IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHNDRABAABU

Writ Petition No.10109 of 2017
and
WMP.Nos.11097 & 11098 of 2017

M/s.Ganges International Pvt. Ltd.,
Represented by its Manager - Legal
Mr.V.Paneerselvam
No.163/1, K Sons Complex, 3rd Floor,
Broadway, Chennai-600 108. ... Petitioner

Vs.

1. The Deputy Commercial Tax Officer
Roving Squad, Villupuram.

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

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent in G.D.No.1231/2017-2018 dated 19.04.2017 and quash the same as issued without authority of law and further direct the respondent to release the detained consignment of Steel Coil to the petitioner without imposing any condition of payment of one time tax or two time of tax as compounding fee.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.K.Venkatesh
Government Advocate

ORDER

The petitioner is aggrieved by the compounding notice dated 19.04.2017 issued by the first respondent, wherein the petitioner was called upon to pay 5% tax of Rs.37,250/- and compounding fee of Rs.74,500/- on the reason that the Value Added Tax at the rate of 5% has not been collected and instead Central Sales Tax at 2% alone has been collected. In other words the crux of the contention of the first respondent to issue the impugned communication is that the subject matter transaction is a sale, taken place within the State of Tamil Nadu attracting the tax under the Value Added Tax at the rate of 5% and not the Inter State Sale as claimed by the petitioner.

2. Mr.P.Rajkumar, learned counsel appearing for the petitioner submitted that there is no reason for detaining the goods based on such erroneous presumption made by the first respondent as if the sale had taken place within the State of Tamil Nadu. He further submitted that the very invoice which accompanied the goods would show that the subject matter goods were moving from the seller viz., Steel Authority of India Ltd., from Salem to the petitioner's office at Pondicherry. He further pointed out that all the necessary documents viz., Goods Consignment Note, invoice and Transit Pass were made available for the inspection of the first respondent and in spite of such production, the first respondent has chosen to pass the impugned order. The learned counsel appearing for the petitioner further submitted that at any event, the first respondent cannot take the role of the Assessing Authority and decide the issue as to whether the sale is Inter State sale or local sale, more particularly when such issue has to be considered and decided, if at all the same arises for consideration, only by the jurisdictional Assessing Authority of the seller viz., the Steel Authority of India Ltd.,

3. On the other hand, the learned Government Advocate for the respondents submitted that in the invoice, the purchaser's address was referred to as the place at Chennai and therefore, the first respondent had every reason to believe that the sale had taken place within the State of Tamil Nadu.

4. Heard both sides.

5. It is seen that the first respondent had issued the impugned proceedings by treating the sale as a local sale. It is not the case of the first respondent that the necessary documents are not available in the vehicle which transported the goods. On the other hand it is admitted by the first respondent that the consignor is the Steel Authority of India Limited, Salem and on verification of records, the driver of the vehicle produced the Goods Consignment Notce, Invoice No. H 1 703 dated 18.04.2017 and Transit Pass dated 18.04.2017. It is seen that the first respondent, while considering the invoice, has taken note of the purchaser's address alone without looking into the dispatch address which is readily available in the invoice itself which shows that the goods are moving only to Pondicherry and not to Chennai. Therefore, as rightly contended by the learned counsel for the petitioner, it is evident that the goods

were moving from Salem to Pondicherry and such movement is supported by the material documents viz., Invoice, Consignment Note and Transit Pass. When those material documents are evidently showing the Inter State sale, the first respondent, that too being a Check Post Official, is not justified in over stepping his role and coming to the conclusion as if the sale is local sale, which in my considered view, is not the role of the Check Post Official and on the other hand it is for the Assessing Officer of the concerned assessment circle to consider and decide. Therefore I find every force in the contention raised by the learned counsel for the petitioner for release of the goods.

6. Accordingly, this writ petition is allowed and the impugned proceedings is set aside. Consequently, the first respondent is directed to release the goods forthwith. However, it is open to the first respondent to refer the issue to the concerned jurisdictional Assessing Officer of the Steel Authority of India Limited, if the first respondent still has a doubt with regard to the nature of the sale. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commercial Tax Officer
Roving Squad, Villupuram.

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

+1cc to Mr.Rajkumar, Advocate, S.R.No.24824
+1cc to the Government Pleader, S.R.No.25225

Writ Petition No.10109 of 2017

NRII(CO)
RS(26/04/2017)