IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.31549 of 2015

CMR Toyotsu Aluminium India Private Limited [PETITIONER]
Rep by its Authorised Signatory
Plot No.A-4 & A-5 Sipcot Industrial Park
Pillaipakkam Village
Sriperumbudur
Chennai 602 105

Vs

Commercial Tax Officer
Enforcement Wing Roving Squad
Vellore, Vellore District

[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 and quash the illegal goods detention notice issued in G.D. No.582/2015-16 dt 1.10.2015 and direct the respondent to release the goods.

For petitioner : Mr.C.Baktha Sironmoni

For respondent : Mr.V.Haribabu, AGP(T)

O R D E R

Heard the learned counsel for the petitioner and Mr.V.Haribabu, 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 Goods Detention Notice issued in G.D. No.582/2015-16 dated 1.10.2015 and to direct the respondent to release the goods.

3. The petitioner Company, registered under the Tamil Nadu Value Added Tax Act, 2006 with TIN No.33411668848 and CST No.1125937 is engaged in the business of purchase of non ferrous metals in the state and after the process of smelling, the petitioner is manufacturing Aluminium Alloy, which were sold as Ingots. For the said sales, the petitioner has collected VAT tax at 5% and pay taxes to the State Government by filing For I monthly returns electronically. The petitioner is also paying Central Excise duty at 12.5% for the goods manufactured and sold in this State. The petitioner has also received non ferrous scraps from M/s Sanjivini Non Ferrous Trading Pvt. Limited, Sriperumbudur, Kancheepuram District for conversion into Aluminium Alloys, and after conversion the same would be sent to Bangalore office of the said party, by charging 12.5% as labour charges. On 01.10.2015, after conversion work, when the Aluminium Alloy Ingots of 8604 Kgs were moved from Chennai to Bangalore, as per delivery note in Form JJ Sl.No.524 dated 30.09.2015, the goods were detained by the respondent by issuing the impugned goods detention notice dated 01.10.2015 for the following reasons:

> "1. The goods transported from Chennai to Bangalore defective documents.
>
> 2. Form JJ raised as return to the customer after job work. But no valid records to prove such job work sent to the dealer.
>
> 3. Absence of valid invoice it is treated as sales to verify the genuineness of transaction and to protect leakage of Government revenue the goods is detained with vehicle at Ranipet office with their own risk".

Aggrieved over the same, the petitioner is before this Court.

4.1 The learned counsel for the petitioner submitted that the respondent ought not to have detained the goods when the saem are transported to other State with a valid delivery note in Form JJ as per Sections 68 and 69 of the TNVAT Act. Further, according to him, when the goods are supported by documents such as Excise Invoice No.CTA/15-16/1459 dated 30.09.2015, as there is no sale involved, no sales invoice can be issued and hence the petitioner issued Form JJ delivery note to transport the goods. That apart, according to the learned counsel, the goods transported are supported by E-Sugam Certificate issued by Karnataka State Sales Tax Department to permit the goods to enter in that State. Besides, there was no evasion of any sales tax or an attempt to evade any tax and therefore, the respondent ought not to have detained 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 since the goods transported were not accompanied with valid documents, the goods were detained.

6. At this juncture, the learned counsel for the petitioner would submit that the petitioner is willing to pay one time tax which may be quantified by the respondent 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, the respondent is directed to intimate the quantum of tax to be paid on receipt of a copy of this order to the petitioner within a period of one week from today and on such payment being made by the petitioner, the goods detained are directed to be released forthwith. With regard to compounding fee, if any, it is open to the petitioner to challenge the same in the manner known to law.

With the above directions, writ petition is disposed of. No costs.

rg

Sd/-
Assistant Registrar

/ True Copy /

Sub-Assistant Registrar

To

1 Commercial Tax Officer
Enforcement Wing Roving Squad
Vellore, Vellore District

+1 C.C. to MR.C.BAKTHASIROMON, Advocate in Sr.No.54195

+1 C.C. to SPECIAL GOVERNMENT PLEADER (TAXES),IN SR.NO.54218

W.P.No.31549 of 2015

PAA(CO)
Sd : 07/10/2015