Additional Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for records in G.D. N. No. 1718 / 2016 - 2017 dated 07.02.2017 / O. R. No. 6 / 2021- 2022 dated 19.11.2021 on the file of the The State Tax Officer -II (Intelligence) Adjudication Cell- II Vellore respondent herein and quash the same as illegal arbitrary, unreasonable and against statutory provisions.

2. There was a vehicle check by the respondent at Ulundurpet Toll Gate on 07.02.2017. A goods vehicle bearing Registration No.TN-28-AM-3102 was intercepted to ascertain the

genuineness of the movement of goods loaded in the vehicle. Boiler components - general fabrication quantity Nos.29 were loaded in the vehicle and the value of such goods is Rs.16,38,257/- as per the sale invoices of Kalin Engineering Industries ie., the petitioner herein and as per the invoices dated 31.12.2016, the goods worth about Rs.11,22,567/- and as per the invoice dated 30.01.2017, the goods worth about Rs.5,15,690/- were transported during the interception.

3. According to the Revenue, since certain documents which otherwise should have accompanied with the goods at the time of movement, were not available, the vehicle with the goods transported, was detained. They issued a detention notice dated 07.02.2017, the date on which the goods vehicle was intercepted.

4. In fact, the said notice was under challenge before this Court in W.P.No.4605 of 2017 filed by the petitioner, where the following orders were passed.

> " 7.Notwithstanding the aforesaid circumstances obtaining in the matter, learned counsel for the petitioner, says that in order to expedite the release of the subject goods, the petitioner would be willing to pay one time tax, without prejudice to its rights and contentions.
>
> 8.Mr.Venkatesh, who appears on behalf of the respondent says that if one time tax is paid, the subject goods could be released to the petitioner.
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> 9.Accordingly, having regard to the facts and circumstances of the case, coupled with the fact, that the petitioner offers to pay one time tax, I am inclined to direct the release of subject goods. Consequently, upon payment of one time tax, by the petitioner, equivalent to the sum of Rs.2,98,013/-, the respondent will, forthwith, release the subject goods to the petitioner.
>
> 10.Needless to say, the payment of tax by the petitioner will be without prejudice to its rights and contentions. The petitioner will also have the right to assail, not only the imposition of tax, but also the imposition of compounding fee, as reflected in the impugned notice, albeit, in accordance with law.

11.The writ petition is disposed of in the aforementioned terms. Consequently, the connected pending applications are also closed. However, there shall be no order as to costs."

5. Pursuant to the said order passed by this Court, the goods in question, after receipt of the one time tax paid by the petitioner, were released. Subsequently, the adjudication was over and the final order has been passed on 19.11.2021, which is impugned herein.

6. In the impugned order, the tax has been levied to the extent of Rs.2,98,013/- and the compounding fee ie., double the tax to the extent of Rs.5,96,026/- was levied. Since the petitioner already paid the tax levied even at the time of detention notice, of course, pursuant to the orders passed by this Court, now, only the compounding fee of Rs.5,96,026/- is being demanded as against which the present writ petition has been filed.

7. Heard Mr.A.Thiyagarajan, learned Senior Counsel appearing for the petitioner, who would submit that, in the impugned order, the respondent has specifically stated that, 'the goods falling under VI Schedule accordingly which are not accompanied by E-transit pass in Form 'LL' as required under Section 70(2)(a) of the Act'. Therefore, according to the learned Senior Counsel, the respondent concurs that the goods fall under the VI Schedule. He would further submit that, if we refer to the VI Schedule of the Tamil Nadu Value Added Tax, 2006 (In short 'the Act'), it does not provide for 'boiler components' which were in fact transported by the petitioner. Therefore, since these proceedings were initiated quoting the wrong provision also under wrong premises as if that the E-transit pass is required for the goods, which were transported by the petitioner, an adjudication was initiated. The very initiation itself is wrong and therefore if this culminated in the impugned order of levying the tax along with the compounding fee, that would also be equally illegal and unlawful and therefore, the impugned order, on that ground, is liable to be interfered with.

8. Per contra, Mr.Richardson Wilson, learned Additional Government Pleader appearing for the respondent would point out that, what are all the documents to be accompanied in respect of the goods which are being transported from State to State have been clearly demarcated under the various provisions of the Act and in this regard, even though invoices were taken earlier, only after 37 days of the invoices since the goods were under transportation, there is every reason for the respondent to believe that, using the invoices taken 37 days prior to the

transportation, the petitioner would have transported more such goods. Therefore, there is every reason on the part of the Revenue to levy tax on the goods transported, where necessary documents including the E-Way Bill was not available.

9. The learned Additional Government Pleader would further contend that, since the petitioner had already paid the tax levied as one time tax, of course pursuant to the orders passed by this Court, which was passed on the basis of the consent given by the petitioner in the earlier round of litigation, the issue against the levey of tax cannot be raised as of now. If at all there is an issue to be raised by the petitioner, it will only be against the imposition of compounding fee under Section 72(1)(a) of the Act and that can very well be agitated before the revisional authority under Section 54 of the Act. In this case there is no statutory violation or for want of jurisdiction or alleged violation of principles of natural justice. Hence, the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked when there is an alternate remedy provided under Section 54 of the Act and therefore, for that reason also, this writ petition is liable to be rejected, he contended.

10. I have considered the submissions made by the learned counsel for the parties and have perused the materials placed on record.

11. Insofar as the levying of tax is concerned, that has been paid by the petitioner long back and now the only grievance of the petitioner appears to be against the imposition of compounding fee to the extent of Rs.5,96,026/-.

12. Whether the petitioner is liable to pay the compounding fee within the meaning of Section 72(1)(a) of the Act or not, has to be gone into only on the basis of the factual matrix and since the revisional authority under Section 54 of the Act is the final fact finding authority in this kind of cases, before whom the petitioner can very well lay his revision petition by putting forth his case both on facts as well as on law and therefore, without exhausting such an alternative remedy, the petitioner cannot come before this Court to file the present writ petition, as there has been no reason to interfere at this juncture by this Court on the impugned order on the said three grounds as stated by the learned Additional Government Pleader viz., (i) violation of principles of natural justice, (ii) want of jurisdiction and (iii) alleged violation of the Statute. In the absence of these three reasons, normally the parties would be relegated to approach the authority concerned by way of alternative remedy provided under the Statute and this is one such case, where the petitioner can be driven to go before the

revisional authority under Section 54 of the Act.

13. In this context, the limitation prescribed under the Act for filing such revision is 30 days and further 30 days is provided for condoning the delay. These 60 days is over by 19.01.2022 as of now, and if the petitioner files the revision, this limitation point may arise. However, in view of the afore stated facts and circumstances and also since the petitioner has taken some time to file this writ petition, this Court feels that a direction can be given to the revisional authority to entertain the revision petition if it is filed by the petitioner within a period of two weeks from the date of receipt of a copy of this order, without raising the point of limitation.

14. With the above directions and observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KST

To

The State Tax Officer-II (Intelligence)
Adjudication Cell-II, Vellore.

+1cc to Mr.S.Karunakar, Advocate, S.R.No.10150 [26/04/2022]

+1cc to the Special Government Pleader(Taxes), S.R.No.10868

W.P.No.2701 of 2022

MG(CO)
SB(18/03/2022)