

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

WP(MD) No. 937 of 2019

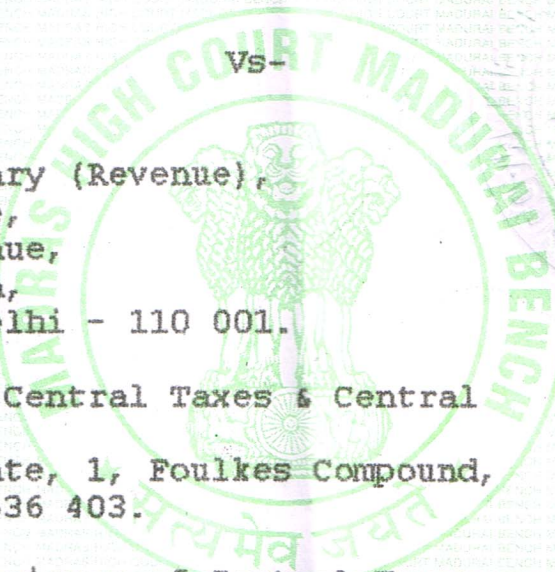
and

WMP(MD) Nos. 764 & 765 of 2019

M/s. Jeyyam Global Foods (P) Ltd.,
No. 32-34, Deevatipatti,
Omalar TK, Salem 636351,
Rep. by its Chief Finance Officer,
B. Sankaranarayanan

... Petitioner

Vs-



1. Union of India,
Through its Secretary (Revenue),
Ministry of Finance,
Department of Revenue,
Government of India,
North Block, New Delhi - 110 001.

2. The Commissioner of Central Taxes & Central
Excise,
Salem Commissionerate, 1, Foulkes Compound,
Anaimedu, Salem - 636 403.

3. The Assistant Commissioner of Central Taxes
& Central Excise,
Salem II Division, Salem Commissionerate,
1, Foulkes Compound,
Head Quarters Office Building, III Floor,
Salem - 636 001.

4. The Assistant State Tax Officer /
Commercial Tax Officer,
Roving Squad Section, Dindigul.

5. The Commissioner of Commercial Taxes,
Chennai.

... Respondents

(5th Respondent is suo motu impleaded
vide court order dated 23.01.2019)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned detention order dated 21.12.2018, No.Nil, issued by the fourth respondent and quash the same and consequently direct the third respondent to decide the rate of tax/classification/HSN Code of the product in question.

For Petitioner : Mr.S.Jaikumar
For Respondents: Mr.P.Dharmaraj for R1
Mr.Vijayakarthiskeyan for R2 &R3
Mr.Aayiram K.Selvakumar
Additional Government Pleader for R4

ORDER

The petitioner is a manufacturer of dried chick peas, gram flour, pulses and grams. The petitioner's claim is that they purchase chick peas, dry them by heating them to a certain degree and the resultant product is known as "Dried Chick Peas". According to the petitioner, this would have to be classified only under Chapter 0713 of HSN. The petitioner had transported the dried chick peas from Salem to Dindigul. The petitioner had not filed any E-Way bill in view of the exemption statutorily granted. While so, the consignment of the dried chick peas sent by the petitioner was intercepted by the fourth respondent on 21.12.2018. The fourth respondent seized the goods and also detained the vehicle in which the goods were being transported. The fourth respondent took the view that what was transported by the petitioner comes under the classification (fried or roasted grams) falling under Chapter 2106 of HSN.

2. In this view of the matter, he issued a detention notice and levied tax with equal penalty. The petitioner paid the said amount as demanded by the fourth respondent under protest and he also obtained release of the goods as well as the vehicle. The order is under challenge in this writ petition principally on the ground that when a bonafide dispute as to classification had arisen, it is only the jurisdictional assessing officer, namely, the third respondent who could have ruled on the classification and that it was not open to the Squad Officer to have done so.

3. Heard the learned counsel on either side. The contesting respondent is only the fourth respondent. The fourth respondent official appeared in person and assisted this Court. He also filed a detailed counter affidavit.

4. According to the fourth respondent, he is statutorily empowered under Section 68 r/w Section 129 of the Tamil Nadu Goods and Services Tax Act, 2017. Section 68 of the said Act reads as under :

"Section 68 (1) : The Government may require the person in charge of a conveyance carrying any

consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods."

Section 129(1) of the Act reads as under :

129.(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released, --

(a) on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods."

