IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.31975 of 2015
and M.P.No.1 of 2015

Ganesh Electricals ...Petitioner

Rep. by its Proprietor
No.1 First Floor
New Street Shakthi Nagar
Porur Chennai-116.

Vs

The Commercial Tax Officer
Roving Squad (Enf)
Greams Road, Chennai-6.
...Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records of the respondent in his Proceedings in Goods Detention Notice No.1026/2015-16 dated 01.10.2015 and quash the same and direct the respondent to release the goods.

For Petitioner : Mr.Adithya Reddy
For Respondent : Mr.V.Haribabu, AGP(T)

O R D E R

Heard the learned counsel appearing for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader, (Taxes), who took notice for the respondent and with their consent, the main writ petition itself is taken up for disposal.

2.The writ petition has been filed under Article 226 of the Constitution of India challenging the Goods Detention Notice No.1026/2015-16 dated 01.10.2015 and to direct the respondent to release the goods.

3. The petitioner, who is a dealer in electrical equipments, registered under the TNVAT Act with TIN No.33810921728. According to the petitioner, Vestas Wind Technology India Private Limited, a well known MNC, had placed an order for supply of MV panel for their business purpose. Accordingly, the petitioner despatched the panel

to the said Company through a lorry bearing No.TN 22 AD 3206 on 01.01.2015 along with necessary documents. Further, according to the petitioner, the panel consists of different parts viz., Air circuit breaker, moulded case, circuit breaker etc., which are packed separately to be assembled into one main panel at the site of the customer. When the goods were in transit to the customer's site in Sholinganallur from the petitioner's office in Porur, the respondent detained the goods were detained on 01.10.2015 at 04.00 p.m. for the following reason:-

> "1. During course of vehicle check the consignor Tvl.Ganesh Electricals carrying LT Panels, 4 Nos to the consignee Tvl.Vestas Wind Technology India Pvt. Ltd (33810921728). But, consignor raised invoice for 1 No. for the value of Rs.19,27,126 @ 14.5%. They are hiding other 2 panels in the consignor then the goods was detained with vehicle. After physically verified for the value.
>
> 2. The Form JJ the Vehicle No. not mentioned and they mentioned approximate value in Form JJ and Invoice copy they mentioned Rs.19,27,126/-".

According to the petitioner, the above reasons for detention of goods are erroneous. The respondent has assumed that there are 4 panels in the vehicle, in fact, the parcels are nothing but different components of the same panel, which are to be assembled at the customer's side. Further, the defects pointed out in Form JJ are wrong and mere fact of non mentioning the vehicle number in Form JJ would not amount to violation of provisions of the TNVAT Act and does not lead to any presumption of evasion of tax. Aggrieved over the impugned detention notice, the petitioner is before this Court.

4. The learned counsel for the petitioner submitted that the respondent has erred in coming to the conclusion that there are 4 panels in the vehicle, whereas the parcels are nothing but different components of the same panel which are to be assembled at the customer's site. Further, according to him, when the goods were accompanied with valid documents, detention of goods is unsustainable.

5. Adding further, 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, goods may be directed to be released and as far as compounding fee is concerned, liberty may be given to the petitioner to adjudicate the same.

6. The learned Additional Government Pleader (Taxes) submitted that a direction may be given to the respondent to quantify the tax to be paid by the petitioner and on such payment, goods may be directed to be released.

7. This Court has considered the submissions made by the learned

counsel on either side and perused the materials available on record.

8. Admittedly, the goods are detained from 01.10.2015. Till date, tax has not been quantified. Hence, for the purpose of release of goods, the respondent is directed to quantify the tax to be paid by the petitioner in consultation with the assessing authority and intimate the same 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. As far as the compounding fee is concerned, it is open to the petitioner to adjudicate the same in the manner known to law.

The writ petition is disposed of with the above direction. No costs.

Connected miscellaneous petition is closed.

-Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer
Roving Squad (Enf)
Greams Road, Chennai-6.

+1 cc to Mr.AdithyaReddy,Advocate(sr.54793)

W.P.No.31975 of 2015

SVI(co)
cp 09/10/2015