IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2018

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.11420 to 11422 of 2017 &

12457 to 12459 of 2017 &

W.M.P. Nos.12368 to 12373 of 2017 &

13232 to 13237 of 2017

Jakson Engineers Ltd
Rep.by Business Manager
Mr.Geoffrey Merdith. P
39/12, Apeejay Business Centre
Haddows Road
Nungambakkam
Chennai - 600 006. ... Petitioner in all WPs

v.

Deputy Commercial Tax Officer
Enforcement Roving Squad
Office of the Deputy commissioner (C.T)
Villupuram. ... Respondent in all WPs

W.P.No.11420/2017 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondent in Goods Detention Notice No.1235 , dated 24.04.2017 and to quash the same.

W.P.No.11421/2017 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondent in Goods Detention Notice No.1236, dated 24.04.2017 and to quash the same.

W.P.No.11422/2017 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondent in Goods Detention Notice No.1237 , dated 24.04.2017 and to quash the same.

W.P.No.12457/2017 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondent in Compounding Notice Notice No.1235/2017-18, dated 25.04.2017 and to quash the same.

W.P.No.12458/2017 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondent in Compounding Notice Notice No.1236/2017-18, dated 25.04.2017 and to quash the same.

W.P.No.12459/2017 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondent in Compounding Notice Notice No.1237/2017-18, dated 25.04.2017 and to quash the same.

For Petitioner (in all) : Mr.Joseph Prabakar

For Respondent (in all) : Mr.M.Hariharan
Addl. Govt. Pleader (T)

COMMON ORDER

The petitioner in all these six writ petitions are one and the same, viz., M/s.Jakson Engineers Limited and the writ petitions pertain to the same transaction done by the petitioner. The petitioner had filed W.P.Nos.11420 to 11422 of 2017 challenging the Goods Detention Notices dated 24.04.2017. Since immediately thereafter Compounding Notices dated 25.04.2017 were issued, the petitioner has filed W.P.Nos.12457 to 12459 of 2017. Therefore, technically, W.P.Nos.11420 to 11422 of 2017 have become redundant, since all issued have been canvassed by the petitioner in W.P.Nos.12457 to 12459 of 2017. Therefore, these writ petitions are taken for disposal first.

2.1 W.P.Nos.12457 to 12459 of 2017 have been filed praying for the issuance of Writ of Certiorari to quash the Compounding Notices dated 25.04.2017.

2.2 Before examining the reasons assigned by the respondent for issuing the Compounding Notices, it may be relevant to take note of the grounds of detention contained in the Detention Notices dated 24.04.2017, which are impugned in W.P.Nos.11420 to 11422 of 2017. Three consignment of Solar Panels had moved from Kolkatta to be taken to Neyveli for a project of Neyveli Lignite Corporation. The respondent detained the consignments on 24.04.2017 stating that on verification of the invoices it is seen that M/s. Sova Solar Limited, Durgapur, West Bengal, have sold the goods to the petitioner, whose corporate office is located at Greater Noida, but, did not raise any invoice or produce Form JJ in the name of the petitioner and therefore, the respondent has suspected their transaction and detained the goods. Immediately thereafter, the impugned Compounding Notices were issued and on perusal of the same, it appears that the reasons assigned therein are slightly different.

2.3 In the compounding notices, the respondent stated that during the course of lorry check at Vikravandi toll gate on 24.04.2017, the goods vehicle were intercepted by the Enforcement Officers to ascertain the genuineness of the goods loaded in the goods vehicle. The goods loaded in the vehicle with solar photo voltaic pallets and the goods were sold by M/s.Sova Solar Limited, Durgapur, West Bengal to M/s. Jackson Engineers Limited, Greater Noida. It is further stated that the goods were detained and the petitioner was directed to pay the tax and compounding fee.

2.4 Aggrieved by the same, the petitioner had filed W.P.No.1572 of 2017, which was disposed of by order dated 20.01.2017, directing the respondent to release the detained goods upon bank guarantee being furnished equivalent to the tax imposed in the compounding notice and this will be without prejudice to the rights of the petitioner to lay a challenge both to the imposition of tax and compounding fee levied via the Detention Notice dated 04.01.2017. Based on the direction issued by this court, the goods, which were detained, were released on 08.02.2017. The respondent would further submit that at the time of verification of records the driver of the vehicle produced the Goods Consignment Note, Delivery Challan of Jackson Engineers Limited, Greater Noida and Tax Invoices.

