

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM :

The Hon'ble MR.JUSTICE RAJIV SHAKDHER

AND

The Hon'ble MR.JUSTICE R.SURESH KUMAR

W.A. No.369 of 2017
and C.M.P.No.5665 of 2017

Tata Power Solar Systems Limited,
Rep. By its Authorized Signatory. ... Appellant

-vs-

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

Appeal filed Clause 15 of the Letters Patent against the order dated 06.03.2017 passed W.P.No.5559 of 2017 on the file of this Court. To issue a writ of certiorarified mandamus to call for the records of the respondent dt 18.2.2017 in G.D. No. 1790/16-17 and quash the same and direct the respondent to release the goods.

For Appellant : Mr.Adithya Reddy
For Respondent : Mr.S.Kanmani Annamalai
Addl.G.P. (T)

J U D G M E N T

(Judgment of the Court was delivered by Rajiv Shakdher, J.)

1.Issue notice. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepts notice, on behalf of the respondent / Revenue.

1.1.With the consent of learned counsel for parties, the writ appeal is taken up for hearing and final disposal.

2.This is an appeal, whereby challenge is laid to the order of the learned Single Judge dated 06.03.2017.

3.Mr.Annamalai, says, having regard to the circumstances obtaining in the present case, he would argue the matter based on the record filed before this Court.

4.The appellant had approached the learned Single Judge by way of a petition under Article 226 of the Constitution, to lay challenge to the goods detention notice dated 18.02.2017, passed by the respondent. In sum, the appellant had sought release of the goods.

4.1.The learned Single Judge, however, disposed of the writ petition with liberty to the appellant to approach the respondent and render its explanation with regard to the grounds for detention articulated in the impugned notice. A further direction was also given by the learned Single Judge, which was, that, upon such representation being made, the respondent shall dispose of the same within a period of seven (7) days.

4.2.The learned Single Judge concluded the order by observing, that upon an order being passed by the respondent on the representation so made by the appellant, the appellant would work out its remedy, by either accepting the liability and paying the tax or, if so advised, lay challenge to the same, albeit, before an appropriate forum.

5.Learned counsel for the appellant says that the challenge in the writ petition was to the jurisdiction of the respondent. According to the learned counsel, the transaction in issue was an inter-state sale, and since, the appellant was registered with the relevant authorities, i.e. sales tax authorities in the State of Karnataka, Central Sales Tax, if any, payable, would be payable to the said authority.

5.1.In any event, according to the learned counsel for the appellant, the respondent was a check-post officer and had, therefore, no jurisdiction to determine the tax and seek its payment in respect of the subject transaction, which was both genuine and above board.

5.2.In sum, it is the submission of the learned counsel for the appellant that the respondent has donned the hat of an Assessing Officer, a role which is not contemplated for him under the Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act').

6.In order to adjudicate upon the appeal, the following brief facts are required to be noticed:

6.1.It appears that the appellant, who is a dealer in solar

power panels and related equipment and, is registered under the Karnataka VAT Act, had imported 3198 pieces of Solar Panels from a chinese entity, namely, M/s.Shandong Linuo Photovoltaic Hi-Tech Co. Ltd. The goods, so imported, were discharged at the Chennai Port and were, thereafter, cleared from the Customs by the appellant's clearing and forwarding agent. The goods were cleared on 09.02.2017. It appears that, in and about the said date, i.e. on 10.02.2017, the appellant entered into a sale transaction with an entity going by the name, Best Corporation Private Limited (in short 'BCPL'). Accordingly, an invoice dated 10.02.2017 was generated, whereby 2288 pieces of Solar Panels were sold to BCPL. To be noted, the BCPL is a dealer registered with the VAT authorities in the State of Tamil Nadu.

6.2.In view of the consummation of the aforesaid transaction, it was arranged that the subject goods be transported to BCPL's place of business located in Dindigul, in the State of Tamil Nadu. For this purpose, the services of a transporter by the name of Shreeji Transport Services Pvt. Ltd., was availed of. As is evident from the record, the transporter carried with it, along with the subject goods, the following documents:

- a) Original Bill of Lading.
- b) Copy of Bill of Entry.
- c) Original Certificate of origin certifying that the goods originated from the Republic of China.
- d) Form KK filed by the appellant's clearing and forwarding agent under the TNVAT Act, 2006.
- e) The invoice raised by the appellant on BCPL.

6.3.The record shows, that, while the subject goods were being transported from the Chennai Port to Dindigul, they were intercepted at Manjambakkam Tollgate, on 18.02.2017. Consequently, the subject goods were seized and the impugned goods detention notice was served on the representative of the appellant. Resultantly, an explanation was sought from the appellant; which was rendered to the respondent.

6.4.As indicated at the outset, it was the stand of the appellant that the subject transaction was an inter-state sale, which had emanated in the State of Karnataka and therefore, the goods were not amenable to local tax. It was also contended that, in so far as Central Sales Tax is concerned, it was payable in the State of Karnataka.

