IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.1711 of 2017
And
W.M.P.Nos.1677 and 1678 of 2017

M/s.Videojet Technologies (I) Private Limited
Rep. by its Authorized Signatory - B.Kumaresan
... Petitioner

Vs.

1 The Assistant Commissioner (CT),
Nungambakkam Assessment Circle,
Chennai.

2 The Deputy Commercial Tax Officer,
Ranipet (In) Check Post,
Serkadu
Vellore District. ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the 2nd Respondent in its impugned Notice issued in G.D.No.2199/2016-17 dated 6.12.2016 quash the same as illegal and against the provisions of the Act in so far as the petitioner is concerned.

For Petitioner : Ms.R.Hemalatha
For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

1.Issue Notice. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, 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.This writ petition is directed against the order dated 06.12.2016 passed by the second respondent. By virtue of the impugned order, the petitioner has been called upon to pay tax in the sum of Rs.2,10,740/- and compounding fee at twice the amount of the tax. The compounding fee has been pegged at Rs.4,21,480/- by taking recourse to Section 72(1)(a) of the Tamil Nadu Value Added Tax Act, 2006.

3.A perusal of the impugned order would show that the subject goods have been detained only on the ground that online Form 'JJ' and the transporter's Form 'MM' were not submitted.

4.To be noted, prior to the issuance of the impugned order, Goods Detention Notice dated 05.12.2016, was served on the petitioner, whereby, the subject goods were infact detained.

5.Counsel for the petitioner says that the goods had moved from Maharastra to the State of Tamil Nadu by way of stock transfer and that the sale of goods had to take place, ultimately, in the State of Tamil Nadu. It is also the learned counsel's case that the petitioner has been regularly filing its monthly returns and paying requisite tax.

6.In support of the submissions that it was a case of stock transfer, my attention has been drawn to the copies of invoices appended at pages 1 to 3 of the typed set of documents.

7.Learned counsel for the petitioner says that the impugned order is erroneous, in as much as the provisions of Section 69 of the Tamil Nadu Value Added Tax Act, 2006, read with Rule 15 of the Tamil Nadu Value Added Tax Rules, 2007 would show that a sale invoice ought to have sufficed.

8.It is also the submission of the learned counsel for the petitioner, as indicated above, that, since, no sale was involved, there was in any event, no jurisdiction vested in the respondent to levy tax or, impose compounding fee.

9.In support of her submissions, learned counsel for the petitioner relies upon the order dated 27.09.2016, passed in W.P.No.33761 of 2016, titled Tvl.Jindal Pipes Limited, Represented by its Authorised Signatory Vs. The State of Tamil Nadu Rep. by its Secretary to Government and three others.

10.Mr.Annamalai, on the other hand, submits that he cannot but contend that the present case is covered by the judgment delivered by this Court in the case of Tvl.Jindal Pipes Limited.

11.Having heard the learned counsels appearing for the parties and perused the records, it is quite clear that the respondent has mis-directed himself in law. A plain reading of Section 69 of the Tamil Nadu Value Added Tax Act, 2006 and Rule 15 would show that a sale bill ought to have sufficed.

12.Furthermore, the respondents appear to have overlooked the stand of the petitioner that there was no sale involved and it was only a case of stock transfer.

13.In this context, I may note that the observations made in Jindal Pipes Limited, in which, this Court was called upon to deal with pari materia facts. The relevant portion of the judgment rendered in the case of Jindal Pipes Ltd. is extracted hereinbelow:

> "6.The question is, as to whether the goods could have been detained by the 4th respondent solely on the ground that the Online Form JJ and Form-MM have not been produced.
>
> 7.The said question came up for consideration earlier before this court in several matters including in the matter relating to the M/s.Madras Steels and Tubes, wherein the 4th respondent is the Detention Officer and this Court observed that a bill of sale or delivery note in Form JJ generated from the website of the Commercial Taxes Department along with the transporter's way bill in Form MM generated from the website of the said Department and goods vehicle record or trip sheet or log book have to be produced.
>
> 8.In the instant case, admittedly, the petitioner has produced the Invoice and Lorry receipt and these can very well be verified by the fourth respondent and merely because the computerised online Forms JJ / MM have not been produced that cannot be a sole reason for detaining the goods.
>
> 9.In the light of the above, the Writ petition is allowed and the impugned order is set aside and the 4th respondent is directed to release the goods, after verifying the Invoice and Lorry receipt on production of copy of this order. No costs. Consequently, connected W.M.P. is closed."

14.Thus, having regard to the facts and circumstances obtaining in the instant case, I am inclined to allow the writ petition. Accordingly, the impugned order dated 06.12.2016 is set aside. The second respondent will release the subject goods and the lorry, forthwith, on receipt of a copy of the order.

15.The writ petition is, thus, disposed of in the aforementioned terms. Consequently, the connected pending applications are closed. However, there shall be no order as to costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1 The Assistant Commissioner (CT),
Nungambakkam Assessment Circle,
Chennai.

2 The Deputy Commercial Tax Officer,
Ranipet (In) Check Post,
Serkadu
Vellore District.

+1 cc to M/s.R.Hemalatha,advocate,sr.4416

+1 cc to Spl.Govt.Pleader,sr.4550.

krd 25/1

W.P.No.1711 of 2017
And
W.M.P.Nos.1677 and
1678 of 2017