IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.12.2016

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THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.40768 of 2016
and WMP No.34739 of 2016

BEP (India) Automotive Systems,
represented by its Authorised Signatory,
No.77, 1st Floor, 1st Cross Street,
Brindavan Nagar Main Road,
Valasaravakkam,
Chennai-600 081. .. Petitioner

vs.

The Deputy Commercial Tax Officer,
Roving Squad,
Kancheepuram. .. Respondent

Prayer : Writ Petitioner filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamu, calling for the records of the respondent in his Compounding Notice in G.D.No.25/2016-2017, dated 09.09.2016, and quash the same as illegal, unconstitutional and in contrary to the provisions of the TNVAT Act and direct the respondent to forthwith release the goods without demanding any payment of one-time tax or two-time compounding fee.

For Petitioner : Mr.R.Ganesh Kanna

For Respondent : Mr.K.Venkatesh,
Government Advocate

ORDER

1. By virtue of this writ petition challenge is laid to the order dated 09.09.2016 passed by the respondent, i.e., Deputy Commercial Tax Officer.

2. This is a second round of litigation. In the earlier round, the petitioner had approached this Court via W.P.No.31991 of 2016. Via the writ petition, challenge was laid by the petitioner to the Goods Detention Notice dated 02.09.2016.

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2.1. The said writ petition was, however, withdrawn with liberty to the petitioner to challenge the Compounding Notice, if, issued by respondent, at a later point in time.

2.2. The present round of litigation is, therefore, now commenced, qua the order dated 09.09.2016, whereby, the respondent has given an opportunity to the petitioner to compound the offence under Section 72(1)(a) of the Tamil Nadu Value Added Tax Act, 2006, (in short "the 2006 Act"), by paying the compounding fee amounting to Rs.8,85,204/-.

3. The challenge to the compounding notice, thus, arises in the background of the following brief facts :

3.1. The petitioner claims to be a registered dealer under the Maharashtra VAT Act, having its principal place of business in Pune.

3.2. It is the case of the petitioner that, though, it is not a registered dealer in the state of Tamil Nadu, it operates out of a branch office, which is situate at the following address : No.77, 1st Floor, 1st Cross Street, Brindhavan Nagar Main Road, Valasaravakkam, Chennai-600 087 (hereinafter referred to as "Valasaravakkam Office".

3.3. The petitioner submits, based on a purchase order dated 30.10.2015 raised by its customer, i.e., Daimler India Commercial Vehicles (in short "Daimler"), sale was effected in favour of the said customer by its office located in China, in respect of the equipment referred to as : "Heavy Duty Roll and Brake Tester" (in short the "Equipment").

3.4. The stand of the petitioner is that the sale was consummated vide invoice dated 03.05.2016, and since, the import into the country was made under a Zero Duty EPCG Scheme, no duty was levied on the aforementioned Equipment.

3.5. It is further averred that as per the terms and conditions of the sale, the petitioner was obliged, albeit, within the warranty period, to replace the parts, which went into the Equipment.

3.6. The petitioner claims that one such part, which is referred to as : 'Drive Dyno Frame' had to be replaced, as the same had got damaged and, the claim made, was within the warranty period.

3.7. It is stated that Daimler made this request, via an e-mail dated 25.08.2016, to the petitioner's US office.

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3.8. It is, in these circumstances, that the replacement part was imported into the country and was received at the Chennai Airport.

4. The petitioner submits that, admittedly, it had filed requisite documents vide bill of entry dated 31.08.2016, and, while clearing the replacement part paid the customs duty equivalent to Rs.3,65,884/-.

4.1. As per the stand of the petitioner, the replacement part was to be transported to the customers factory, i.e., Daimler's factory, located at Oragadam. It was, while the replacement part was being transported to Oragadam, that, it was intercepted and detained.

4.2. As indicated above, the Goods Detention Notice dated 02.09.2016, was issued to the petitioner. The same was challenged, as alluded to by me, hereinabove. The writ petition was, however, withdrawn with liberty to file a fresh writ petition after compounding notice was issued.

5. The petitioner, in support of the averments made above, has relied upon a letter of Daimler dated 16.09.2016, which is, supportive of the assertions made on its behalf before me. In brief, Daimler has indicated to the respondent that the replacement part was ordered by it, and that, there was no sale involved in the supply of the said part.

6. Quite clearly, this letter, the respondent could not have taken into account, while passing the impugned order, which is dated 09.09.2016, as the letter of Daimler, which is dated 16.09.2016, would have been received by him only after the impugned order was passed.

7. To be noted, while issuing notice in the writ petition, Mr.K.Venkatesh, who appears for the respondent, was called upon to take instructions in the matter.

8. I have put to Mr.K.Venkatesh, who appears for the respondent, as to whether this letter of Daimler would be important, in the respondent coming to a conclusion, one way or the other, as to whether, the impugned order ought to have been issued.

8.1. Given the stand taken in that letter, Mr.Venkatesh says that insofar as the respondent is concerned, it could re-visit the issue, and thereafter, issue a fresh order, taking into account the material supplied by the petitioner's customer, i.e., Daimler.

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9. Accordingly, the impugned order is set aside. The petitioner via its representative will appear before the respondent on 20.12.2016 at 11.00 a.m.

9.1. The petitioner will be at liberty to place further material before the respondent, to buttress its stand, which has been taken before me, in the writ petition.

9.2. Needless to say, the respondent will pass a fresh order, after taking into account any further material, which, the petitioner may file before him. The petitioner, will file the additional material on or before 13.12.2016.

10. The writ petition is disposed of with the aforesaid direction. The respondent will pass a fresh order as expeditiously as possible, though, not later than, six weeks from the date of hearing. However, there will be no order as to costs.

10.1. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commercial Tax Officer,
Roving Squad,
Kancheepuram.

+1cc to Mr.A.Ravichandran, Advocate Sr.71869
+1cc to the Special Government Pleader Sr.72054

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W.P.No.40768 of 2016

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