IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.18591 of 2015
and M.P.No.1 of 2015

M/s KEL VOLT India Pvt. Ltd.,
represented by its Director
G-2, Subhiksha Flats
Vellalar Street
Kodambakkam
Chennai 600 024 .. Petitioner

-vs-

The Deputy Commercial Tax Officer
Ranipet (In) Check Post
Serkadu .. Respondent

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records of the respondent in the impugned proceedings GD No.2030/2015-2016 dated 14.06.2015 detaining the goods of the petitioner, quash the same which is against the circular dated 08.04.2014 and direct the respondent to release the goods detained on 14.06.2015 vide Goods Detention Notice .

For Petitioner :: Mrs.Radhika Chandra Sekhar
For Respondent :: Mr.A.N.R.Jayapratap
Government Advocate (Taxes)

ORDER

This writ petition has been filed by M/s KelVolt (India) Private Limited challenging the impugned goods detention notice issued in G.D.No.2030/2015-2016 dated 14.06.2015, in and by which the respondent herein has come to the conclusion that there has been a sale of the goods liable to tax and on further examination of the contents of the goods vehicle during inspection, it has been found that that when the goods are transported from Gujarat to Chennai, the consignee delivery address is an unregistered place. On this basis, when the goods were detained, the present writ petition has been brought before this Court.

2. Learned counsel for the petitioner submitted that the petitioner, being engaged in the business of supply and installation of heating, ventilation and air-conditioning equipments, has entered

into a contract with M/s Tata Communications for HVAC high side chiller works at IDC Ambattur. They have also entered into an agreement dated 20.10.2014 with M/s Tata Communications Data Centers Private Limited to provide supply and installation of air-conditioning equipments and they are also paying the taxes properly as a registered assessee from 11.3.2014. While so, during the course of project execution, M/s Tata Communications had placed a purchase order on the petitioner for purchase of various chiller equipments and components and that the petitioner in turn had purchased FRP cooling tower from M/s Advance Cooling Towers Private Limited, Gujarat and the said cooling tower is used for air-conditioning chilling plant at M/s Tata Communications Data Center Private Limited for data center application. But the respondent, during the movement of goods, has detained the vehicle transporting the components of cooling tower from Gujarat to Chennai at Ranipet check post on the ground that the address of the consignee is not the registered place of business. Learned counsel for the petitioner further submitted that when there has been a circular No.18/2014 Q4/7752/2014 dated 8.4.2014 issued by the Principal Secretary/Commissioner of Commercial Taxes, Chennai making it clear that in case of works contractors executing work at the site of a works contractee, it is natural for them to ask the supplier of the goods to give delivery of the goods to the work site to which the goods are meant, therefore, they need not register such work site as their branch or godown. The said circular further says that if a works contractor produces sufficient proof such as works contract agreement to prove that he is executing works contract at a particular site, the goods should be allowed to move to that site. But in the present case, immediately after the goods were detained, on receipt of information from the driver of the vehicle, the respondent was approached by the representatives of the petitioner and they placed all the materials including the copy of the contract agreement to prove that the petitioner is executing the works contract at a particular place. But the respondent has refused to consider, as a result, the goods are unnecessarily detained causing so much inconvenience to the petitioner.

3. Learned Government Advocate for the respondent, replying to the said contentions, submitted that the respondent, on inspection of the goods vehicle, entertaining a serious doubt that there has been evasion of tax on the goods moved by the petitioner's vehicle, passed the impugned goods detention notice. But the petitioner, till date, has not even made any written explanation or met the respondent with proper explanation, therefore, the petitioner cannot find fault with the respondent. So long as the respondent has not received any response or explanation whatsoever to the fact whether there has been a works contract to which the petitioner has been involved, the goods detained cannot be sought to be released. He has also further submitted that the petitioner may be directed to approach the respondent with all the relevant documents and on production of the documents mentioned in the circular No.18/2014 dated 8.4.2014, the respondent would be entitled to consider and pass appropriate orders.

4. This Court also, agreeing with the suggestion made by the learned Government Advocate for the respondent, without going to the merits of the matter as to whether the petitioner has carried the goods to the place of works contract, hereby directs the petitioner to approach the respondent along with all the available documents. On production of all the documents and the order passed by this Court, the respondent is directed to consider the release of the goods on the same day to the petitioner. With the above directions, the writ petition is disposed of accordingly. Consequently, M.P.No.1 of 2015 is closed. No costs.

ss

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

The Deputy Commercial Tax Officer
Ranipet (In) Check Post
Serkadu

+ 1 cc to Mr.K.Vaitheeswaran, Advocate SR 32317

+ 1 cc to Spl.Govt.Pleader (Taxes) SR 32357

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