IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.Nos.27755 to 27757 of 2015
and M.P.Nos.1 of 2015

Mahindra Susten Private Ltd.
rep. by its Assistant Manager (F & A)
Mr.A.Ravindar
17/18 Patulous Road
Opposite to Anna Salai Chennai-2 ... [Petitioner] in all the WPs

Vs

The Deputy Commercial Tax Officer
Katpadi Check Post, Katpadi ... [Respondent] in all the Wps

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the respondent in Notices G.D.Nos.1591, 1592 and 1596/2015-2016 respectively dated 26.8.2015 and quash the same and to direct the respondent to release the goods along with the respective goods vehicle without insisting for payment of tax and compounding fee.

For petitioner : Mr.M.Joseph Prabakar
For respondent : Mr.S.Kanmani Annamalai, AGP(T)

C O M M O N O R D E R

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the writ petitions are taken up for disposal.

2. These writ petitions have been filed challenging the proceedings of the respondent in G.D. Nos.1591, 1592 and 1596/2015-2016 respectively dated 26.8.2015 and to direct the respondent to release the goods along with the respective goods vehicle without insisting for payment of tax and compounding fee.

3.1 The petitioner Company is involved in the business of Solar Power Systems. The company is registered under Local Sales Tax Law of the State and under CST Act, 1956. While the head office of the petitioner Company is situate at Mumbai, the local branch is registered in the office of the Assistant Commissioner (CT), Anna

Salai Assessment Circle under TNVAT Act and CST Act, 1956. The petitioner Company is regularly filing monthly returns and paying tax, as required under Section 21 of the Act.

3.2 The petitioner Company entered into three separate distinct contracts with M/s G.R.Thanga Maligai, one for supply of goods, the second one for Services and the third one for Civil Works, relating to putting up a 5 MW Solar Power Plant at Moovanur Village, Trichy District. According to the petitioner, the supply of "Rafter with Plate Module Mounting Galvanized Steel Structure" pertains to the supply contract.

3.3. Further, according to the petitioner, the Vendor M/s Pennar Industries Limited, who deals with equipments, components and accessories required for Solar Power Plants is located in Isnapur Unit, Medak District, Telengana. Pursuant to the agreement entered into with M/s G.R.Thanga Maligai, the Head Office of the petitioner Company placed purchase orders with M/s Pennar Industries Limited, Telengana, for the supply of "Rafter with Plate Module Mounting Galvanized Steel Structure" and issued instructions to move the goods directly to the site of M/s G.R.Thanga Maligai, Trichy for the Solar Power Plant.

3.4. According to the petitioner, pursuant to the purchase order, M/s Pennar Industries Limited raised invoice Nos.1510210 to 1510212 dated 23.08.2015 for Rs.10,72,799/-, Rs.10,58,885/- and Rs.10,50,618/- respectively, mentioning the name of M/s Mahindra Susten Pvt. Limited, the petitioner herein, as the consignee. The said consignments moved from M/s Pennar Industries Limited, Telengna in Goods Vehicles bearing Nos.TN 25-Q-1744, TN 21-AA-0742 and TN 72-Q-1337 directly to the site of M/s G.R.Thanga Maligia, Trichy District.

3.5 Further, according to the petitioner, the respondent, being the Check Post Authority, had intercepted the goods vehicles in question at Katpadi Check post and inspected the documents accompanying the consignments and carried by the transport vehicles. Having found that the documents accompanying the consignments were defective, the respondent detained the goods along with the goods vehicles in the Katpaid Check Post premises, by issuing the Goods detention notices.

3.6. The petitioner further averred that pursuant to the said notices, the respondent had issued detailed Goods Detention Notices dated 26.08.2015, which are impugned herein, directing the petitioner to pay one time tax of Rs.61,736/-, Rs.60,988/- and Rs.60,534/- respectively on the sale value of the goods estimated by adding freight and gross profit at 10% and double the amount of tax payable amounting to Rs.1,23,508/-, Rs.1,21,976/- and Rs.1,21,068/- as compounding fee.

Aggrieved over the same, the petitioner is before this Court by way of filing these writ petitions.

4.1 The learned counsel for the petitioner submitted that the allegation of the respondent that since the work site was not registered, the petitioner Company ought to have raised local sale bill in the name of M/s GRT Thanga Maligai, but, in order to evade payment of tax, the petitioner has not raised is baseless, as the impugned transaction is inter-State in nature and there is no question of raising local sale bill.

4.2 That apart, according to the learned counsel, the destination where the goods are supplied, cannot, by any stretch of imagination, be construed as the additional place of business of the petitioner-Dealer, and they need not be registered as their branch or godown, as per the Circular dated 08.04.2014 of the Principal Secretary/Commissioner of Commercial Taxes. Therefore, when even a works contractor is not expected to obtain registration for work site, question of registration of place for a pure supply transaction does not arise. Hence, according to the learned counsel, the allegation that the petitioner did not get registration of the place of supply and the consequent conclusion that the petitioner had violated the provisions of TNVAT Act and Rules are without any legal basis.

4.3 Besides, according to the learned counsel for the petitioner, the impugned sale is an inter-state sale originated from the State of Telengana and transactions in the nature of inter-state trade and commerce, falling under Section 3(b) of the CST Act, and hence, there is no scope for levy of tax in the State of Tamil Nadu.

4.4. Adding further, learned counsel for the petitioner would submit that in view of the fact that there is no tax liability on the impugned transactions in the State of Tamil Nadu, there is no question of attempting to evade payment of tax attracting levy of tax and compounding fee under Section 72(1)(a) of the Act.

4.5. Besides, according to him, when the movement of goods from Telengana to Trichy is accompanied with proper documents prescribed under the Act, the action of the respondent in detaining the goods is unsustainable.

Basing on these, the learned counsel for the petitioner has sought for allowing of the writ petitions.

5. The learned Additional Government Pleader (Taxes) on the other hand would submit that the transactions emanated from Telengana to Trichy. The petitioner purchased the goods, brought down to Tamil Nadu and thereafter supplied the same to Trichy, treating it as local sale and since the transaction is not supported by valid documents, the goods came to be detained. In order to evade tax payment, the petitioner has not raised the local sale bill in the name of

Tvl.G.R.Thangamalai and hence the goods are detained by the respondent.

6. The learned counsel for the petitioner would submit that the petitioner is willing to pay one time tax and on such payment, the goods detained may be directed to be released.

7. In view of the submissions made by the learned counsel for the petitioner that the petitioner is willing to pay one time tax and in order to give a quietus to the issue, for the purpose of release of goods, on payment of one time tax viz., Rs.61,736/-, Rs.60,988/- and Rs.60,534/- respectively by the petitioner, the respondent shall release the goods forthwith along with the respective goods vehicles. With regard to compounding fee, it is always open to the petitioner to challenge the same in the manner known to law.

With the above directions, the writ petitions are disposed of. No costs. Connected miscellaneous petitions are closed.

rg

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

The Deputy Commercial Tax Officer
Katpadi Check Post, Katpadi

+ 1 cc to Mr.Joseph Prabakar, Advocate SR 47357

gj(co)
prk3/9

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