IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.1727 of 2017

And

W.M.P.No.1694 of 2017

M/s.Watthour Systems
Rep. by its Proprietor
Mr.Paramjith Singh ... Petitioner

Vs.

1 The State of Tamil Nadu
Rep. by its Secretary,
Commercial Taxes and Registration
Department,
Fort St. George, Chennai - 9.

2 The Deputy Commissioner (CT)
Enforcement (North), First floor,
PAPJM Building, No.1 Greams Road,
Chennai - 600 006.

3 The Check Post Officer
Deputy Commercial Tax Officer
Puzhal Check Post,
Chennai. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned Detention Notice made by the 3rd respondent in Goods Detention Notice NO.4396/ 2016- 2017 dated 18.01.2017 and quash the same as illegal and contrary to the provisions of the TNVAT Act and further direct the respondents to release the goods without imposing any condition of payment.

For Petitioner : Mr.A.K.Jayaraj
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.

1.1. Mr.Annamalai says that he does not wish to file a counter affdavit in the matter.

2.This writ petition is directed against the Goods Detention Notice dated 18.01.2017.

3.In order to adjudicate upon the matter, the following facts and averments made in the Writ Petition are required to be noticed:

3.1.The subject goods were, apparently, were imported from Honk Kong. Consequent, thereto, the subject goods were cleared from the Port at Chennai, after having them assessed by a proper officer, as required under the Customs Act, 1962.

4.According to the petitioner, it is, when, the subject goods were in transit from a warehouse in Chennai to his warehouse in New Delhi, for onward journey to Ujjain, that they were intercepted, which, ultimately, led to their detention.

5.The petitioner's case is that, the transporter was carrying the relevant documents, a perusal of which, would demonstrate that no sale occurred within the State of Tamil Nadu.

5.1.The petitioner for this purpose, draws my attention to the impugned order, which records that the transporter was carrying the following documents:

> "1.The consignment of Computer Processor moving from Chennai to Shakaambri Enterprises, Malipura Ujjain. The driver of the vehicle No.PB-65AD-2353 has furnished the following documents.
> 1.Form KK No.FKK170117000009573569 dt.17.01.2017 generated by Jeyyemaarr, Chennai -32.
> 2.Bill of Entry No.8160958, dt.12.01.2017.
> 3.Invoice No.8, dt.17.01.2018 raised by Tvl.Watthour Systems, New Delhi to Tvl.Shakaambri Enterprises, Malipura Ujjain."

6. It is, in this background that the counsel for the

petitioner submits that the respondents have no jurisdiction to deal with and/or adjudicate upon the matter.

6.1. However, counsel for the petitioner says that in order to seek, immediate, release of the subject goods, the petitioner is willing to pay one time tax, as may be calculated by the concerned authority, albeit, without prejudice to the petitioner's rights and contentions.

7.Mr.Annamalai, on the other hand, says, that, since the goods after clearance from customs were stored, admittedly, in a warehouse in Chennai, the respondents, came to doubt the genuineness of the transaction and hence detained the subject goods.

7.1..Mr.Annamalai, thus, emphasises, that the respondents doubt the claim of the petitioner that the transaction in issue is an inter-state sale.

7.2.Learned counsel, however, says that, if, one time tax is paid and a Bank Guarantee is furnished for the compounding fee, the subject goods could be released to the petitioner.

8.I have heard the learned counsels for the parties and examined the record as presently available with Court.

8.1.The documents adverted to in the impugned order, prima facie, indicate, at least at this juncture, that the subject transaction may be an inter-state sale. However, this is a matter which requires to be adjudicated upon, on merits, by the concerned authority.

8.2.Concededly, the petitioner is not registered, as a dealer, in the State of Tamil Nadu. Therefore, for the moment, I am of the view that the interest of the Revenue would be served, if, the subject goods are released to the petitioner upon payment of one time tax, as calculated by the concerned authority.

8.3. It is made clear, though, that the valuation of the subject goods, for the purpose of calculation of tax would be the valuation of the goods, as indicated in the impugned Goods Detention Notice.

8.4.The concerned authority will apply the requisite rate of tax to the said value and upon the tax so quantified, in accordance with the relevant provisions of law, shall be communicated to the petitioner. The petitioner shall, thereafter, deposit, in cash or by way of a banking instrument, the tax, so calculated, before being given the custody of the subject goods. In addition, the petitioner shall also furnish a personal bond for the compounding fee, which may be calculated by the concerned authority.

8.5.This arrangement, however, is put in place, subject to the right of the parties to raise their respective contentions before the concerned authority, when, the matter is adjudicated, upon merits.

9.The writ petition is disposed of in the aforementioned terms. Needless to say, the subject goods will be released to the petitioner, immediately, upon payment of one time tax. The respondents will carry out the aforesaid exercise with due expedition, though, not later than one day from the date of receipt of a copy of the order.

10. Consequently, the connected pending application is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1 The Secretary
The State of Tamil Nadu
Commercial Taxes and Registration
Department,
Fort St. George, Chennai - 9.

2 The Deputy Commissioner (CT)
Enforcement (North), First floor,
PAPJM Building, No.1 Greams Road,
Chennai - 600 006.

3 The Check Post Officer
Deputy Commercial Tax Officer
Puzhal Check Post, Chennai.

+1cc to Mr.A.K. Jayaraj, Advocate, S.R.No.4234

UG(CO)
md(24/01/2017)

W.P.No.1727 of 2017 And
W.M.P.No.1694 of 2017