IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.14251 of 2016 &
W.M.P.No.12446 of 2016

M/s Larsen & Toubro Limited
rep. by Manager (Corporate Indirect Taxes)
Nirvaloor Village, Kancheepuram District
.. Petitioner

..Vs..

1.The Deputy Commercial Tax Officer
Ranipet Check Post (outward)
Serkadu 632 115, Vellore District.

2.The Joint Commissioner (Enforcement)
Vellore, Vellore District.
.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the impugned proceedings in GDN.Notice No.2501/2016-17dated 06.04.2016, by the first respondent herein under section 72(1)(a) of the TNVAT Act, 2006, from the files of the second respondent herein and quash the same.

For Petitioner : Mrs.Aparna Nandakumar

For Respondents: Mr.S.Kanmani Annamalai
Addl. Government Pleader

O R D E R

Heard Mrs.Aparna Nandakumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice on behalf of the respondents. By consent, the Writ Petition itself is taken up for final disposal.

2.The petitioner has come forward with this Writ Petition challenging the Goods Detention Notice dated 06.04.2016. Earlier the petitioner had approached to the notice of this Court by filing a Writ Petition in W.P.No.13395 of 2016, in which, the petitioner sought for quashing the earlier Goods Detention Notice dated 01.04.2016. The said Writ Petition was disposed of by directing the petitioner to pay 'one time tax', which the petitioner has paid before the Assessing Officer and the goods were released.

3.After receipt of the first Detention Notice dated 01.04.2016, the petitioner submitted a reply on 02.04.2016. It is thereafter, the second compounding notice dated 02.04.2016 was issued. After which, the petitioner gave another representation on 04.04.2016. Though such representation was given, once again the authority issued another compounding notice on 06.04.2016, which is challenged in this Writ Petition.

4.Before going into the contentions raised by the first respondent in the counter affidavit, it has to be seen as to what was the reason for detaining the goods at the first instance while issuing goods detention notice. The reason assigned in the notice was that the goods are transported from Chennai to Madhya Pradesh and the amount quoted in the invoice and in the transit pass were not relevant to each other and the value of the invoice was more than the transit pass value i.e. three times. For that reason and in order to safeguard Revenue of the Government, the goods were detained.

5.The petitioner's explanation was that the goods were covered under a single invoice dated 31.3.2016, bearing Invoice No.01788 for a total value of Rs.91,80,000/-. Since the consignment was very bulky, they had to be transported in three vehicles, bearing Registration Nos.MP09HG3367, RJ48GB0391 and RJ27GA2323 and separate Form LL were generated for all the three vehicles and the assessable value of the cargo for all the three vehicles were separately mentioned and a certificate to the said effect was issued by the petitioner on 31.03.2016.

6.So far as the two vehicles bearing with Registration Numbers RJ48GB0391 & RJ27GA2323, have passed the Tamil Nadu Check Post and they were carrying only photostat copies of the invoice, but accompanied by the original Form LL. So far as the present consignment is concerned, the only reason mentioned in the Detention Notice dated 01.04.2016, was that there was variation in the quantity. That was explained by the petitioner by reply dated 02.04.2016. However, the first respondent without reference to the reply, issued a compounding notice on the same day i.e. 02.04.2016, for a different reason, stating that there was no valid transit pass available to transport the goods. Once again the petitioner gave an explanation on 04.04.2016, reiterating all the facts. Without even referring to the said reply, once again the impugned compounding notice dated 06.04.2016 has been issued on the ground that there was no valid transit pass. The said stand was reiterated in the counter affidavit also.

7.Thus, it is evidently clear that the entire proceedings are out of total non-application of mind. The petitioner has clearly explained as to why the consignment covered in the single invoice was split up into three. The respondent has not disputed the fact that two of the consignments have already moved from the State of Tamil Nadu and so far as the impugned consignment is concerned, it was accompanied by proper documents and the explanation given by the petitioner for the variation in the quantity was reasonable and there is nothing on record to show that the said explanation was false. The Invoice Number in the Form LL, has been correctly shown. Therefore, there is absolutely no ground for detaining the cargo or issuing the Detention Notice or compelling the petitioner to compound, especially when no offence had been committed by the petitioner. Hence, it is held that the impugned Detention Notice is wholly without jurisdiction and illegal.

8.In the result, the Writ Petition is allowed, the impugned detention notice is quashed and the petitioner is given liberty to approach the Assessing Officer to adjust the 'one time tax' paid by the petitioner as against their regular tax dues. No costs. Consequently,connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III )

/true copy/

Sub Asst. Registrar

rpa

To

1.The Deputy Commercial Tax Officer
Ranipet Check Post (outward)
Serkadu 632 115, Vellore District.

2.The Joint Commissioner (Enforcement)
Vellore, Vellore District.

1 cc to M/s. Aparna Nandakumar, Advocate, Sr. 63560
1 cc to Spl.Government Pleader, Sr. 63893

W.P.No.14251 of 2016

NM (CO)
kk 30/11