IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 31.01.2017
CORAM:
THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
W.P.No.2169 of 2017
and W.M.P.No.2149 of 2017

Bay Forge P Ltd.,
Rep. By its Authorised Signatory,
Palayanoor Post,
Vedanthangal Road,
Maduranthagam Taluk,
Kancheepuram District - 603 308. ... Petitioner

vs.

The Commercial Tax Officer (Enforcement),
Roving Squad,
Villupuram. ... Respondent

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, to call for the entire records of the respondent in Goods Detention Notice No.1202 dated, 24.01.2017 and quash the orders passed therein and direct the respondent to release the detained goods of the petitioner in the vehicle bearing Registration No.TN 69 BB 9343.

For Petitioner : Mr.A.P.Srinivas

For Respondent : Mr.K.Venkatesh,
Government Advocate.

O R D E R

1. Issue Notice. Mr.Venkatesh accepts notice on behalf of the respondents.

2. With the consent of counsel for the parties, this Writ Petition is taken up for hearing and final disposal.

3. By virtue of the impugned goods detention notice, the petitioner's goods have been detained. The reason given in the goods detention notice for detaining the subject goods is that the description given in Form JJ does not tally with the description given in the invoices.

4. To be noted, goods detention notice was followed by a compounding notice dated 25.01.2017, whereby, the petitioner has been multed with tax in the sum of Rs.7,36,820/- and compounding

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fees equivalent to twice the amount of tax calculated. The compounding fees thus has been reflected in the notice dated 25.01.2017 as Rs.14,73,640/-.

4.1. In sum, the petitioner is required to pay a total sum of Rs.22,10,460/-

5. It is the petitioner's case that there are, briefly, the following flaws in the impugned goods detention notice as also in the compounding notice notwithstanding the fact that latter, i.e., compounding notice has not been challenged in the present proceedings.

6. The petitioner says that the goods detention notice incorrectly assumes that the description of goods in Form JJ is at variance with the description set out in the invoice. For this purpose, the learned counsel for the petitioner has drawn my attention to Form JJ as also the invoice appended to the writ petition.

6.1. The counsel lays stress on the fact that in both documents, the subject goods have been described as steel forgings. It is stated that insofar as Form JJ is concerned, the only difference is that they are preceeded by the description of the entry given in the form itself. Therefore, it is stated that the premise on which the respondent has proceeded, which is, that the subject goods have been described in Form JJ as "industrial inputs" is clearly flawed.

6.2 Furthermore, counsel for the petitioner says that the respondent has in effect changed the goalpost in as much the reasons for detaining the goods as reflected in the impugned goods detention notice are different from those which are set out in the compounding notice.

6.3. Learned counsel says that the respondent has assumed that the transaction in issue is a transaction which falls within a purivew of Section 5(1) of the CST Act, 1956. Learned counsel says that the transaction in issue is really a transaction under Section 18 of the TNVAT Act, 2006.

6.4. It is thus, the contention of the learned counsel for the petitioner that the documents demanded by the respondent is based on the premise that Section 5(1) of the CST Act, 1956 is attracted to the transaction in issue.

7. Mr.Venkatesh, who appears for the respondent says that no representation has been made by the petitioner. Learned counsel further submits that if a representation is made, the fallacy which has sought to be brought forth by the petitioner could be examined.

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8. In these circumstances, this writ petition is disposed of with the direction to the respondent to treat the instant writ petition as a representation. The respondent will afford an opportunity of personal hearing to the authorised representative of the petitioner. After hearing the authorised representative of the petitioner, the respondent will pass a speaking order.

8.1. If upon conclusion of the proceedings, the respondent is persuaded by the submission advanced on behalf of the petitioner, he shall forthwith release the detained goods. In case the respondent comes to a contrary conclusion, the same will be intimated to the petitioner. A copy of the order will be furnished to the petitioner to enable it to take further action in accordance with law.

9. In order to expedite matters, the authorised representative of the petitioner will appear before the respondent on 02.02.2017 at 11.00 a.m. The respondent is directed to pass an order on or before 03.02.2017.

10. The writ petition is closed in the aforesaid terms. Resultantly, the connected application is closed. There shall, however, be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer (Enforcement),
Roving Squad,
Villupuram.

+1 cc to Mr.A.P.Srinivas Advocate sr 5815
+1 cc to the Special Government Pleader sr 5980

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