IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23-02-2022

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.NO.1694 OF 2022
AND W.M.P.NO.1836 OF 2022

Tvl. Techno Industrial Products
Represented by its authorized representative,
Shikhar Shah,
S/o. Shyam Kumar,
No.4, Chowringhee Lane,
Block IV, Unit 9B, 9th Floor,
Kolkatta - 16. ...Petitioner

-vs-

1. The Commissioner of Commercial Tax
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The Deputy State Tax Officer
   Roving Squard III, Intelligence - II,
   Commercial Tax Office, Greams Road,
   Chennai - 600 006.

3. The Assistant Commissioner / Adjudication,
   Intelligence - II,
   Commercial Tax Office,
   Greams Road, Chennai - 600 006. ...Respondents

PRAYER : Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondents, to quash the impugned notice, dated 20.01.2022 issued by the third respondent, i.e., The Assistant Commissioner / Adjudication, Intelligence - II and direct the second respondent to release the conveyance bearing No. TN28AF5779 and its goods which was detained by him in order, dated 19.01.2022.

For Petitioner : Mr.D.Vijayakumar

For Respondents : Mr.Prasanth Kiran
Government Advocate

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus, to call for the records on the file of the respondents, to quash the impugned notice, dated 20.01.2022 issued by the third respondent, i.e., The Assistant Commissioner / Adjudication, Intelligence - II and direct the second respondent to release the conveyance bearing No. TN28AF5779 and its goods which was detained by him in order, dated 19.01.2022.

2. The petitioner goods which are chemical carried by the conveyance with Registration No. TN28AF5779 from Calcutta to Madurai was intercepted on 18.01.2022 at 1.30 hours by the respondents and they found that, in the E-way bill which is one of the essential document to be carried otherwise by the conveyance, Part-B was not updated. On the ground the vehicle has been detained and a show cause notice had been issued on 20.01.2022, which is under challenge in this writ petition.

3. Mr.D.Vijayakumar, learned counsel appearing for the petitioner would submit that, at the time of generating E-way bill originally, i.e., on 13.01.2022 by mistake the Part-B of the E-way bill was not generated or updated. However, subsequently, they generated the E-way bill on 18.01.2022 at 10.45 a.m., wherein the Part-B also had been generated, which carrying the Registration No. of the vehicle and other details.

4. In this context, since the vehicle has been detained for more than a month, i.e., from 18.01.2022 and the present show cause notice has been issued, the petitioner even though ready and willing to give reply to the show cause notice, in the impugned show cause notice, dated 20.01.2022, which is under challenge herein, though it has been mentioned that, within 7 days from the receipt of notice, the petitioner was directed to show cause as to why the proposed tax and penalty mentioned should not be paid by the petitioner, in the next column, i.e., at para 8 of the notice, it has merely mentioned that, the petitioner had been directed to appear before the undersigned on ...., i.e., without giving any date.

5. Pointing out this, Mr.D.Vijayakumar, learned counsel appearing for the petitioner would submit that, if a date is given specifically, on that date, certainly the petitioner would appear and give show cause and the defence as well as the documents pertaining to this issue and thereafter the issue can be adjudicated and decided by the respondents on merits.

6. The learned counsel for the petitioner would also submit that, since it will take some reasonable time to complete the adjudication and pass orders, till such time, the goods in

question which is detained now since is a chemical competent, let it be released on any condition to be imposed in this regard by this Court, he contended.

7. I have heard Mr.V.Prasanth Kiran, learned Government Advocate appearing for the respondents who would submit that, once the notice is issued giving 7 days time to give reply to the show cause and the said notice, dated 20.01.2022 had been served on the petitioner, immediately within one week, he should have given a reply and within the 7 days period, any day he could have appeared before the respondents, the non-giving of date specifically for personal hearing need not be taken as a ground, as if there is no date given to the petitioner to appear.

8. Moreover, the learned Government Advocate would further submit that, Judgments have been passed by this Court that, in between the show cause notice and the final adjudication order, the person whose vehicle is detained shall not recourse the remedy of approaching the Court of law challenging the show cause notice and here it is one such case, where the petitioner instead of giving show cause and appearing before the respondents had chosen to come before this Court challenging the very show cause notice, therefore, on that ground also, the present writ petition is liable to be rejected, he contended.

9. I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

10. When the interception was made on 18.01.2022, it was found by the respondents that, Part-B of the E-way bill was not updated. However, it is the case of the petitioner that, on 18.01.2022 at 10.45 a.m, a corrected E-way bill was generated, where Part-B also had been updated with necessary details including the vehicle number.

11. Apart from that, it is the case of the petitioner that, if a date is given, particularly on that date, the petitioner would appear to give his show cause with documents and thereafter, let the adjudication go on and be completed at the earliest. However, before such completion of adjudication proceedings since the goods have been detained from 18.01.2022 and the goods is chemical component, the same may be directed to be released, of course with some conditions.

12. Insofar as the merits of the case whether the Part-B updation admittedly was not available on the date of interception, subsequently has been updated is concerned, it is a matter of merit to be decided by the adjudicating authority, for which show cause notice alredy been issued. Insofar as the

said show cause notice is concerned, let there be a specific date to be specified by the respondents Revenue and communicate the same immediately to the petitioner, on that date, it is open to the petitioner to appear before the respondents and to give show cause with his documents. Thereafter the respondents can decide the same by way of adjudication and pass final orders.

13. However, insofar as the releasing of the goods are concerned, during the pendency of the adjudication proceedings, this Court feel that, the goods in question, being chemicals, can be directed to be released by way of provisional release, of course with certain condition. The condition being the petitioner shall execute a Bank guarantee for the equal sum of the tax due / tax demanded by the Revenue and on receipt of such Bank guarantee, the goods in question can be released by the respondents.

14. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order :

> (i) That there shall be a direction to the respondents to give a specific date for personal hearing to the petitioner and the same shall be intimated to the petitioner immediately and on receipt of the same, the petitioner shall appear on the date without fail and give his defence with documents. Thereafter, it is open to the Revenue to complete the adjudication and pass a final order as early as possible.
>
> (ii) In the meanwhile, if the petitioner come forward to give a Bank guarantee for the equal sum of the tax due / tax demanded by the Revenue, on receipt of such Bank guarantee, the goods in question shall be released as a provisional release by the respondents forthwith.
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> (iii) However, it is made clear that, the order directing the respondents to release the goods by way of provisional release is without prejudice to the right and contention of both sides and if ultimately the respondents decide the tax component as well as penalty, if any, that shall not be prejudiced merely because the goods have already been released by the order of this Court.

15. With these orders and direction, this writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The Commissioner of Commercial Tax
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The Deputy State Tax Officer
   Roving Squard III, Intelligence - II,
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   Intelligence - II,
   Commercial Tax Office,
   Greams Road, Chennai - 600 006.

+1cc to Mr.D.Vijayakumar, Advocate, S.R.No.11936
+1cc to the Government Pleader, S.R.No.12490

W.P.No.1694 of 2022

JPL(CO)
KKV/25/02/2022