2.5 After referring to Section 2(43) of the Tamil Nadu Value Added Tax Act, 2006 and Section 5(1) of the TNVAT Act, the respondent would state that on verification of invoices, buyer is Jackson Engineers Limited, Greater Noida to execute the work contract in Tamil Nadu, for which, registration has to be obtained under the TNVAT Act and in the invoices produced by the driver of Tamil Nadu, TIN number is not available.

2.6 It was further submitted that the consignment solar photo voltaic modules, which moved from Greater Noida is a taxable commodity @ 14.5% under TNVAT Act and being the first sales to Neyveli Lignite Corporation, Tamil Nadu, tax liability arises within the State and the petitioner has not paid the tax due thereon to the Government of Tamil Nadu. Thus, it was alleged that M/s.Jackson Engineers Limited, Greater Noida with an intention to evade tax have adopted the modus and therefore, it was alleged that they have committed the offence under sections 70(1)(c), 71(3)(d), 71(3)(e) and 71(5)(a) of the TNVAT Act and therefore, proposed to levy compounding fees. The respondent after referring to form JJ, permitted the goods as unclassified items and levied tax at 14.5%.

3. Heard Mr.Joseph Prabakar, learned counsel appearing for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing for the respondent and perused the materials placed on record.

4.1 Mr.Joseph Prabakar, learned counsel appearing for the petitioner submitted that there is absolutely no legal basis for detaining the goods on entering the State of Tamil Nadu, especially, when the goods viz., Solar Panels, are unconditionally exempted goods in the origin State, West Bengal. It is further stated that in terms of Section 67 of the TNVAT Act, either the tax invoice or Form JJ is sufficient and the invoices issued by M/s.Sova Solar Limited, West Bengal, clearly shows that Neyveli Lignite Corporation Limited, Neyveli as consignee and this is sufficient to justify the movement of the goods to Tamil Nadu. Further it is submitted that Section 67 of the TNVAT Act provides that the goods should be accompanied with any of the document such as invoice and that the goods in question were indeed accompanied by a valid invoice as well as a challan. Further it is submitted that if the respondent or the Check Post Officer has any doubts about the transaction, he can always address the Assessing Officer of the petitioner, as the petitioner is a registered dealer in Nungambakam Assessment Circle, which had issued Form JJ for the transaction in question. By relying upon an order passed by this court in the petitioner's own case, viz., Jakson Engineers Ltd , Chennai v. The Commercial Tax Officer, Roving Squad II, Chennai in W.P.Nos.5433 and 5443 of 2017, dated 03.07.2017, it is submitted that this court in the said order has held that the levy of compounding fee and demanding one time tax by the Check Post Officer on an interpretation made by him in the said case is without jurisdiction.

4.2 It is submitted that the only difference between the transaction, which was the subject matter in W.P.Nos.5433 and 5443 of 2017 and the present case is that in the said writ petitions, the goods were imported and were taken to Neyveli Lignite Corporation Limited, Neyveli for implementing the very same solar project and the court taking into considerations the facts placed before it held that the Check Post Officer has no jurisdiction to impose compounding fee and one time tax by interpreting the nature of the transaction. Therefore, it is submitted that the respondent has absolutely no jurisdiction to pass the impugned order, more particularly, the reasons assigned therein, as it is beyond his purview as a Check Post

Officer.

5. Mr.M.Hariharan, learned Additional Government Pleader appearing for the respondent, by referring to the counter affidavit, reiterated the factual position and submitted that the goods were moved from Greater Noida with an intention to evade tax and therefore, the respondent has rightly initiated proceedings and levied compounding fee and tax and if they are aggrieved, they should have filed a revision under section 54 of the TNVAT Act.

6. The petitioner is a registered dealer within the State of Tamil Nadu and having its Branch Office within the jurisdiction of Nungambakam Assessment Circle. The petitioner's corporate office is situated at Greater Noida. The petitioner's case is that Neyveli Lignite Corporation Limited, Neyveli, awarded a contract for setting up a Solar Power Plants, which involves supply of Solar Modules with specific instructions to deliver the goods to them. The Solar Panels were purchased by the petitioner by placing a purchase order through their corporate office with the manufacturer/supplier situated in the State of West Bengal. The solar device are unconditionally exempted in terms of Section 21 of West Bengal Value Added Tax Act. The interstate sale of Solar Panels is also exempted. It is the further case of the petitioner that the interstate sales would include in-transit and therefore, the in-transit sale is also exempted.

