IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.Nos.2602 and 2603 2017

M/s.RJ Brewing Solutions LLP,
Rep. By its Authorised Signatory,
F-234, UGF, Sushant Shopping Arcade,
Sushant Lok -1,
Gurgaon - 122 002.
Haryana ... Petitioner in both W.Ps'

vs.

Commercial Tax Officer,
Roving Squar-IV,
Enforcement (North),
Greams Road,
Chennai - 600 006. ... Respondent in both W.Ps'

Writ petitions filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified mandamus, calling for the records of the respondent in his proceedings, in G.D.No.1772/2016-17 and G.D.No.1773/2016-17 dated 29.01.2017 and quash this detention order direct the respondent to release the goods.

For Petitioner : Mr.C.Baktha Siromoni

For Respondent : Mr.S.Kanmani Annamalai,
(In both W.Ps') Additional Government Pleader (T)

COMMON ORDER

Issue notice. Mr.Kanmani Annamalai, accepts notice on behalf of the respondent.

2. With the consent of counsel for the parties, these writ petitions are taken up for final hearing and disposal.

3. By virtue of these writ petitions, challenge is laid to the two separate Goods Detention Notices of even date i.e., 29.01.2017 bearing Nos.G.D.No.1772/2016-17 and G.D.No.1773/2016-17.

4. For the purposes of adjudication of these writ petitions, the following broad facts need to be noticed.

4.1. The petitioner claims to be a registered dealer under Haryana State Value Added Tax Act, 2003. The petitioner says that it has been allocated TIN No.06211843653 and CST No.06211843653, as on 27.05.2016.

5. It is the petitioner's case that it had imported plant and machinery, which are in the nature of a beer brewing equipment from China via Chennai Port.

5.1. It is the stand of the petitioner that the goods were cleared, upon payment of requisite customs duty.

6. Furthermore, the petitioner avers that the imported goods were sold to an entity by name "Time & Space Life Style LLP", having its office at Banglore (Now Bengaluru) in the State of Karnataka. The petitioner claims that upon sale of the said imported goods, it collected 2% Central Sales Tax (CST) on the total value of the goods as reflected in the tax invoice dated 28.01.2017. The value of the goods, as per the tax invoice, is a sum of Rs.1,45,00,000/-. The CST, according to the petitioner, was, thus, quantified as Rs.2,90,000/-.

6.1. It is the petitioner's case that the buyer i.e., Time & Space Life Style LLP is also a registered dealer under CST Act, 1956, albeit, in the State of Karnataka.

6.2. In sum, the petitioner's stand is that the aforementioned imported equipments were illegally detained, while in the course of movement pursuant to an inter-state sale transaction.

6.3. The petitioner, however, has candidly stated in the writ petitions that out of the three trucks, containing the aforementioned equipments, one truck was cleared, while two trucks bearing Registration Nos.TN 28 E 6849 and TN 28 AJ 4398 were detained, on 29.01.2017.

6.4. The petitioner, thus, says that the detention of the aforementioned equipment/goods was illegal, in view of the fact that the equipments/goods were accompanied by a delivery notice, in Form KK, dated 28.01.2017, which was generated from the Tamil Nadu Sales Tax Web Site by its Customs House Clearing Agent.

6.5. It is also the petitioner's stand that, since, the sale was consummated in the State of Haryana, the CST had to be paid in that State and not in the State of Tamil Nadu.

6.6. It is, thus, the case of the petitioner that, since, the required documents as stipulated in Section 67-A of the Tamil Nadu Value Added Tax Act, 2006 and as per Rule 15(14) and Rule 15 (18) of the Tamil Nadu Value Added Tax Rules were made available, the respondent could not have detained the goods. Furthermore, in support of this submission, learned counsel for the petitioner relies upon the E-sugam delivery note issued by the concerned authority in the State of Karnataka to establish that the said equipment/goods were purchased by Time and Space Life Style LLP, located in Bengaluru.

6.7. Learned counsel says that there has been no evasion of tax, as alleged or at all. Counsel for the petitioner, however, says that in order to expedite the release of the detained goods, the petitioner is willing to furnish a security in the form of bank guarantee in respect of CST that may be imposed by the respondent, albeit, without prejudice to its rights and contentions. Furthermore, the petitioner says that liberty be granted to challenge the impugned notices before the concerned authority.

7. On the other hand, Mr.Kanmani Annamalai, says that insofar as the tenability of imposition of tax or compounding fee is concerned, that can be challenged by the petitioner, by taking recourse to appropriate proceedings under the TNVAT Act, 2006.

8. Having heard the learned counsel for the parties and perused the record, I am inclined to direct the respondent to release the detained goods, subject to the petitioner furnishing a bank guarantee of a Nationalized Bank. The bank guarantee shall be sought by the respondent with respect to CST, which will be calculated as per the value of goods, as reflected in the tax invoices submitted qua all three trucks.

13. It is made clear that the mere fact, the petitioner

furnishes a bank guarantee will not be an impediment to a challenge, if any, made by him, in accordance with law, with respect to the tax imposed. Similarly, if, compounding fee is levied, the petitioner will have right to challenge the same.

14. The Writ Petitions are closed in terms of the aforesaid directions. Needless to say, the aforesaid exercise will be completed by the respondent, as expeditiously as possible, though, not later than two (2) days from the date of receipt of a copy of the order. There shall, however, be no order as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

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

+2ccs to Mr.C.Bakthasiromoni, Advocate sr.6840

+1cc to Special Government Pleader(I)sr.7025

W.P.Nos.2602 and 2603 2017

gg(co)
ss(3/2/2017)