IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.7626 of 2017
and
W.M.P.Nos.8328 & 8329 of 2017

M/s.Bauer - L & T Geo JV
Rep. by its Authorized Signatory
#979, Manapakkam, Chennai-600 022. ...Petitioner

Vs.

The Deputy Commercial Tax Officer
Air Cargo Vehicle Check Point
Chennai-600 027. ... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the impugned Goods Detention-cum-compounding notice in G.D.R.No.20022/2016-17 dated 25.03.2017 by the respondent herein from the files of the respondent herein, quash the same.

For Petitioner: Mrs.Aparna Nandakumar
For Respondent : Mr. S.Kanmani Annamalai
Additional Government Pleader (Tax)

O R D E R

Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Tax), takes notice on behalf of the respondent. By consent of the parties, the main writ petition itself is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the proceeding dated 25.03.2017 issued by the respondent, calling upon the petitioner to pay the tax and penalty, totally to the tune of Rs.1,09,41,969/- for the purpose of releasing the goods detained by the respondent on 24.03.2017, followed by issuance of the goods detention notice on the same day.

3. The case of the petitioner is that they are an Unincorporated Joint Venture firm, for the purpose of executing specific project at Polavaram for construction of Polavaram Dam

for the State of Andhra Pradesh and that they are having VAT registration in the State of Andhra Pradesh. It is their further case, that the goods detained by the respondent was imported through Chennai Airport Cargo Complex, only for the purpose of transporting the same to the project site at State of Andhra Pradesh and thus, there is no sale or purchase involved within the State of Tamil Nadu. It is the further contention of the petitioner that they need not pay any tax to the VAT authorities in the State of Tamil Nadu, as their liability, if at all, if any, would arise only within the State of Andhra Pradesh. Therefore, it is contended by the petitioner that the detention of the goods by the respondent, on the sole ground that the petitioner is an un-registered dealer in Tamil Nadu, cannot be sustained and consequently, the impugned demand also cannot be made.

4. The learned counsel appearing for the petitioner submitted that when the petitioner has made a detailed objections on 25.03.2017 in pursuant to the goods detention notice dated 24.03.2017, there is no discussion whatsoever with regard to such objections raised by the petitioner in the impugned order passed by the respondent. Thus, he submitted that the impugned order is liable to be set aside.

5. The learned Additional Government Pleader submitted that the impugned order came to be passed on the reason that the petitioner has imported the goods without having any registration within the State of Tamil Nadu and therefore the sale by the un-registered dealer by State of Tamil Nadu to the registered dealer at State of Andhra Pradesh has to necessarily be treated as local sales of inter-state sales. However, he fairly submitted that the reply given by the petitioner on 25.03.2017 seems to have been not considered by the respondent, as there is no discussion of such objections in the order impugned in this writ petition.

6. Heard both sides.

7. It is claimed by the petitioner that they are not liable to pay any tax within the State of Tamil Nadu, as no sale or purchase is involved within the State of Tamil Nadu. It is also claimed by the petitioner, that there is no inter-state sales, as alleged in the impugned proceedings and on the other hand, the petitioner, who is executing his project at Andhra Pradesh, has simply transferred the goods from Chennai Cargo Complex to the place at Andhra Pradesh for their own use and therefore the contention of the respondent is not correct. Further the perusal of the goods detention notice would show that the

petitioner was given time to get the goods released till 27.03.2017. When they have made their objections on 25.03.2017, it is not known as to how the respondent has passed the impugned order on 25.03.2017 itself i.e. two days before the expiry of the notice time.

8. On considering the above facts and circumstances, I am of the view that there appears to be a non-application of mind, on the part of the respondent in passing the impugned order. Absolutely there is no consideration of the objections raised by the petitioner dated 25.03.2017, apart from the fact that the order itself was passed without waiting till 27.03.2017, for the petitioner to react on the notice dated 27.03.2017, even assuming that the reply given by the petitioner dated 25.03.2017 has not reached the respondent before passing the impugned order. Therefore, considering all these aspects, this Court is of the view, that the matter has to go back to the respondent for re-considering the whole issue once again.

9. Accordingly, the writ petition is allowed and the impugned order is set aside and the matter is remitted back to the respondent to pass fresh order after hearing the petitioner and considering the objections raised on 25.03.2017. The respondent shall complete the exercise as stated above within a period of seven days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
The Deputy Commercial Tax Officer
Air Cargo Vehicle Check Point
Chennai-600 027.

+1cc to Mr.Aparna Nandakumar, Advocate, S.R.No.19121
+1cc to the Government Pleader, S.R.No.19223

W.P.No.7626 of 2017

CA(CO)
RS(28/03/2017)