IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.27918 of 2015

JSW Steel Limited
Salem Works
Pottaneri
Salem - 636453 [Petitioner]

Vs

The Deputy Commercial Tax Officer
Kandamangalam Check Post
Linga Reddy Pallayam. [Respondent]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the Respondent in his Proceedings in Goods Detention Notice No.3577 dated 31.08.2015 and quash the same and direct the Respondent to release the goods.

For petitioner : Mr.Adithya Reddy
For respondent : Mr.S.Kanmani Annamalai, AGP(T)

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 petition is taken up for disposal.

2. This writ petition has been filed challenging the proceedings of the respondent in Goods Detention Notice No.3577 dated 31.08.2015 and to direct the respondent to release the goods.

3. The petitioner Company is a very large player in the steel manufacturing industry with an international reputation. The Salem branch of the petitioner Company sold 16 MT of alloy steel bars to Sundaram Fasterners Ltd., Pondicherry, which were handed over to a third party transporter for transport to the buyer's premises in Pondicherry. In the invoice covering the sale, the name of the

consignee in Pondicherry has been clearly mentioned, so also appears on the package containing the goods. According to the petitioner, the Goods Vehicle bearing No.TN 29 AZ 5761 was intercepted by the respondent at Kandhamangalam Check Post on 31.08.2015 at 11.40 a.m, and the goods were detained on the basis that the goods moved from Mecheri, Mettur to Pondicherry, but the E-Transit Pass covered consignee address as JSW Steel Ltd., Depot, Pune and a notice dated 31.08.2015 was issued demanding tax at the rate of 5% on the value of the goods along with compounding fee. Aggrieved over the same, the petitioner is before this Court.

4.1 The learned counsel for the petitioner submitted that the respondent ought to have seen all the documents accompanying the goods, which indicate that the goods were meant for delivery at Pondicherry. When that being the position, mentioning wrongly the destination as Pune in the transit pass, does not violate any provisions of the TNVAT Act and does not lead to presumption of evasion of tax or local sale, when admittedly the goods were meant for delivery outside the State.

4.2 That apart, according to the learned counsel for the petitioner, the respondent ought not to have deviated from the instructions of the Principal Secretary and Commissioner of Commercial Taxes dated 16.06.2014, wherein it is specifically instructed that before passing final orders under Section 70(2)(c) has to verify the records and come to the conclusion that the goods did not actually moved to other states.

4.3 Besides, according to the learned counsel for the petitioner, the respondent ought to have seen that Section 71(3)(d), (e) and 71(5)(a) have no application to the facts of the case, since the petitioner's goods were accompanied with all the documents including sale invoice.

4.4. Adding further, learned counsel for the petitioner would submit that there is violation of principles of natural justice in coming to the conclusion that the petitioner Company has intended to evade Sales Tax on the sales in question without giving any opportunity.

4.5. Besides, according to the learned counsel for the petitioner, the respondent has grossly erred in demanding not only payment of tax, but also payment of compounding fee as conditions for release of the goods.

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

5. The learned Additional Government Pleader (Taxes) on the other hand would submit that the transactions emanated from Mecheri, Mettur to Pondicherry, but the 'e' transit pass has the consignee

address as JSW Steel Ltd., Depot, Pune and hence, since the transaction is not supported by valid documents, the goods came to be detained.

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.60,349/-by the petitioner, the respondent shall release the goods forthwith. 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 petition is disposed of. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

The Deputy Commercial Tax Officer
Kandamangalam Check Post
Linga Reddy Pallayam.

1 cc to Mr.Adithya Reddy , Advocate Sr.No.47807

W.P.No.27918 of 2015

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