IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.01.2017
CORAM:
THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
W.P.No.775 of 2017
and W.M.P.Nos.814 and 815 of 2017

M/S.Stahl India Private Limited
represented by its authorised signatory
No.1-A Sargunar salai
Nagalkeni, Chromepet
Chennai-600 044. ... Petitioner

vs.

Commissioner Tax Officer
Roving squad-IV
Enforcement (north)
Chennai, at C.T.building
Greams road
Chennai-600 006. ... Respondent

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified, to call for records in GD No.1737/2016-2017 dated 27.12.2016 issued by the first respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.K.Mohanamurali

For Respondent : Mr.K.Venkatesh
Govt. Advocate

ORDER

1.Issue notice. Mr.K.Venkatesh, accepts notice on behalf of the respondent.

1.1 With the consent of counsels for the parties, the writ petition is taken up for hearing and final disposal.

2.This writ petition is directed against the order dated 27.12.2016. By virtue of this order, the subject goods were detained.

2.1. Furthermore, via the impugned order dated 27.12.2016, tax, penalty and compounding fee has been levied. The tax imposed is, equivalent to a sum of Rs.1,87,380/-. The penalty, which is claimed, is a sum of Rs.3,74,360/-, while compounding fee has been pegged at Rs.4,40,270/-.

2.2. To be noted, prior to the issuance of impugned notice, as is usually the case, a Goods Detention notice dated 24.12.2016, was also been issued by the respondent.

3. It is the petitioner's case that it had purchased the subject goods in a High Sea Sale, from an entity, known as: Gautam Dyes & Chemicals Co., which, in turn, had purchased the goods from a company, going by the name, Chemurs Company Singapore Pvt. Limited.

3.1. The impugned order, however, was served on Gautam Dyes & Chemicals Co..

3.2. In this behalf, it is relevant to note that Gautam Dyes & Chemicals Co., had approached this Court by way of W.P.No.270 of 2017. This Writ Petition was dismissed as withdrawn vide order dated 05.01.2017, with liberty to the buyer, i.e., the petitioner herein, to approach the Court and to obtain requisite orders in accordance with law.

3.3. The reason, that I was persuaded to pass the aforesaid order was that, the counsel for Gautam Dyes & Chemicals Co. had admitted before me, that, on account of High Sea Sale having taken place, between Gautam Dyes & Chemicals Co. and the petitioner herein, the ownership in the subject goods had passed on to the latter.

3.4. It is, in these, circumstances, that the petitioner herein has approached this Court to assail the Goods Detention notice dated 27.12.2016.

4. Broadly, the case of the petitioner herein is that, no local sale is effected and that the subject goods were intercepted and detained, while they were being moved in the course of import from the Port at Chennai to Ranipet.

4.1.It appears, albeit, upon a perusal of the impugned notice that, the respondent has come to a contrary conclusion, which is, that the movement of the goods was effected, pursuant to the invoice dated 08.12.2016. This conclusion, apparently, has been reached by the respondent, as the date adverted to in the High Sea Sale agreement is 12.12.2016. In other words the respondent has viewed the subject transaction as a local sale.

5.On the other hand, the contention advanced on behalf of the petitioner, is that, the date, which will determine, as to whether or not, a High Sea Sale had taken place, would be the date endorsed on the bill of lading.

6.Counsel for the petitioner, in sum, argues that the impugned notice is not sustainable in law, as there is no local sale involved and thus, the impugned order ought to be set aside.

7. Per contra, Mr.Venkatesh, urges that the matter needs to be examined in an adjudication proceedings and therefore, the petitioner should take recourse to an appropriate remedy under the provisions of TNVAT Act, 2006.

8. Mr.Venkatesh, however, says that, if, the tax imposed is paid, the subject goods, which have been detained, by the respondent, can be released.

9.Having regard to the record placed before me and the submissions of the counsels, the respondent is directed to release the subject goods forthwith, upon deposit of tax, amounting to Rs.1,87,380/-.

9.1 The deposit, if made, undoubtedly, would be without prejudice to the rights and contentions of the petitioner. This apart, the petitioner would have liberty to challenge the imposition of tax, penalty and compounding fee, by taking recourse to an appropriate remedy, albeit, in accordance with law.

10. The writ petition is, accordingly, disposed of.

11. Resultantly, the connected pending application is also closed. There shall, however, be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
Commissioner Tax Officer
Roving squad-IV
Enforcement (north)
Chennai, at C.T.building
Greams road
Chennai-600 006.
+1 cc to M/s.K.Mohanamurali Advocate sr 2558

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