IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.01.2017

Coram

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.1572 of 2017

and WMP Nos.1516 and 1517 of 2017

Jakson Engineers Limited,
represented by Business Manager
Mr.Geoffrey Merdith, P.
39/12, Apeejay Business Centre,
Haddows Road, Nungambakkam,
Chennai-600 006. .. Petitioner

vs.

Deputy Commercial Tax Officer,
Enforcement Roving Squad,
Office of the Deputy Commissioner (CT),
Villupuram. .. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari or any other writ, order or direction or any other appropriate writ, to call for the records of the respondent in Compounding Notice G.D.No.1195/2016-2017, dated 04.01.2017, and to quash the same.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.K.Venkatesh, Government Advocate

ORDER

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

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

2. By virtue of the captioned writ petition, challenge is laid to the compounding notice No.G.D.No.1195/2016-2017, dated 04.01.2017, passed by the respondent.

3. A perusal of the impugned notice would show that the petitioner has been directed to pay a sum of Rs.7,16,900/- and compounding fee of Rs.14,33,800/-, via the said notice.

4. The petitioner's case, briefly, is that no tax is payable, in view of the fact that the subject goods, which are, broadly, described as solar modules, are exempt from tax under Section 21 of the West Bengal Value Added Tax Act, 2003 (in short the 2003 Act), read with the Schedule A of the said Act.

4.1. The stand of the petitioner, is that, it had obtained a contract to supply solar modules to Neyveli Lignite Corporation Limited (in short NLC), and that, in order to execute the said contract, the subject goods, i.e., the solar modules, were sourced from an entity by the name, SOVA Solar Limited, situate in Durgapur, in the state of West Bengal.

4.2. The petitioner says that, accordingly, the goods were transported from Durgapur in West Bengal, directly to the premises of the ultimate buyer, and/or consignee, i.e., NLC, and that, during the course of their transportation, they were intercepted by the respondent.

4.3. It is, therefore, the stand of the petitioner that being an inter-state sale concerning notified goods, the said sale transaction is exempt from tax in terms of the provisions of the 2003 Act read with Section 8(2) of the Central Sales Tax, 1956. In other words, according to the petitioner, no tax could have been levied by the respondent via the impugned notice.

4.4. For the very same reason, it is stated that levy of compounding fee, as reflected in the impugned notice, is also unsustainable.

5. Counsel for the petitioner, however, contends that these are matters that the petitioner would agitate before the concerned authority, and that, in order to expedite the release of the subject goods, the petitioner would furnish a security in the form of a Bank Guarantee, equivalent to the tax imposed, i.e., Rs.7,16,900/-.

5.1. To be noted, this offer, however, is made by the petitioner, without prejudice to its right to challenge the imposition of tax and compounding fee levied via the impugned notice.

6. Mr.K.Venkatesh, who appears on behalf of the respondent, says that if, security is furnished, in the form of Bank Guarantee(s) for the tax imposed, the detained goods would be released to the petitioner.

7. Having heard the leaned counsel for the parties, I am inclined to dispose of the writ petition with the following directions :

7.1. The respondent will release the detained goods, i.e., solar modules, upon Bank Guarantee(s) of a nationalised bank being furnished, equivalent to the tax imposed, via the compounding notice, dated 04.01.2017.

7.2. This, however, will be without prejudice to the rights of the petitioner to lay a challenge both to the imposition of tax and compounding fee levied via the impugned notice dated 04.01.2017.

8. Resultantly, pending applications shall stand closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Deputy Commercial Tax Officer,
Enforcement Roving Squad,
Office of the Deputy Commissioner (CT),
Villupuram.

+1cc to Mr.Joseph Prabaker, Advocate, S.R.No.3956
+1cc to the Spl.Government Pleader, S.R.No.4027

RSK(CO)
md(20/01/2017)

W.P.No.1572 of 2017