IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2015
CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.21039 of 2015
And
M.P.No.1 of 2015

Olam Agro India Pvt. Ltd.,
Represented by Pradeep ...Petitioner

Vs.

The Commercial Tax Officer,
Roving Squad,
Villupuram. ...Respondent

Prayer:
Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records on the files of the respondent herein in G.D.No.1058 dated 08.07.2015 and quash the same.

For Petitioner : Mr.N.Inbarajan
For Respondent : Mr.Manoharan Sundaram
Additional Government Pleader (T)

ORDER

By consent, the writ petition is taken up for final disposal.

2.This writ petition has been filed by Olam Agro India Private Limited represented by Pradeep challenging the impugned Goods Detention Notice no.1058 dated 08.07.2015 (Form No.041), to quash the same and for further direction to release the goods.

3.Learned counsel appearing for the petitioner in support of the prayer contended that the petitioner is a company having their registered office at No.8, Tower A, DLF Cyber City Phase-2, Gurgaon, Haryana with their branch office in the State of Tamil Nadu, Kerala and Andhra Pradesh where they are registered dealer.

4.Being so, through their branches at Kerala, Andhra Pradesh and Tamil Nadu, they are having trading activity of cashewnut and they are also paying tax as the raw cashews are also taxable at 5% falling under Serial No.113 of the First Schedule to the Act. The

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branch office at Visakhapatnam is undertaking the processing and as they are having registered dealer in the State of Tamil Nadu, goods cleared through the Tuticorin Port are usually despatched to their branch office at Visakhapatnam for the purpose of processing. Whileso, the goods moved from Tuticorin Port were accompanied with Form JJ in which it is clearly stated that the goods are not for sale but for processing only.

5.Therefore, the grievance of the petitioner is when the consignor is their branch at Kanyakumari District in Tamil Nadu, the consignee is their own branch at Visakhapatnam, Olam Agro India Private Limited is one and the same under the Act and there is no question of sale involved. While this is the position, with regard to the movement of goods, the respondent at Villupuram detained the goods sent through the Form JJ 632 dated 07.07.2015 along with e-way bill Form 20 on the ground that the petitioner is not having place of business at Tuticorin and the goods have not reached the destination at Kollam, Kerala or Chenamcode, Kanyakumari as it is moving straight away from Tuticorin to Visakhapatnam, Andhra Pradesh. The respondent was under the impression that the petitioner has no right to move the goods to Visakhapatnam without any valid documents for the movement of goods from Olam, Kollam, Kerala to Olam, Kanyakumari.

6.The petitioner immediately objected to the detention and explained that Olam is a Company having the branches at Kollam, Chenamcode and Visakhapatnam and therefore, there is no sale transaction between the same company. It was also brought to the notice of the respondent that the goods have been moved with Form JJ along with e-way bill of Olam, Visakhapatnam. However, the respondent has passed the impugned order.

7.Challenging the same, among other grounds it was also requested by the learned counsel appearing for the petitioner that since the goods are likely to get damaged, the goods may be released on payment of the one time tax amount of Rs.1,59,224/- under protest as he could contest the matter by filing a revision against the impugned order.

8.Mr.Manoharan Sundaram, learned Additional Government Pleader (T) objecting to the said prayer submitted that the petitioner's goods instead of moving from Tuticorin to Kanyakumari, it was wrongly moving from Tuticorin to Visakhapatnam. Therefore, if the petitioner comes forward to pay one time tax amount of Rs.1,59,224/- along with furnishing the bank guarantee for the same amount with permission to challenge the impugned order, the respondent has no objection.

9.This Court agreeing with the statement made by the learned counsel appearing for the petitioner that the petitioner is ready to make the tax amount of Rs.1,59,224 and produce the same for release of the goods as he is also entitled to challenge the impugned order by filing revision before the appropriate authority, finds no impediment to release the goods. Accordingly, the petitioner is

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directed to pay the one time tax of Rs.1,59,224/- and on payment of the said amount before the respondent, the goods are directed to be released. The petitioner is also at liberty to challenge the impugned order by filing revision before the appropriate authority.

10.With the above direction, the writ petition stand disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

11.Registry is directed to release the original impugned order so as to enable the petitioner to file revision.

-s/d-
Assistant Registrar(CS-II)

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Sub-Assistant Registrar

To

1. The Commercial Tax Officer,
   Roving Squad,
   Villupuram.

+ 1 cc to Spl.Govt.Pleader Taxes SR 35610

+ 1 cc to Mr.N.Inbarajan, Advocate SR 21039

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