IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.02.2017
CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.3592 of 2017
And
W.M.P.No.3621 of 2017

MAQ.Equipment
Represented by its Authorised Signatory
Mr.R.Suresh Kumar ... Petitioner

Vs.

1 The Commissioner
Commercial Taxes Department,
Ezhilagam, Chepauk,
Chennai - 600 005.

2 The Deputy Commissioner
Commercial Taxes Department,
Enforcement Wing,
Villupuram District.

3 The Commercial Tax Officer
Roving Squad,
Cuddalore. ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the third respondent in G.D.No.769/2016-2017 dated 20.1.2017 and quash the same by directing the respondents to release the vehicle bearing Registration No.TN-02-AE-4621 along with the detained Air Compressor Machine.

For Petitioner : Mr.Shameer Sha
For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

1.Issue Notice. Mr.K.Venkatesh, learned Government Advocate, accepts notice on behalf of the respondents. With the consent of the learned counsels for parties, the writ petition is taken up for hearing and final disposal.

2.The petitioner is aggrieved by the detention of the subject goods and accordingly, challenge is the goods detention notice dated 20.01.2017.

3.The record shows that the petitioner has also been served with the compounding notice dated 21.01.2017. By virtue of the compounding notice, the petitioner has been mulcted with tax at the rate of 14.5% amounting to Rs.5,46,059/-. Furthermore, compounding fee of Rs.16,38,177/- has been imposed on the petitioner.

4.The petitioner's stand is that he was required to sell the subject goods, i.e., Air Compressor to a person by name, PR.Rajenthiran and that for this purpose, he had raised a Purchase Order on an entity by the name, Chicago Pneumatic Construction Equipment. For this purpose, my attention has been drawn to the Purchase Order dated 11.01.2017, raised on Chicago Pneumatic Construction Equipment, a division of Atlas Copco India Limited and also the tax invoice dated 19.01.2017, raised by the petitioner on Mr.PR.Rajenthiran.

5.A perusal of the detention notice shows that the subject goods which are detained for the following reasons:

> "An Aircompressor transported from Pondicherry to Tiruchengode. The consignees TIN. No. Not mentioned in the invoice. Further the consignor Tvl. ATLAS COPCO (India) Pondicherry has not raised any sale invoice. This transaction is suspected. Hence goods detained along with vehicle at Ulundurpet Tollgate."

6.Learned counsel for the petitioner says that the perusal of the tax invoice would show that the requisite Central Sales Tax has been paid.

7.On being queried, learned counsel for the petitioner does concede, that the sales invoice that was issued by Chicago Pneumatic Construction Equipment to the petitioner was not available with the transporter. According to the petitioner, the transaction in issue is an Inter-State sale transaction and hence, is not amenable to local tax.

7.1. Having said so, learned counsel submits that in order to expedite the release of the detained goods, i.e., the Air Compressor, the petitioner will furnish security in the form of a Bank Guarantee for an amount equivalent to the tax imposed.

8.Mr.Venkatesh, who appears for the respondents says that, if, security is given in the form of Bank Guarantee, the detained goods i.e., Air Compressor would be released to the petitioner.

9.I must indicate herein that the learned counsel for the petitioner has stated that offer to furnish security is made without prejudice to the rights and contentions of the petitioner to challenge both the levy of tax and the imposition of compounding fee.

10.Accordingly, having heard the learned counsel for the parties and perused the records, in my view, the writ petition can be disposed of based on the following directions:

(i)Upon the petitioner furnishing the bank guarantee of a Nationalized Bank/ Scheduled Bank, equivalent to a sum of Rs.5,46,059/-, the detained goods, i.e., the Air Compressor will, forthwith, be released to the petitioner. The bank guarantee furnished will be kept alive till further orders of the concerned authority.

(ii)The submission of bank guarantee, if any, will not come in the way of the petitioner challenging the imposition of tax and compounding fee as indicated in the compounding fee notice dated 21.01.2017.

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

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

To

1 The Commissioner,Commercial Taxes Department,
Ezhilagam, Chepauk, Chennai - 600 005.
2 The Deputy Commissioner,Commercial Taxes Department,
Enforcement Wing, Villupuram District.
3 The Commercial Tax Officer, Roving Squad,Cuddalore.
+1 cc to Special Government Pleader Taxes sr 9585
+1 cc to M/s.B.Rameshkumar Advocate sr 9510

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