In the High Court of Judicature at Madras

Dated: 23.03.2017

Coram

The Honourable Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.6430 of 2017
and
WMP No.6936 of 2017

M/s.Alpha Industries,
Rep. By its Partner Mr.M.Abraham Roy,
No.1, Railway Colony Second Street,
Amanjikarai, Chennai 600 029.
.... Petitioner

Vs.

1.The Commercial Tax Officer,
Air Cargo, Vehicle Check Point,
Chennai 600 027.

2.The Deputy Commissioner (CT),
Enforcement (East), PAPJM Buildings,
Greams Road, Chennai 600 009.

3.The Assistant Commissioner (CT),
MMDA Colony Assessment Circle,
Chennai. ...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the first respondent in G.D.No.21/2016-17 dated 08/03/2017 and the consequential notice dated 13/03/2017, quash the same as illegal, ultravires of the provisions of the Tamilnadu Value Added Tax 2006 and further the first and second respondents to reimburse the demurrage charges demanded by the Air Port Authorities for illegal detention of goods from 08/03/2017 till the date and time of release of goods detained in G.D.No.21/2016-17 dated 08/03/2017.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

The petitioner is aggrieved against the proceedings of the first respondent dated 08.03.2017, detaining the petitioner's goods viz., a printing machinery and the consequential notice dated 13.03.2017, calling upon the petitioner to pay the tax and penalty totalling a sum of Rs.7,11,123/-.

2.The case of the petitioner in short, is as follows:-

The petitioner is a registered dealer and carrying on the business in printing since 40 years. Monthly returns are being filed before the third respondent regularly and the sales taxes are remitted without any default. The petitioner imported printing machineries from abroad through Chennai Airport Air Cargo Complex. It is for the petitioner's personal use and utilisation. Therefore, such import of goods does not attract sales tax, since there is no sale or purchase of the goods inside the State of Tamil Nadu. However, the first respondent detained the goods and issued the impugned goods detention notice on 08.03.2017, on the reason that the petitioner had not furnished the details in their return in respect of the two earlier imports of the printing machineries. The petitioner through letter dated 09.03.2017, informed the second respondent that the goods imported on 08.03.2017 is only a capital goods and not for sale and that the previous imports made are also capital goods not for sale. Therefore, the petitioner wanted the release of the goods. However, the first respondent issued the subsequent notice dated 13.03.2017 and called upon the petitioner to pay tax due of Rs.2,37,041/- and penalty of Rs.4,74,082/-, reiterating the very same contentions raised while issuing the goods detention notice. Thus, the present writ petition is filed challenging the above said orders and for release of the goods.

3.A counter affidavit is filed by the first respondent wherein it is stated that on verification in the Ice Gate Website, it is found that the petitioner had not declared the three imports made by them by Sea and Air on 15.09.2016, 04.10.2016 and 07.03.2017. Therefore, it is contended by the first respondent that the impugned proceedings have been rightly issued against the petitioner. However, it is admitted in the counter that the petitioner filed letter on 09.03.2017, wherein they claimed that the goods imported are capital goods and that they are not doing any trading business.

4.Mr.V.Sundareswaran, learned counsel for the petitioner submitted that the first respondent has no authority to detain the goods, when there is no sale or purchase of goods taken place inside the State of Tamilnadu so as to presume or assume that the petitioner has evaded the payment of tax. He further submitted that the goods are imported by the petitioner directly from the foreign seller and when the goods are imported and utilised by the petitioner for their personal consumption, the question of claiming tax and also imposing penalty does not arise that too by detaining the goods. He further contended that even assuming that there is non disclosure of previous imports made by the petitioner in their returns, still it is for the third respondent to look into that aspect and pass appropriate orders and not for the first respondent to make any conclusion and impose tax and penalty on the petitioner.

5.Per contra, the learned Government Advocate appearing for the respondent submitted that when the web report discloses that the petitioner has not declared the two imports made earlier in their returns, there is no illegality in passing the impugned orders.

6.Heard both sides.

7.The petitioner has imported a printing machinery through Chennai Airport Air Cargo Complex and the same was detained on 08.03.2017, on the reason that the petitioner has not disclosed two earlier imports of machinery made in the month of September and October 2016 by sea and air. Consequently, the first respondent, who is admittedly not the Assessing Authority in so far as the petitioner is concerned, has imposed the tax and penalty on the petitioner and demanded the same as stated supra. The petitioner claims that they are not liable to pay any tax, as there is no event of sale or purchase of goods taken place inside the State of Tamilnadu.

8.It is also not disputed by the first respondent that the said goods were detained at the time of import by the petitioner at the Chennai Airport Air Cargo Complex. When that being the factual position, I do not think that the first respondent, acting as a Check Post Officer, can finally conclude that the petitioner is liable for tax on the reason that they did not disclose the imports of two machineries on earlier occasions in their returns. At the best, the first respondent should have referred the matter to the jurisdictional Assessing Authority viz., the third respondent for taking appropriate proceedings against the petitioner, if the allegation made against the petitioner is based on certain materials.

9. In this case, the first respondent claims that the verification of the web site indicates that the petitioner has not disclosed such imports. Therefore, it is for the third respondent to look into this aspect and pass appropriate orders after issuing notice to the petitioner and giving them an opportunity of hearing.

9.Considering the claim of the petitioner that the machinery is imported for the petitioner's personal use and their specific case that there is no sale or purchase taken place inside the State of Tamilnadu, I am of the view that the first respondent cannot continue to detain the goods any more and on the other hand, the same has to be released to the petitioner, however, subject to the condition that the petitioner should give bank guarantee to the tune of Rs.2,37,041/- representing the tax claim, before the third respondent within a period of one week from the date of receipt of a copy of this order. On production of proof of furnishing of such bank guarantee before the third respondent, the first respondent shall release the subject matter goods forthwith. The third respondent shall issue notice to the petitioner and also give personal hearing and thereafter, decide the matter and pass appropriate orders within a period of four weeks thereafter. No costs. The connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

vri

To
1.The Commercial Tax Officer,
Air Cargo, Vehicle Check Point,
Chennai 600 027.

2.The Deputy Commissioner (CT),
Enforcement (East), PAPJM Buildings,
Greams Road, Chennai 600 009.

3.The Assistant Commissioner (CT),
MMDA Colony Assessment Circle,
Chennai.

+1cc to Mr.sundareswaran,Advocate for the petitioner sr.18736

+1cc to Special Government Pleader (Taxes)sr.18390

W.P.No.6430 of 2017

kj(co)
ss(24/3/2017)