IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU.

WRIT PETITION No.8086 of 2017
and W.M.P.No.8873 of 2017

M/s.Jaypee Engg & Hydraulic Equipments Co., Ltd.,
Rep. By its Director Mr.Akshay Agarwal,
No.24, Strand Road, Kolkata 700 001,
West Bengal. .. Petitioner

Vs.

The Deputy Commercial Tax Officer,
Katpadi Check Post,
Katpadi, Tamilnadu. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records and quashing the detention notice in Goods Detention Notice No.1680/2016-17 dated 22.03.2017 and the consequential compounding notice G.D.No.1680/2016-17 dated 23.03.2017.

For Petitioner : Mr.N.Inbaraj
for Mr.J.Joseph
For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

The petitioner is aggrieved against the Goods Detention Notice dated 22.03.2017 and the consequential compounding notice dated 23.03.2017.

2.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

3.The case of the petitioner is that the proceedings initiated by the respondent for detaining the goods and issuing a demand for making the one time tax and compounding fee are totally unwarranted, since there is no sale involved in the present case, as the goods are only returned by the buyer to the seller on the reason that the goods supplied are not satisfactorily performing. The petitioner before this court is the seller of the goods having their registration office at Kolkata.

4. It is the case of the petitioner that the goods sold through the invoices dated 25.03.2016 and 03.05.2016 by the petitioner to the buyer viz., one Sree Saravana Transports, Thoppukadu, Salem District, were returned by the said buyer on 20.03.2017, by raising a Delivery Challan No.005 dated 20.03.2017. Therefore, it is contended that there is no tax liability involved in this case in the absence of any sale taken place within the State of Tamilnadu. In any event, as the petitioner was issued with a compounding notice, wherein the tax liability and compounding fee are imposed on the petitioner, it is for them to challenge the same before the Revisional Authority by raising all the points, which, in my considered view, are the factually aspects of the matter necessarily to be gone into and decided by the fact finding authority. However, for the purpose of releasing the goods, the learned counsel for the petitioner submits that they would furnish bank guarantee for the one time tax liability of Rs.1,36,200/- to the satisfaction of the respondent.

5.Considering the facts and circumstances of the case and considering the claim of the petitioner that the goods are transported by way of return from the buyer to the seller and considering the fact that all these factual aspects of the matter have to be gone into and decided by the Revisional Authority, I am of the view that the following order will take care of the interest of both parties. Accordingly, the writ petition is disposed of as follows:

a) The petitioner shall furnish a bank guarantee for a sum of Rs.1,36,200/- to the satisfaction of the respondent immediately on receipt of copy of this order;

b) On receipt of such bank guarantee, the respondent shall release the goods forthwith;

c) It is open to the petitioner to challenge the order imposing the tax and compounding fee before the Revisional Authority in the manner known to law.
No costs. The connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

vri

To

The Deputy Commercial Tax Officer,
Katpadi Check Post,
Katpadi, Tamilnadu.

+1 cc to the Special Government Pleader Taxes sr 21599
+1 cc to Mr.I.Joseph Advocate sr 21516

W.P.No.8086 of 2017

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