In the High Court of Judicature at Madras

Dated: 12.01.2017

Coram

The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition No.1095 of 2017
& WMP No.1066 of 2017

M/s.Konark Plyland
rep. by its Partner
No.281/2, Sydenhams Road,
Choolai, Chennai - 600 012.
.... Petitioner

Vs.

1. The Deputy Commissioner (CT),
Enforcement (North), First Floor,
PAPJM Buildings, 1, Greams Road,
Chennai - 600 006.

2. The Commercial Tax Officer,
Roving Squad - II, Enforcement (North),
Greams Road, Chennai - 600 006.
.... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in G.D.No.643/RS-II/(N)/2016-17, dated 03.01.2017 and quash the same and further direct the 2nd respondent to release the consignment detained on 3/01/2017.

For petitioner : Ms.C.Rekha Kumari
For Respondents : Mr.S.Kanmani Annamalai, AGP

O R D E R

1. Issue notice. Mr.S.Kanmani Annamalai, accepts notice on behalf of the respondents.

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

2. This Writ Petition is directed against the Goods Detention notice dated 03.01.2017.

2.1. The notice pertains to Assessment Year (AY) 2016-17. The reason given in the impugned notice are as follows:

> ".... During the course of vehicle check on 03.01.2017 at Vadaperumbakkam Rountana, Madhavaram at 08.45 PM. The vehicle was intercepted at Manjambakkam Chinna Rountana at 08.45 PM. The vehicle was moved from Vadaperumbakkam and intercepted and carried the goods in sheets (as per invoice-J. the driver of the vehicle has submitted the following documents:-
>
> 1). Tvl.G.S.Transport LR.No.3232/03.01.2017
>
> 2). Tvl.Konark Plyland Invoice No.KP1147/03.01.2017
>
> 3). E-Form-JJ, Sl.No.FJJ03011700008914877, dt:03.01.2017.
>
> On verification of documents the goods was moved from Choolai. But the vehicle was intercepted at Manjambakkam Chinna Rountana, Manali High Road. The driver has also stated that the goods was loaded from at Grandline Village, Redhills, Chennai - 52.
>
> Hence to verify the genuineness of transaction the goods along with vehicle has been detained at CMDA Truck parking Yard, Manjambakkam and G.D. notice in Form-041 is issued...."

3. The petitioner, on the other hand, says that it had secured an order for sale of MDF Boards from a registered dealer in Kerala against declarations in Form-C. While it had stocks of most sizes and varieties of MDF Boards ordered by the purchaser in Kerala, it did not have the stock of MDF Boards of the following specification: 7.5mm (2.440x1.220) 8 x 4 size.

3.1. It is, thus, the case of the petitioner that it was for this reason that 150 MDF Boards of the aforementioned specification were sought to be procured from another dealer, viz., Sai Balaji Marketing.

3.2. The petitioner further avers that, in order to save transportation cost, a decision was taken to have the said 150 MDF Boards loaded directly on to the transport arranged in that behalf from the premises of Sai Balaji Marketing instead of the said MDF Board being transported in the first instance to the petitioner's premises and, then, ferried across to the purchaser in Kerala.

3.3. The petitioner, thus submits, that given these circumstances, there was no occasion to detain the goods, as all relevant documents supporting the aforesaid facts, were available with the transporter/driver.

3.4. Having said so, the petitioner, in order to secure immediate release of the detained goods, offers to pay tax, which may be imposed by the respondents without prejudice to its rights to contest the same by taking recourse to an appropriate remedy under the provisions of Tamil Nadu Value Added Tax Act, 2006.

3.5. To be noted, in the impugned notice, respondent No.1 has not alluded to the amount of tax that could be imposed on the petitioner.

4. Accordingly, a direction is issued to the respondents to indicate the tax it proposes to impose on the petitioner and on deposit of the said sum by the petitioner, release forthwith, the detained goods to the petitioner.

5. Needless to say, the deposit of tax by the petitioner, will be without prejudice to its rights and contentions.

6. The Writ Petition is disposed of in the aforementioned terms. Resultantly, the connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Commissioner (CT),
Enforcement (North), First Floor,
PAPJM Buildings, 1, Greams Road,
Chennai - 600 006.

2. The Commercial Tax Officer,
Roving Squad - II, Enforcement (North),
Greams Road, Chennai - 600 006.

+1cc to M/S.C.Rekhakumari, Advocate Sr.3226
+1cc to the Special Government Pleader Sr.3272

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srg 12/01/2017