IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

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THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

WP.No.18969 of 2017
&
W.M.P.No.20469 of 2017

M/s.Jagson International Limited,
Represented by its Legal Advisor,
Mr.Vinodkumar Devi Dayal Sharma,
3rd Floor, Vandana Building,
No.11, Tolstoy Marg,
New Delhi-110 001 ...Petitioner

Vs.

The Deputy Commercial Tax Officer,
(Check Post Officer)
Puzhal Check Post,
Chennai 600 006. ...Respondent

Prayer: Petition under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus to call for the impugned proceedings of the respondent in G.D.No.4040/2017-2018, O.R.No.8608/2017-2018 dated 11.05.2017 and quash the same as issued without authority of law and to direct the respondent to refund the tax of Rs.7,78,720/- and the compounding fees of Rs.2000/- collected from the petitioner without authority of law.

For Petitioner :: Mr.P.Rajkumar

For Respondent:: Mr.K.Venkatesh
Government Advocate



O R D E R

Heard Mr.P.Rajkumar, learned Counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent.

2. The petitioner, who is a contractor registered as a dealer under the provisions of Delhi Value Added Tax is before

this Court challenging the Goods Detention Notice. The petitioner imported "Deepsea Matdrill" for being used for drilling operation in offshore India against the locations released by the ONGC. The imports were effected from China and Singapore via Chennai SeaPort. When the goods were being moved from Chennai Port to Kakinada, they were detained by the respondent by issuing the impugned detention notice stating that the petitioner is not a registered dealer under the provisions of TNVAT Act and they are sending the materials without TIN number, work order and other related documents. The petitioner has produced a declaration signed by the Deputy General Manager (Drilling), ONGC, Mumbai, addressed to the Assistant Commissioner of Customs, Chennai, wherein the ONGC has clearly stated as to what purpose the petitioner has imported the said products and the ONGC has undertaken to pay customs duty, fine and penalty, that may be payable, if any of the conditions of the Notification No.12/2012 dated 17.03.2012 as amended by notification No.12/2016 custom dated 01.03.2016 are not complied with by the petitioner or ONGC. Thus, there could be no doubt regarding the genuinity of the import and the purpose of which the equipment has been imported from China/Singapore. The project for which purpose the drilling equipment has been imported has clearly certified as to where the goods have to be taken for operations. In such circumstances, the question of insisting upon the petitioner to register themselves under the TNVAT Act is wholly illegal and that could not have been a ground for detention of the goods. The respondent has not disbelieved the import transaction nor can they disbelieve the solemn undertaking given by ONGC before the customs authorities. The import documents filed by the petitioner has not been disputed by respondent. Thus, the impugned proceedings are wholly without jurisdiction.

3. Accordingly, the writ petition is allowed and the impugned proceedings are quashed and the respondent is directed to refund the amount of Rs. 7,78,720/- collected as one time tax and Rs.2,000/-, which was collected as compounding fee. The refund shall be effected to the petitioner by the respondent within 12 (twelve) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
The Deputy Commercial Tax Officer
(Check Post Officer)
Puzhal Check Post,
Chennai 600 006.

+1cc to Special Government Pleader(Taxes) sr.64227

+1cc to Mr.P.Rajkumar, Advocate sr.64277

WP.No.18969 of 2017

pa(co)
ss(4/10/2017)