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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2011

CORAM:

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

W.P. (MD) No. 3201 of 2011

M/s. Standard Rubber House,
Represented by its Proprietor Khader Abdul,
KTP/5-111-Q, Government Hospital Road,
Anna Nagar, Kulasekaram,
Kanyakumari District.

: Petitioner

Vs

The Assistant Commissioner (C.T.),
Kavalkinaru Checkpost,
Tirunelveli District.

: Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in Goods Detention Notice No.5/2010-11 dated 11.01.2011 and the consequential proceedings dated 13.01.2011 on the files of the respondent and quash the same as illegal and direct the respondent to release the goods detained on 11.01.2011.

For petitioner : M/s.S.Karunakar
For respondent : Mr.S.C.Herold Singh
Government Advocate

ORDER

This petition has been filed seeking a writ of Certiorarified Mandamus calling for the records in Goods Detention Notice No.5/2010-11 dated 11.01.2011 and the consequential proceedings dated 13.01.2011 on the file of the respondent and quash the same as illegal and direct the respondent to release the goods detained on 11.01.2011.

2. The learned counsel for the petitioner would contend that the petitioner who is a registered dealer under the Deputy Commercial Tax Officer and has obtained Special License to deal with Rubber from Rubber Board, Kochi. According to the petitioner, he has received orders for the supply of materials. He has transported the goods from Kulasekaram to Ludhiana in a lorry bearing Registration No. TN-28-AD-3299. When the goods were in transit, the respondent has intercepted the vehicle and detained goods by issuing a notice dated 11.01.2011 and based on the records of the Rubber Board, the petitioner had involved in



evsion of tax to the tune of Rs.11,73,616/- for the business transactions pertaining to the assessment years 2008-09 and 2009-10 and in respect of the goods transported in the vehicle to the tune of Rs.22,40,000/- without proper records. The respondent has levied tax at the rate of 4% along with the penalty of Rs.2,000/- under Section 72(1) of the Tamil Nadu Value Added Tax Act. According to the petitioner, the very notice itself is wrong as it has been issued by an authority who has no authority to issue notice and if at all, he has got any authority to detain the vehicle or collect tax for that consignment and not for any other consignment. Therefore, the petitioner would only contend that the order is *per se* illegal, invalid and *non est* in law. He would also contend that since the authority has passed order in violation of rules, he has filed the present petition for certiorarified mandamus to quash the order dated 11.01.2011 and the consequent proceedings dated 13.01.2011.

3. The learned Additional Government Pleader, at the time of admission, brought to the notice of this Court Section 54 of the Tamil Nadu Value Added Tax Act, which says that any person who objects an order or proceedings recorded under the said Act, can immediately file a revision to the Joint Commissioner and in view of the availability of alternative remedy, the writ petition will not lie at this point of time.

4. Heard the learned counsel on either side.

5. Taking into consideration Section 54 of the Act, which reads as follows:

"54.Powers of revision of Joint Commissioner.-

(1) Any person objecting to an order passed or proceeding recorded under this Act for which an appeal has not been provided for in Section 51 or Section 52 may within a period of thirty days from the date on which a copy of the order or proceeding was served on him, in the manner prescribed file an application for revision of such order or proceeding to the Joint Commissioner

Provided that the Joint Commissioner may within a further period of thirty days admit an application for revision presented after the expiration of the first mentioned period of thirty days, if he is satisfied that the applicant had sufficient cause for not presenting the application within the first mentioned period.

(2) An application for revision shall be in the prescribed form and shall be verified in the prescribed manner.

(3) On admitting an application for revision, the Joint Commissioner may call for and examine the record of the order or proceeding against which the application has



been preferred and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, pass such order thereon as he thinks fit.

(4) Notwithstanding that an application has been preferred under sub-section (1), the tax, fee or other amount shall be paid in accordance with the order or proceeding against which the application has been preferred.

Provided that the Joint Commissioner may in his discretion give such directions as he thinks fit, in regard to the payment of such tax, fee or other amount before the disposal of revision, if the applicant furnishes sufficient security to his satisfaction in such form and in such manner as may be prescribed.

(5) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard."

it is very clear that any person objecting to an order passed or proceedings recorded under this Act for which an appeal has not been provided under Section 51 or Section 52 of the Act, can definitely file a revision. No doubt, the learned counsel for the petitioner would bring to the notice of this Court that for filing of revision he has to pay full tax. But, there is also a proviso to Section 54(4) of the Act which says that the Joint Commissioner can consider the request and that is also available. As such, the petitioner's apprehension is unfounded. In any view of the matter, in view of the fact that there is an alternative remedy, it would suffice to state that the petitioner shall approach the revisional authority for necessary relief in accordance with law. Hence, the writ petition is dismissed. No costs.

Sd/-
Deputy Registrar(LA)

/True Copy/

Assistant Registrar

To
The Assistant Commissioner (C.T.),
Kavalkinaru Checkpost, Tirunelveli District

+One cc to The Special Govt Pleader, SR.No.12304