IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.627 of 2017
and W.M.P.No.682 of 2017

M/S.Paramount Shipping Services Pvt. Ltd.
Rep. by its Director K.Rathnakumar
163, IIIrd floor, Thambu chetty street
Chennai-1. ... Petitioner

vs.

The Deputy Commercial Tax Officer
Kandamangalam checkpost
@ Lingareddypalayam
Villupuram District. ... Respondent

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus or any other appropriate writ by calling for the records of the respondent in his goods detention notice No.3741 dated 29.12.2016 and consequential compounding notice in G.D.No.3741/2016-17 dated 31.12.2016 and quash the same as illegal and direct the respondent to release the goods of Hub Body detained vide goods detention notice No.3741 dated 29.12.2016 immediately.

For Petitioner :Mr.S.Ramanathan

For Respondent :Mr.K.Venkatesh
Govt. Advocate

ORDER

1.Issue notice. Mr.K.Venkatesh, accepts notice on behalf of the respondent. With the consent of counsels for the parties, the writ petition is taken up for hearing and final disposal.

2.The petitioner, before me, is a Customs House Clearing and Forwarding Agent (in short 'the agent'), who has filed a writ petition to impugn the Goods Detention Notice dated 29.12.2016 and consequential Compounding Notice dated 31.12.2016.

2.1. Having regard to the aforesaid circumstance, I would have ordinarily returned the Writ Petition with a liberty to the Principal, i.e., Suzlon Energy Limited (in short 'SEL'), on whose behalf, the petitioner had acted, which led to the respondent passing the impugned orders to file a petition.

2.2. I have, however, allowed the prosecution of the Writ Petition, in view of the respondent's own conduct, to which I have made a brief reference hereafter.

2.3. In this behalf, one, notes, that the goods detention notice dated 29.12.2016 has been marked by the respondent only to the driver of the concerned vehicle, while the compounding notice dated 31.12.2016 has been directed, not only to the driver, but also to the petitioner and its principal, i.e., SEL.

2.4. Therefore, I am inclined, as indicated above, to entertain the present Writ Petition, on behalf of the agent, as it is equally aggrieved, if not more, by the impugned orders, while recognising the fact that the ultimate liability, if at all, under the TNVAT Act, 2006, would fall on the dealer, i.e., SEL.

3.Given the preface, briefly, the facts, which are required to be noticed for adjudication of the writ petition are as follows:

3.1 The petitioner i.e., the agent was acting for and behalf of an entity, by the name, SEL, which has one of its offices located at Thiruvandarkoil, Pondicherry-605 107.

3.2.It is the petitioner's case that the principal i.e., SEL had imported parts of wind operated electricity generators, which are known as "Hub Body", and that, in the course of movement of goods from the Chennai Port to Pondicherry, they were detained by the respondent.

3.3 Furthermore, the petitioner avers that this detention took place, on account of inconsistency in values reflected in Form KK and that which got mentioned in Form LL qua one lot.

3.4. As per the petitioner's version, four (4) KK Forms of even date i.e., 28.12.2016 had been filed. Each form was required to reflect the basic price amounting to Rs.37,01,648/- and the duty component, equivalent to Rs.2,85,952/-.

3.5. It is the petitioner's case that in one of the Forms i.e., Form bearing No.FKK281216000008657019, dated 28.12.2016, pertaining to trailer No.TN28AC9002, inadvertently, the basic price got reflected as Rs.27,01,648/- as against Rs.37,01,648/-. The table below will bring to fore the discrepancy, if, one were to compare the basic price given against Serial No.1, with that of which is set out vis-a-vis sernial Nos.2,3 and 4.

Sl.No.	Form KK No.	Date	Trailer	Basic Price	Duty	Total
1	FKK28121600008657019	28-12-2016	TN28AC9002	27,01,648	2,85,952	29,87,600
2	FKK2812160000656259	28-12-2016	TN21AU3672	37,01,648	2,85,952	39,87,600
3	FKK28121600008655964	28-12-2016	TN20AK3556	37,01,648	2,85,952	39,87,600
4	FKK28121600008655619	28-12-2016	TN28E1110	37,01,648	2,85,952	39,87,600

3.6. It is, thus, the petitioner's case, that because of the discrepancy, the subject goods, i.e., Hub Body was detained.