7.1 On a perusal of the suppliers' invoice issued from West Bengal shows the name of the consignee as General Manger, Neyveli Lignite Corporation Limited, Neyveli and the buyer is Jakson Engineers Limited, Greater Noida. The petitioner's delivery challan, which was issued from Greater Noida, is in favour of Neyveli Lignite Corporation Limited, Neyveli and it has been mentioned that the place of origin of goods is from Kolkatta against the invoice raised and the goods are sold in transit between Durgapur (West Bengal) and Tamil Nadu.

7.2 It appears that the problem has arisen on account of the entries found in the Form JJ. In the said form, in section A, which gives the details of Consignor, the name of the West Bengal Supplier has been mentioned. In Section B, details of the Consignee name, viz., Neyveli Lignite Corporation Limited, Neyveli, has been mentioned. Therefore, it appears that the respondent doubted the genuineness of the transaction, since the petitioner's name did not find place in the Form JJ. It being a triparte arrangement, there is no column to provide the name of the third entity. Therefore, it is submitted that the transaction effected by the petitioner is a genuine transaction for implementation of a project awarded by the Government of India.

7.3 In my considered view, there is no necessity for this court to examine the contentions advanced by the dealer or the defence put up by the Revenue. As it is clear that the facts which have been mentioned in the impugned compound notices are beyond the purview of the Check Post Officer. When the petitioner is a registered dealer within the State of Tamil Nadu on the file of the Assistant Commissioner of Commercial Tax, Nungambakkam Assessment Circle, it is well open to the Assessment Officer to take a decision in the matter and it is not for the Check Post Officer to give a rethink on the said issue and if permitted to be done so, it would amount to transgressing into the power of assessee. Therefore, the reasons assigned in the impugned compound notices are held to be beyond the purview and jurisdiction of the Check Post Officer. However, that does not mean that the genuineness of the transaction cannot be examined at any length.

7.4 As pointed out earlier, Assessing Officer of the petitioner, who has to examine the contentions raised by the petitioner, has to ascertain the genuineness of the transaction. Prima facie, records, which was placed before this court, show that the goods were intended for solar project to be implemented for the Neyveli Lignite Corporation Limited, Neyveli. The delivery challan clearly indicates that the goods are sold in transit between Durgapur (West Bengal) and Tamil Nadu. The supplier invoice shows the name of the consignee as Neyveli Lignite Corporation Limited, Neyveli and the buyer as Jakson Engineers Limited, Greater Noida. Thus, those entries would prima facie show that the goods moved from the State of West Bengal to Neyveli Lignite Corporation Limited as part of an interstate transaction. However, this is only a prima facie finding which has been recorded by this court and it is for the Assessing Officer of the petitioner to conduct a detailed enquiry to come to a right conclusion. For the above reasons, the observations/reasons given in the impugned compound notices are held to be beyond the purview of the Check Post Officer, therefore, such reasons have to be held to be without jurisdiction.

8. Thus, on this short technical ground, the impugned compounding notices are liable to be set aside and accordingly set aside with a direction to the Assistant Commercial Tax Officer, Nungambakkam Assessment Circle, Chennai, before whom the petitioner is registered, to complete the petitioner's assessment in respect these transactions(relevant year) on the basis of the returns filed by the petitioner. To secure the release of the goods, the petitioner had remitted one time tax and this amount shall be transferred by the Check Post

Officer to the credit of the Assessing Officer, who shall retain the same and the tax so collected, shall abide by the orders that may be passed by the Assessing Officer.

9. With the above directions, the W.P.Nos.12457 to 12459 of 2017 are allowed. Consequently, W.P.Nos.11420 to 11422 of 2017 are closed as no orders are required in these writ petitions. No costs. Connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Rj

To

Deputy Commercial Tax Officer
Enforcement Roving Squad
Office of the Deputy commissioner (C.T)
Villupuram.

Copy to

The Assistant Commercial Tax Officer
Nungambakkam Assessment Circle
Chennai,

W.P.Nos.11420 to 11422 of 2017 &
12457 to 12459 of 2017 &
W.M.P. Nos.12368 to 12373 of 2017 &
13232 to 13237 of 2017

NRL(CO)
TR(15/05/2018)