

(2014) 11 MAD CK 0517

Madras High Court

Case No: Writ Petition No. 29378 of 2014 and M.P. No. 1 of 2014

Srinivasa Traders

APPELLANT

Vs

The Deputy Commercial Tax
Officer

RESPONDENT

Date of Decision: Nov. 12, 2014

Acts Referred:

- Tamil Nadu Value Added Tax Act, 2006 - Section 71, 71(5)(a)

Hon'ble Judges: T.S. Sivagnanam, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

T.S. Sivagnanam, J.

With the consent of both sides, this Writ Petition is taken up for final hearing at the admission stage itself.

2. The petitioner has filed this writ petition praying for issuance of writ of certiorarified mandamus, to quash the Show Cause Notice for composition of offence dated 04.11.2014 and consequential Draft Compounding Notice dated 08.11.2014.

3. The petitioner's vehicle was detained by the respondent for verification, alleging that movement of vehicle was suspicious and it has unnecessarily entered into Sidco, Sundarapuram, instead of going to Puducherry. Therefore, the petitioner has contravened the provisions of Section 71 of Tamil Nadu Value Added Tax Act, 2006 (hereinafter shortly referred to as Act) and committed an offence punishable under Section 71(5)(a) of the Act. The petitioner was granted seven days time to compound the offence departmentally, failing which, prosecution will be launched. Consequent upon the Show Cause Notice dated 04.11.2014, a Draft Compounding Notice dated 08.11.2014 was issued to the petitioner, wherein, the petitioner has been directed to pay a total amount of Rs.3,26,250/-, out of which, the tax, which has been levied at

14.5%, is Rs.1,08,750/-.

4. The learned counsel for the petitioner submitted that the vehicle was transporting 23000 litres of Lubricants Neutral oil from Navi Mumbai vide Invoice No. 0064 dated 31.10.2014 to be delivered at Mahe and that the goods were accompanied by Goods Way Bill dated 31.10.2014. The consignment was also accompanied by transit pass in Form VAT 530 issued by Karnataka Government. The learned counsel further submitted that the consignment was transported by proper documents and the driver of the Truck has entered into Sidco, Sundarapuram, for collecting pending freight charges from the customer. Therefore, merely because the driver of the vehicle went to Sidco en route, cannot be a ground to doubt the genuineness of movement of the goods, which were accompanied by proper documents.

5. Heard the learned Additional Government Pleader on the above submissions.

6. Admittedly, the impugned proceedings are the only show cause notice for composition of offence and draft compounding notice. It is well open to the petitioner to submit their objection and to satisfy the respondent that the goods were accompanied by proper documents. Merely because, the driver of the vehicle had gone into Sidco Sundarapuram will not make the transportation of goods in any manner as illegal or in contravention of the provisions of the Act. However, without submitting their objection, the petitioner has approached this Court directly. In the light of the above facts, this Court is of the view that the petitioner should be directed to submit their objection to the show cause notice.

7. At this stage, the learned counsel for the petitioner submitted that the petitioner is ready and willing to submit their objection before the respondent, however, in the interregnum period, the vehicle may be released. Otherwise, the petitioner would be put irreparable financial hardship and the goods in the vehicle, being Lubricants Neutral Oil, the quality of the same is likely to be detrimental.

8. In the light of the above submissions, there shall be a direction to the respondent to release the vehicle in question, subject to the following conditions:

(i) the petitioner pays Tax as demanded in the Draft Compounding Notice dated 08.11.2014, namely, Rs.1,08,750/-; and

(ii) the petitioner shall submit their objection in writing to the show cause notice dated 04.11.2014 and explain their stand with supportive documents.

If the petitioner complies with both the conditions, then the vehicle in question shall be released forthwith and thereafter, the respondent shall consider the petitioner's objection/explanation to the show cause notice and pass orders on merits and in accordance with law, within a period of three weeks from the date on which, the reply/objection is filed by the petitioner.

9. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.