6.5.The respondent, however, via the impugned notice,

rejected the stand taken by the appellant and proceeded, instead, to impose tax, as if, a local sale transaction had been entered into between the appellant and BCPL. Furthermore, the respondent came to the conclusion that the appellant had employed fraud and therefore, penalty had to be levied. Consequently, penalty was levied, which was quantified at twice the amount of the tax arrived at by the respondent.

6.6. In sum, the respondent called upon the appellant to pay an amount equivalent to Rs.8,54,567/- towards tax, along with penalty amounting to Rs.17,09,134/-. In all, the appellant has been called upon to pay a sum of Rs.25,63,701/-, in order to seek release of the subject goods.

7. It is not disputed before us by Mr. Anamalai that the detained goods can be released to the appellant, if security is furnished by the appellant in respect of tax, in terms of Section 67 (4) of the TNVAT Act. Section 67 (4) of TNVAT Act reads as under:

"67. Establishment of check-post or barrier and inspection of goods while in transit. - (1) ..
(2) ..
(3) ..
(4) If the tax is paid or the security is furnished, then, the goods so detained shall be released forthwith.
.. "

8. Accordingly, we have put to the learned counsel for the appellant as to whether the appellant would be willing to furnish security for the amount of tax imposed vide the impugned detention notice.

8.1. Mr. Adithya Reddy, who appears for the appellant, says that the appellant will furnish a bank guarantee for the tax imposed, if this Court were to, otherwise, direct release of the detained goods. This, however, the learned counsel for the appellant says, would be done without prejudice to the appellant's right to lay challenge to the imposition of tax and penalty vide the impugned notice.

9. Accordingly, the Writ Appeal is allowed. The impugned notice is set aside, with a direction to the respondent to release the detained goods, subject to the appellant furnishing a bank guarantee of a nationalised bank equivalent in value to the tax imposed vide the impugned notice, within two (2) days from the date of receipt of a copy of this order. The appellant is also given liberty to assail the imposition of tax and penalty before the appropriate authority. The appellant will,

however, keep the bank guarantee alive, till such time a decision is reached by the appropriate authority with regard to the imposition of tax and penalty. Consequently, C.M.P.No.5665 of 2017 is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To

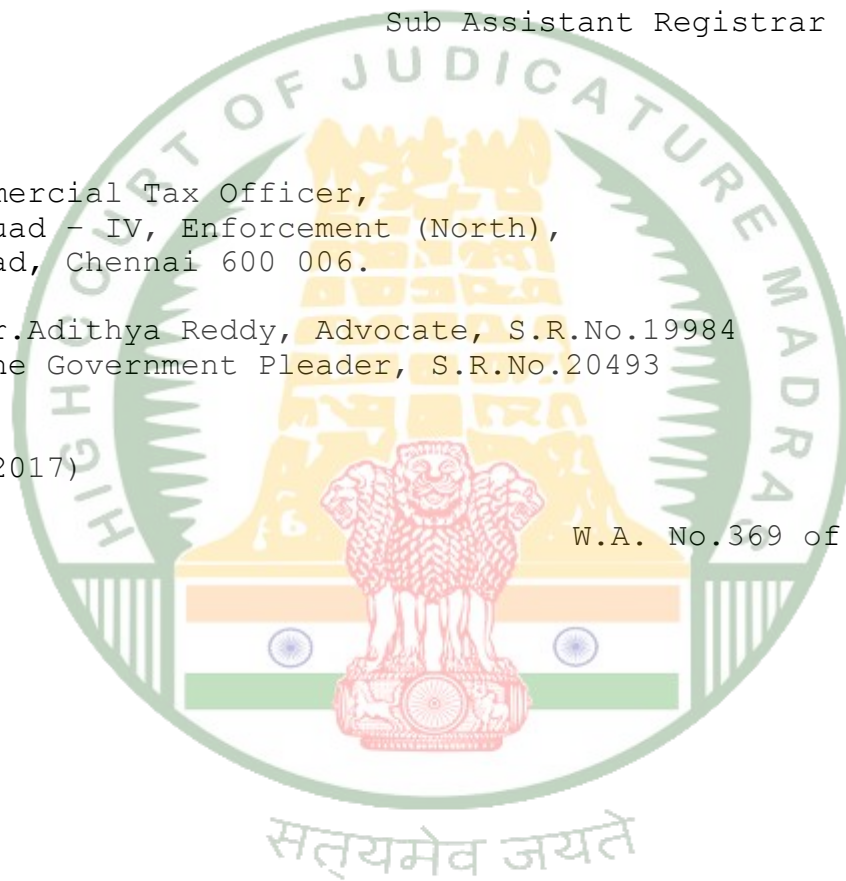
1.The Commercial Tax Officer,
Roving Squad - IV, Enforcement (North),
Greams Road, Chennai 600 006.

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.19984

+1cc to the Government Pleader, S.R.No.20493

rk(CO)
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W.A. No.369 of 2017



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