IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.07.2017

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.5433 and 5443 of 2017
& W.M.P.Nos.5751 and 5772 of 2017

Jakson Engineers Limited,
Rep. by Business Manager Mr.Geoffrey Merdith.P,
39/12, Apeejay Business Centre,
Haddows Road, Nungambakkam,
Chennai - 600 006. ... Petitioner in both Writ Petitions

Versus

The Commercial Tax Officer, Roving Squad-II,
Office of the Deputy Commissioner (CT),
Enforcement (North),
No.1, Greams Road, CT Building,
Chennai - 600 006. ... Respondent in both Writ Petitions

Writ petitions are filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, to call for the records of the respondent in Compounding Notice G.D.No.666/2016-17/R.S.II dated 25.02.2017 & Compounding Notice G.D.No.670/2016-17/R.S.II dated 28.02.2017 respectively and to quash the same(Prayer in both WPs).

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

COMMON ORDER

Heard Mr.Joseph Prabakar, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who accepts notice on behalf of the respondent and with their consent, the writ petitions are taken up for final disposal.

2.The petitioner is before this Court challenging the two orders passed by the respondent which are infact Compounding Notices, levying compounding fee and demanding one time tax. The undisputed facts are that the petitioner was awarded a contract for establishment of Solar Power Plant Project to be located in the Neyveli Lignite Corporation Limited, Neyveli, Tamil Nadu, by the Ministry of Non Renewable Energy, Government of India. For the purpose of such project, the petitioner imported certain goods from Tianjin Renhui New Energy Technology Co., Ltd, China. The shipping documents show that the petitioner is the person who has purchased the goods which was discharged in the Chennai Sea Port. From the Chennai Sea Port, the Customs Agent generated Form -K.K and the goods were transported to Neyveli via road. At that time, it was detained by the Check Post Officer, who issued a Detention Notice dated 22.02.2017 and the grounds of detention, it was mentioned that on verification of Bill of Entry for Home consumption, the custom duty was paid by the petitioner and on verification of Form-KK, the consignment was moving to Tvl. NLC India Limited, Neyveli. The petitioner/ importer was a registered dealer in Noida, Uttar Pradesh and no further document produced in Sale Invoice. The original importer was registered in Noida, Uttar Pradesh, but the consignment was moved to Neyveli, Tamilnadu. As there is no inter-state movement of goods, in terms of Section 4(2) of the CST Act 1956, Tamilnadu is the appropriate State that can levy tax. Therefore, to verify the genuineness of transaction, the goods were detained along with Vehicle at Manjambakkam Truck Parking Yard, Manjambakkam and a detention notice was issued in Form No.41.

3.The petitioner submitted its objections dated 24.02.2017 detailed as under:

1. At the outset we, Jakson Engineers Ltd, would state that we are registered under the Tamil Nadu Valud Added Tax Act, 2006 with TIN33496381970 with the Assistant Commissioner, Nugambakkan Assessment Circle, Chennai 600 006.
2. You have stated that while Bill of Entry has been filed by us and the goods were moved to NLC along with Form KK. You have stated that no further document is produced as regards the sale (invoice).
3. We would state that Neyveli Lignite Corporation Limited, Neyveli, Tamil Nadu, had awarded a contract to us for setting up Solar Power Plant and the said work involves supply of solar Modules and Solar Modules supporting structures. We would state that we had imported the subject goods, namely, Solar Modules Mounting Structure, from Tianjin Renhui New Energy Technology Co., Ltd. China which are meant for supply to NLC, Neyveli.

4.

5. Accordingly, we filed the Bill of Entry in the Chennai port in our name and cleared these goods and upon clearance from the port these goods were directly consigned to NLC Ltd., Neyveli. In other words, while the movement of the subject consignment commenced in China, the said movement continued when the goods were cleared in the Chennai port and the said movement was to continue until the goods reached NLC Limited, at Neyveli. However, the said goods were intercepted and detained at the check post. Therefore, we would state that the documents which accompanied in the goods namely, invoice raised by the Chinese supplier, bill of entry in our name, Form KK and our letter dated 18.02.2017, among other documents which accompanied the consignment, are sufficient in terms of compliance under Section 67(5) of TNVAt Act 2006.

6. You have stated that we, Jaksons Engineers Ltd., the original importer is registered in Noida, Uttar Pradesh and that ther is no inter state movement of goods. We have explained above that this is a case of import of goods which is quite evident from the documents available with you and which documents, including bill of entry have been referred by you in Notice dated 22.02.2017. Therefore, when it is a case of import of goods, the question of inter-state movement does not arise.

