IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.31061 of 2016
and
W.M.P.No.26931 and 26932 of 2016

M/s. Doosan Infracore India Pvt. Ltd.,
rep. by its Authorized Signatory
Mr.N.Krhishna Kumar,
No.42, Pathukannu Road,
Thondamannatham Village,
Villinaur Taluk,
Puducherry - 605 502. ...Petitioner

Vs

1. The Commercial Tax Officer,
Roving Squad,
O/o. Deputy Commissioner (CT) Enforcement,
Villupuram.

2. The Assistant Commissioner (CT)
Alandur Assessment Circle, Chennai. .Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the first respondent, in G.D.No.1155/2016-17, dated 26.08.2016, and to quash the same as arbitrary, without jurisdiction being ultravires to the statutory provisions of the Tamil Nadu Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.K.Venkatesh
Government Advocate(Taxes)

O R D E R

Heard Mr.V.Sundareswaran, learned counsel appearing for the petitioner, and Mr.K.Venkatesh, learned Government Advocate, accepting notice on behalf of respondents. With consent on either side, the Writ Petition itself is taken up for disposal.

2. The order, impugned in this Writ Petition is a compounding notice, issued by the first respondent, dated 26.08.2016. This notice is pursuant to a vehicular check, carried at Thiruchitrambalam, on 24.08.2016, at 5.30 p.m. where, the Vehicle bearing No. PY 01 AG 3669, carrying two excavators, was checked to ascertain as to whether proper documents are accompanying the movements of the goods from Pulichappallam to Puducherry. On verification of records, available with the driver of the Vehicle, it was found that the following documents were accompanying the goods:-

i) Sattva Hi Tech & Conware Private Limited, Panchavadi Complex Pullichapalayam, Gate pass out 16/EBDDP 00538, dated 24.08.2016.

ii) Bill of Entry For EXBOND 6463393, DATED 23.08.2016 Xerox Copy.

and

iii) Commercial Invoice No.10193679, dated 27.04.2016 Xerox Copy.

3. After taking note of the available documents, the first respondent issued a goods detention notice, stating that two excavators moved from Pulichappallam to Puducherry (Thondamanatham) and the goods, which were imported from Belgium, moved without Form KK Bill Invoice Chennai delivery made Puducherry, no documents produced, and moved without documents. In this regard, the allegation was that goods moved from Pulichappallam to Puducherry, and it was treated as an interstate transaction, and the goods also being imported goods, the same were detained, as it was not accompanied with proper documents. Within two days, the impugned compounding notice has been issued, computing the tax and compounding fee, and the petitioner was directed to pay the amount, so demanded.

4. The petitioner's stand is that, there is no dispute to the fact that the goods were imported goods, and they were kept in a bonded warehouse at Puducherry, and the goods were debonded and taken to the petitioner's warehouse at Thondamanatham, in Puducherry, and therefore, treating the said transaction as interstate transaction is erroneous.

5. In para No.4 of the counter affidavit, the first respondent has taken a stand that, actually Pulichampalayam lies in the boundary of Tamil Nadu, Vanur Taluk, Villupuram District, and the goods vehicle was intercepted in the jurisdiction of the respondent only.

6. On the last hearing, this Court directed the first respondent as well as the learned Government Pleader appearing for Puducherry, to present in Court, in order to ascertain from them as to where, Pulichappallam is situated. Accordingly, both of them were present in Court. The learned Government Pleader, Puducherry, affirmatively stated that they have no jurisdiction to take action, since the goods were moved within the Union Territory of Pondicherry. The first respondent informed this Court that Pulichappallam lies in the boundary of Pondicherry. Therefore, it has to be ascertained as to whether the goods moved from Puducherry to Tamil Nadu.

7. It is not in dispute that, while transit from Pulichappallam to Thondamanatham, i.e., the place, where the petitioner's warehouse is situated, a small area, which lies in the Tamil Nadu border has to be crossed, viz., Thiruchitrambalam, and that is where detention has been made.

8. The learned counsel appearing for the petitioner produced a copy of the answers given by the Hon'ble Ministry of Commerce and Industry, Government of India, to certain questions asked in the Lok Sabha on 24.07.2015. One of the questions appears to be with regard to Inland Container Depots (ICDs)/ Container Freight Stations (CFSs) and from the answer, it is seen that, in Puducherry, there are two Container Freight Stations, one of which is M/s.Sattva Hi-Tech and Conware Pvt. Ltd., and this is were the goods were bonded by the petitioner.

9. Thus, the said M/s.Sattva Hi-Tech and Conware Pvt. Ltd., is a custom free station/Container Freight Station, located at Puducherry. There can be no doubt to this issue, since this stand is taken by the Government of India. Similarly, in the Official Website of Trichy Customs, M/s.Sattva Hi-Tech and Conware Pvt. Ltd., situated at Pulichappallam, is shown to be within the Union Territory of Pondicherry. If that be the case, then the only thing, that has to be seen is as to where the goods were transferred. Admittedly, the goods have been taken to the petitioner's warehouse at Thondamanathm, which is within the limit of Villianur Taluk in Union Territory of Puducherry.

10. In the light of the above facts, the question of insisting upon the production of documents for movement of the goods from one State to another, would not arise. Though the first respondent takes a stand that Pulichappallam is in Tamil Nadu border, the invoice and the documents produced by the

petitioner are all documents pertaining to the Government of India, which shows that Pullichappalam is within the jurisdiction of Puducherry.

11. In the light of the above, the reasons for detention assigned by the first respondent is not tenable. Accordingly, the Writ Petition is allowed, the impugned order is set aside, and the respondents are directed to forthwith release the consignments from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Commercial Tax Officer,
Roving Squad,
O/o. Deputy Commissioner (CT) Enforcement,
Villupuram.

2. The Assistant Commissioner (CT)
Alandur Assessment Circle, Chennai.

+1 cc to Mr.V.Sundaresan Advocate sr 51804
+1 cc to M/s.Special Government Advocate tax sr 51825

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