3.7. In support of the stand taken above, the petitioner relied upon the following documents:

i) The purchase order raised by SEL on its supplier i.e., Jiangsu Sinojit Wind Energy Technology Company Limited, China (in short 'JSL'), dated 24.10.2016.

ii) The Commercial Invoice bearing No.16JXMC041, dated 22.11.2016, raised on SEL.

iii) The Bill of Entry bearing No.: 7895234, dated 20.12.2016.

iv) Exemption Certificate, dated 13.12.2016, issued by the Ministry of New and Renewable Energy, Government of India.

v) The relevant Form KK bearing No.FKK28121600008657019, dated 28.12.2016, in which, the discrepancy has, apparently, crept in.

4. As against this, Mr.Venkatesh, relied upon the compounding notice, dated 31.12.2016, to demonstrate that the stand taken by the petitioner was not tenable.

4.1 Learned counsel submitted that, according to the respondent, there was not only a discrepancy in the value of the subject goods, but also there was a serious doubt with regard to the assertion that the subject goods had been sourced from China.

4.2 It was emphasized by the learned counsel that the subject goods had been under-valued, as their value had been pegged at Rs.29,87,599.50 as against a sum of Rs.39,87,599.50. Furthermore, it was submitted that an observation had been made in the impugned order with regard to the identity of the consignment as well.

4.3 This apart, my attention was drawn to the fact that the respondent had also observed in the impugned order that the subject goods were not covered in the declaration made in Form M M by the driver, as required under Rule 15(19)(b) of TNVAT Rules, 2007.

4.4 Mr.Venkatesh, thus, submitted that the conclusion reached in the impugned compounding notice were sound and sustainable.

5. I have heard the learned counsel for the parties for some time and perused the records.

6. What has clearly emerged and to that extent it is conceded, even by the petitioner, is that, in one of the Forms, i.e., Form No.FKK2812160000 8657019, dated 28.12.2016, the basic price was indicated as Rs.27,01,648/-. Therefore, the respondent is right in contending, that, inadvertently or deliberately, the value was understated.

7.This apart, there is material on record, which prima facie, does indicate that the subject goods were imported by SEL from JSL and that, in respect of the subject goods, a certificate has been issued by the Government of India, Ministry of New and Renewable Energy, granting exemption to SEL from payment of additional duty.

8.Therefore, the contention of the petitioner that the subject goods were detained, while they were being moved in the course of import, may perhaps, be right, subject, though, to further enquiry being made in that behalf.

9.Moreover, even if, the petitioner is held liable to pay tax under the provisions of TNVAT Act, 2006, on the ground that local sale was effected, the tax, if at all can, perhaps, be imposed only at the rate of 5%, being a part of a "Wind Mill used for generation of electricity". As per the provision obtaining in entry 150, Part B of the First Schedule of the TNVAT Act, 2006 read with Section 3(2) of the very same Act, the tax qua such goods can be levied only at the rate of 5%.

10.The impugned notice, however, seeks to levy the tax on the entire value of the subject goods i.e., Rs.39,87,600/-, which includes an element of duty, equivalent to Rs.2,85,982/-.

The tax, in the impugned compounding notice, has been calculated at the rate of 14.5% and is, accordingly, pegged at Rs.7,07,720/-. In addition thereto, compounding fee has also been levied at twice the rate of tax imposed, i.e., Rs.14,15,440/-.

11.Having regard to the fact that even according to the respondent, the value of the subject goods was understated by Rs.10,00,000/-, to my mind, interest of Revenue can be secured in the given facts and circumstances, if, the subject goods are directed to be released by imposing tax, for the moment, at the rate of 5% of understated value i.e., Rs.10,00,000/-, with a personal bond, being furnished for the balance amount of tax claimed, albeit, without prejudice to the rights and contentions of the petitioner.

11.1. It is ordered accordingly.

11.2. Thus, having regard to the circumstances indicated above and the submissions made by the counsels, I am inclined to direct the release of the subject goods, on deposit of tax, equivalent to 5% of Rs.10,00,000/-. This payment will be accepted by the respondent to the credit of the dealer i.e., SEL. In addition, a personal bond will be furnished by the authorised representative of the dealer i.e., SEL. On the fulfilment of the aforesaid conditions, the subject goods will be released to the petitioner.

11.3 Needless to say, the petitioner and/or dealer viz., SEL would have the right to raise all the contentions before the concerned adjudicating authority.

11.4 It is made clear that any observations made herein above, will not impact the consideration of the matter on merits by the Adjudicating Authority as and when steps are taken in that behalf by the petitioner and/or the dealer, i.e., SEL.

12.The writ petition is, accordingly, disposed of. Resultantly, the connected pending application is closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Deputy Commercial Tax Officer
Kandamangalam checkpost
@ Lingareddypalayam
Villupuram District.

+1cc to Mr.Ramanathan, Advocate Sr.2189
+1cc to the Special Government Pleader Sr.2491

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srg 10/01/2018