IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2017

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THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.4605 of 2017
And
W.M.P.Nos.4830 and 4831 of 2017

M/s.Kalin Engineering Industries,
Represented by its Partner
A.Sasi Lourdus Ruby ... Petitioner

Vs.

1 The Deputy Commercial Tax Officer,
Special Roving Squad (Enforcement)
Cuddalore.

2 Bharat Heavy Electricals Limited
High Pressure Boiler Point,
Trichy – 620 014.

3 Tvl.AGM(P), NTPC Ltd.
North Karanpura STPP,
P.O: Tandwa, Jharkand.

(R2 and R3 dropped as per the
order of this Court dated 23.02.2017
made in W.P.No.4605 of 2017) ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in G.D Notice 1718/2016-17 dated 07.02.2017 issued by the 1st respondent and wrongly mentioned as 07.02.2016 to quash the same as illegal, arbitrary and in violation of the provisions of the TNVAT Act and direct the 1st respondent to release the consignments detained on 07.02.2017.

For Petitioner : Mr.Nallathambi
for M/s.Karunakar

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

1.At the outset, the learned counsel for the petitioner says that he does not wish to press the writ petition against respondent nos.2 and 3. Accordingly, respondent nos.2 and 3 are dropped from the array of parties.

2.Accordingly, issue notice to the respondent no.1 (now the sole respondent). Mr.K.Venkatesh, learned Government Advocate, accepts notice on behalf of the respondent. With the consent of the learned counsels for parties, the writ petition is taken up for hearing and final disposal.

3.By virtue of this writ petition, challenge is laid to the goods detention notice dated 07.02.2017 (which is wrongly dated as 07.02.2016).

4.The petitioner claims that it had received an order from Bharat Heavy Electricals Limited, Trichy for supply of boiler components and that, as per the instructions, the said goods had to be delivered to NTPC Limited, North Karanpura STPP, Tandwa, Chatra, Jharkhand.

4.1.The details, with respect to the invoice number, dates and values, are given hereunder:

Invoice No.	Date	Value in Rs.
0040	31.12.2016	12,24,615/-
0043	30.01.2017	5,62,570/-

5.Admittedly, while the invoices qua subject goods were generated on 31.12.2016 and 30.01.2017, they were moved only on 07.02.2017.

5.1. It is, in these circumstances, that the subject goods were detained by the respondent.

6.Learned counsel for the petitioner says that there were several reasons for delay which, inter alia, included: break-down of the transport vehicle; the Pongal festival, and unavailability of a regular lorry for carrying the consignment to Jharkhand.

6.1.It is, therefore, in sucm, the contention of the petitioner that the transaction was genuine and, thus, the subject goods ought not to have been detained.

7.Notwithstanding the aforesaid circumstances obtaining in the matter, learned counsel for the petitioner, says that in order to expedite the release of the subject goods, the petitioner would be willing to pay one time tax, without prejudice to its rights and contentions.

8.Mr.Venkatesh, who appears on behalf of the respondent says that if one time tax is paid, the subject goods could be released to the petitioner.

9.Accordingly, having regard to the facts and circumstances of the case, coupled with the fact, that the petitioner offers to pay one time tax, I am inclined to direct the release of subject goods. Consequently, upon payment of one time tax, by the petitioner, equivalent to the sum of Rs.2,98,013/-, the respondent will, forthwith, release the subject goods to the petitioner.

10.Needless to say, the payment of tax by the petitioner will be without prejudice to its rights and contentions. The petitioner will also have the right to assail, not only the imposition of tax, but also the imposition of compounding fee, as reflected in the impugned notice, albeit, in accordance with law.

11.The writ petition is disposed of in the aforementioned terms. Consequently, the connected pending applications are also closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commercial Tax Officer,
Special Roving Squad (Enforcement)
Cuddalore.

+ 1 cc to Mr.S. Karunakar, Advocate Sr.11567

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RJ(CO)
EU 24.2.17