IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 03.02.2017
Coram
THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
W.P.No.2617 of 2017
and WMP Nos.2576 and 2577 of 2017

M/s.M.B.Tiles and Sanitarywares
rep. by its Partner S.Mohan Babu,
No.54, Chittoor Road, Senguttai,
Katpadi, Vellore-7. .. Petitioner

vs.

The Commercial Tax Officer (Enforcement),
Roving Squad, Vellore,
Commercial Taxes Buildings,
Vellore. .. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, or any other appropriate writ by calling for the records of the respondent in his Goods Detention Notice No.623/2016-17, dated 25.01.2017, in Form No.041, and consequential Compounding Notice in G.D.No.623/2016-17, dated 26.01.2017, and quash the same as illegal and direct the respondent to release the goods of 2308 boxes of tiles covered by Invoice No.W-01859, dated 29.10.2016, and Invoice No.04457, date 29.10.2016, and detained vide Goods Detention Notice No.623/2016-17, dated 25.01.2017, immediately.

* * *

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.K.Venkatesh,
Government Advocate

ORDER

WMP No.2576 of 2017
in WP No.2617 of 2017

1. Allowed, subject to just exceptions.

WP No.2617 of 2017
and WMP No.2577 of 2017

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

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

3. By virtue of the captioned writ petition, challenge is laid to the Goods Detention Notice dated 25.01.2017, and the consequential Compounding Notice dated 26.01.2017.

3.1. The petitioner's case is that it had bought the detained goods from an entity by the name Sunshine Tiles Company Private Limited, located in Gujarat.

3.2. The petitioner further avers that these goods were, thereafter, sold locally to an entity by the name Geetha Home Decors.

3.3. On this transaction, local tax at the rate of 14.5%, I am told, was paid. In so far as the first leg of the transaction is concerned, central sales tax at the relevant rate is said to have been, also, paid.

4. In respect of the transaction at hand, the petitioner seeks to place reliance on the copies of invoices appended at pages No.1 to 4 of the typed set of documents.

5. The record, however, shows that the goods were detained by the respondent for the following reasons :

> "... The Ceramics Tiles transported from Gujarat to Vellore through Train (Arakonam SICAL) without Advance Inward Way Bill, i.e., online Form JJ as prescribed in Rule 15(18)(a)(v) of TNVAT Act.
>
> 2. Non-reporting of checkpost at SICAL, Arakonam.
>
> 3. The goods delivery processed other than consignee address i.e. Geetha Timber, Vellore. Hence to verify the genuineness of the transaction the goods is hereby detained with vehicle with their own risk."

5.1. Learned counsel for the petitioner says that the petitioner was not able to generate Form JJ, in view of the delay in dispatch of the detained goods by the consignor, i.e., Sunshine Tiles Company Private Limited.

5.2. It is the stand of the petitioner that there has been no evasion of tax, and therefore, provisions of Section 72(1)(a) of the Tamil Nadu Value Added Tax Act, 2006, will not be applicable, in the instant case.

5.3. Furthermore, it is submitted that the transaction at hand is an inter-state sale, and therefore, there is no case for levy of local tax.

5.4. Learned counsel for the petitioner further says, as indicated above, in so far as that leg of the transaction is concerned, i.e., intra-state sale, local tax at the relevant rate was paid.

5.5. Learned counsel, however, says, in order to expedite, release of detained goods, one time tax will be paid by the petitioner, albeit, without prejudice to its rights and contentions.

5.6. Learned counsel for the petitioner further says that the imposition of tax and compounding fee shall be challenged by taking recourse to an appropriate remedy.

6. Mr.K.Venkatesh, who appears for the respondent, submits that if, one time tax is paid, the detained goods would be released.

7. Accordingly, the captioned writ petition is disposed of with a direction to the respondent to release, forthwith, the detained goods, upon payment of one time tax equivalent to a sum of Rs.90,211/-.

7.1. It is made clear that the payment of one time tax would be, without prejudice to the rights and contentions of the petitioner, including the right to challenge, not only the imposition of tax, but also the penalty reflected in the impugned compounding notice dated 26.01.2017.

7.2. Qua the same, the petitioner will, as indicated above, take recourse to an appropriate remedy, albeit, in accordance with law.

8. Consequently, pending application shall also stand closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gg

To

The Commercial Tax Officer (Enforcement),
Roving Squad, Vellore,
Commercial Taxes Buildings,
Vellore.

+1 cc to Mr.S.Ramanathan Advocate sr 6828

+1 cc to Special Government Pleader(T) sr 7029

W.P.No.2617 of 2017

scd(co)
aa03/02/2017