IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.27920 of 2017
and
W.M.P.No.29953 of 2017

M/s.VPR Mining Infrastructure Limited
Rep by its Authorised Signatory
Door No.8-2-293/82/A/1259
3rd Floor, Road No.36
Jubilee Hills, Hyderabad-500 033.
...Petitioner

Vs.

1.The Joint Commissioner (CT)
Chennai (North) Division
Station: III Floor, PAP JM Buildings
No.1, Greams Road, Chennai - 600 006.

2.The Commercial Tax Officer
Roving Squad-IV, Enforcement (North)
Greams Road, Chennai - 600 006. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, call for the records of the impugned order RP No.60/17, dated 04-07-2017, passed by the first respondent herein, quash the same.

For Petitioner : M/s.Aparna Nandakumar

For Respondents : Ms.G.Dhanamadhri
Government Advocate (Taxes)

O R D E R

Heard M/s.Aparna Nandakumar, learned counsel for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate (Taxes) appearing on behalf of the respondents.

2.The petitioner is aggrieved by an order passed by the Joint Commissioner (Commercial Tax), Chennai (North) division dated 04.07.2017, by which, the revision petition filed by the petitioner challenging the order passed by the Commercial Tax Officer, Roving Squad-IV, Enforcement (Chennai North) dated 12.01.2017 was dismissed.

3.The goods in question were detained on the ground that there was a reasonable suspicion that the goods are meant for sale in the State of Tamil Nadu, disbelieving the stand of the petitioner that the goods were meant for export from India. At the first instance, the Check Post officer detained the goods, because the driver of the vehicle, who was carrying the goods did not have any documents to show that the goods were meant for export and further stated before the Check Post officer that he has been instructed to deliver the goods in Kancheepuram. As soon as the goods were detained on 02.01.2017, the petitioner had obtained a letter dated 02.01.2017 from M/s.Genshipping Pacific Line (India) Private Limited, informing the petitioner that the goods could not be loaded into a vessel, as it reached Chennai late and unable to complete the custom formalities and assured that the goods will be loaded in the next vessel which is expected to arrive in Chennai Port around 4^{th} week of January 2017. The petitioner, in the meanwhile, appears to have taken a decision not to take back the goods to Andhra Pradesh but to warehouse the same in Tamil Nadu itself and that is the reason why the goods were taken to Kancheepuram when they were interrupted.

4.The crucial question that has to be tested is whether the plea raised by the petitioner that the goods were intended for export is bonafide and what are all the documents available with the petitioner. The bunch of export documents filed in the typed set of papers, clearly shows that the goods were intended for export.

5.Though, the Revisional Authority accepts the facts that the goods are meant for exported, to pick holes in the transaction, he has stated that the discrepancy in the name of the vessel, prior permission was not obtained to take the goods and warehouse the same at Kancheepuram, there is a mis-match in the model number as it has been mentioned as ZH 220 instead of ZW220.

6.In my considered view, if the authority does not dispute the fact that the goods have been meant for export, the minor discrepancies as pointed out in the impugned order are of no consequence. Because what is required to be tested is whether the goods were meant for export or whether they were actually exported.

7.On perusal of the invoices, packing list, I find that the model number has been shown ZW220. Apart from that, there is no mis-match in the machine serial number in all the export document. Therefore, I have no hesitation to hold that the goods were intended for export outside the country, were in fact exported as admitted by the 1st respondent.

8.Thus, the impugned order calls for interference. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently the order passed by the 2nd respondent dated 12.01.2017 is set aside and the respondents are directed to refund the one time tax paid by the petitioner. Consequently, the petitioner is permitted to discharge the Bank Guarantee. No Costs. Consequently, the connected miscellaneous petition is also closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

rka/maya

To

1. The Joint Commissioner (CT)
   Chennai (North) Division
   Station: III Floor, PAP JM Buildings
   No.1, Greams Road, Chennai - 600 006.

2. The Commercial Tax Officer
   Roving Squad-IV, Enforcement (North)
   Greams Road, Chennai - 600 006.

+1 CC to M/s. Aparna Nandakumar, advocate sr 7372.
+1 cC to The Spl. Govt. Pleader(T) sr 7025

W. P. No.27920 of 2017

SP(19/02/2018)