7. You have referred to Section 4(2) of the CST Act 1956, and have stated that appropriate state can levy tax on the transaction if the movement of goods is is the state of Tamilnadu.

7.We would state that section 4(2) of the CST Act 1956 envisages a situation where the movement of the goods commence from a place within India. Whereas, as explained above, the transaction in question is import of goods and admittedly, the movement of goods commenced in China and the movement continued until the goods were detained at the check post. Therefore, we would state that the transaction question is covered under Section 5 (2) of the CST Act 1956 as sale in the course of import and accordingly the transaction is outside the purview of TNVAT Act 2006. Therefore, we would

> state that you have no jurisdiction to detain these goods. We would request you to take on above on record and release the goods immediately.

4.On receipt of the same, the impugned order has been passed and the only reason assigned by the respondent in the impugned order is that the importer is a registered dealer in the State of Uttar Pradesh and the imported goods were cleared from Chennai Port and moved to Tvl. NLC India Limited, Neyveli without any Sale Invoice and only with Form-K.K of the Clearing Agent to the Ultimate Buyer, Tvl. NLC India Limited, Neyveli being other than the original importer. Therefore it was held that the Tamil Nadu is the appropriate State to levy tax.

5.It is to be noted that the petitioner was entrusted with the work of establishing a Solar Power Project at Neyveli by the Government of India and the petitioner had been permitted to import the goods at the concessional/actual rate of duty based on Notification No.1 of 2011 CUS and Notification No.21 of 2012 CUS. To avail such benefit, the petitioner has executed a bond and unless the conditions stipulated in the bond are fulfilled, the Bill of Entry will not be closed. It is no doubt true that Form-KK contains the name of the importer as Tvl. NLC India Limited. The question would be as to merely because the name of Tvl. NLC India Limited is found in Form-KK which is electronically generated by the Shipping Agent, will it make the transaction, as a sale within the State without a Sale Invoice. It may not be necessary for this Court to decide that issue, for the simple reason that such decision could be made only by the Assessing Officer of the petitioner. Admittedly, the petitioner is a registered dealer within the State of Tamil Nadu registered on the file of the Assistant Commissioner, Nungambakkam Assessment Circle, Chennai with TIN No.33496381970. Therefore, the said Assessing Officer, who has to take a decision in the matter and it is not for the Check Post Officer to rule on the said issue, as it would amount to transgressing into the power of the Assessing Officer. The petitioner's case itself is that the movement from Chennai Port to Neyveli itself is pursuant to the conditions and it is an instance of contract between the petitioner and the Government of India and therefore, the question of taxing the transaction as a local sale would not arise and all that the Check Post Officer can look into is whether the consignment after clearance by customs on import is accompanied by a copy of the Bill of Entry, declaration in electronic Form-KK generated by Clearing and Forwarding Agent and trip sheet or log book, as the case may be, as per stipulations in Rule 15(14)(c) of the TNVAT Act, 2006.

6.Further, the learned counsel also referred to the letter of award which was executed in favour of the petitioner for completing the said work to establish that as per the terms of the contract, the goods were moved to Tvl. NLC India Limited as mentioned above. These issues have to be decided by the Assessing Officer and not by the Check Post Officer. At the time when the writ petitions were entertained, the petitioner without prejudice to the rights and conditions, paid one time tax and the consignment has been released.

7. In the light of the above reasons, this Court has no hesitation to hold that the levy of the compounding fee and demanding one time tax by the Check Post Officer on a interpretation made by him is without jurisdiction. Hence, on this technical ground, the impugned order is set aside with a direction to the Assistant Commercial Tax Officer, Nungambakkam Assessment Circle, Chennai, to complete the petitioner's assessment in respect of this transaction on the basis of returns filed by the petitioner. Since the one time tax has already been collected, the respondent is directed to forward the same and remit the amount to the account of petitioner's Assessing Officer, who shall retain the same and it shall abide by the order of assessment that may be passed by the Assessing Officer after considering all issues. With the above direction, the writ petitions shall stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

dn/rsi

To

1.The Commercial Tax Officer, Roving Squad-II,
Office of the Deputy Commissioner (CT),
Enforcement (North),
No.1, Greams Road, CT Building,
Chennai - 600 006.

2.The Assistant Commercial Tax Officer,
Nungambakkam Assessment Circle,
Nungambakkam, Chennai-34.
+1cc to Special Government Pleader sr.46229
+1cc to Mr.Joseph Prabakar,Advocate sr.46334

W.P.Nos.5433 & 5443 of 2017

lrs(co)
ss(19/7/2017)