5. The stand of the fourth respondent is that he is entitled to call upon the person in charge of the conveyance to produce the documents in question for verification. In the present case, there is no dispute as to the goods that were actually transported. But then, according to the petitioner, they would qualify only as dried chick peas. But, according to the fourth respondent this would have to be classified as roasted grams.

6. The Commissioner of Commercial Taxes, Chennai has issued a notification bearing Rc.No.085/2016 Taxation A1, dated 12.07.2017 notifying the Deputy Commissioner, Assistant Commissioner, State Tax Officer, Deputy State Tax Officer as the Proper Officer to exercise the powers and perform the functions conferred on them under Tamil Nadu Goods and Services Tax Act, 2017 and the rules made thereunder and to exercise the powers under Section 129 of the Act in the matter of detention, seizure and release of goods and conveyances in transit. Therefore, there cannot be any doubt that the fourth respondent is the notified Proper Officer in this case. But then, the issue that arises for consideration is whether the inspecting squad officer is entitled to rule on the appropriate classification.

7. A Similar issue came up for consideration before the Hon'ble Kerala High Court in the decision reported in 2018 (1) TMI 1503 (N.V.K.Mohammed Sulthan Rawther and Sons and Willson Vs. Union of India). The Hon'ble Kerala High Court held that in such cases at best the inspecting authority can alert the assessing authority to initiate the proceedings "for assessment of any alleged sale, at which the petitioner will have all his opportunities to put forward his pleas on law and on fact." The process of detention of the goods cannot be resorted to when the dispute is bona fide, especially, concerning the exigibility of tax and, more particularly, the rate of tax.

8. I am in full agreement with the aforesaid enunciation of law laid down by the Hon'ble Kerala High Court. Here, a bonafide dispute with regard to the classification has arisen between the transporter of goods and the squad officer. I am of the view that the squad officer can intercept the goods, detain them for the purpose of preparing the relevant papers for effective transmission to the jurisdictional assessing officer. It is not open to the squad officer to detain the goods beyond a reasonable period. The process can at best take a few hours. Of course, the person who is in-charge of transportation will have to necessarily cooperate with the squad officer for preparing the relevant papers. I hold that the final call will have to be taken only by the jurisdictional assessing officer.

9. The learned counsel appearing for the writ petitioner submitted that they would not press for refund of the amount that were already paid by them and that they would abide by the ultimate outcome of the proceedings that may be initiated by the third respondent in this regard. This submission of the learned counsel for the writ petitioner is placed on record.

10. Recording the undertaking given by the petitioner's counsel, the proceedings impugned in this writ petition stand quashed. This writ petition is allowed. The matter cannot rest there. The learned counsel for the writ petitioner would strongly press that this Court will have to direct the Commissioner of Commercial Taxes, Chennai to issue appropriate directives in this regard. I find force in the said request. This Court therefore suo motu impleads the Commissioner of Commercial Taxes, Chennai as the fifth respondent in this writ petition and directs Shri. Aayiram K. Selvakumar, the learned Additional Government Pleader to take notice for him also.

11. The Commissioner of Commercial Taxes, Chennai is directed to issue a circular to all the inspecting squad officers in Tamil Nadu not to detain goods or vehicles where there is a bonafide dispute as regards the exigibility of tax or rate of tax. The circular shall embody the essence of the decision reported in 2018 (1) TMI 1503 (N.V.K. Mohammed Sulthan Rawther and Sons and Willson Vs. Union of India). Such a circular shall be issued within a period of eight weeks from the date of receipt of a copy of this order.

12. With these directions, this writ petition is allowed.

Sd/-
Assistant Registrar (CO)

/True Copy/

J. [Signature]
30/1/19
Sub Assistant Registrar (CS-III)

To

1. The Secretary (Revenue), Ministry of Finance, Department of Revenue, Government of India, North Block, New Delhi - 110 001.
2. The Commissioner of Central Taxes & Central Excise, Salem Commissionerate, 1, Foulkes Compound, Anaimedu, Salem - 636 403.
3. The Assistant Commissioner of Central Taxes & Central Excise, Salem II Division, Salem Commissionerate, 1, Foulkes Compound, Head Quarters Office Building, III Floor, Salem - 636 001.

[Handwritten signature]

**MADRAS HIGH COURT
MADURAI BENCH**

S. R. No. 42431/19

Carbon Copy Application

made 24.01.2019

Application Returned.....201

Application Represented...201

Copy made ready 30.01.2019

Copy delivered 31.01.2019

21.01.19
Section Officer
G. C. C. Section

