IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.11989 of 2005
and
W.P.M.P.No.13092 of 2005

Gupta Enterprises
Rep. by its Partner Krishna Kishore
P.B.No.44, Eastern Street
Eluru, Andhra Pradesh 534 001
...Petitioner

Vs.

1.The District Forest Officer
Sathyamangalam Division
Sathyamangalam

2.The Manager
Dena Bank
Numgambakkam Branch
Chennai 600 034
... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records on the file of the 1st respondent relating to the impugned order dated 13.03.2005 in Proc.No.L/6660/04 and quash the same.

For Petitioner : Mr.K.S.Natarajan

For Respondents: Mr.G.B.Rajesh
Government Advocate

O R D E R

The petition has been filed by the petitioner for issuance of a writ of Certiorari, to call for the records on the file of the 1st respondent relating to the impugned order dated 13.03.2005 in Proc.No.L/6660/04 and quash the same.

2.The case of the petitioner is that the petitioner participated in the auction of sandalwood material conducted by the 1st respondent on 26.05.2004 to fulfill the prior export commitment under export orders placed by foreign buyers. In pursuance to the auction of sandalwood, the petitioner was declared as the successful bidder in respect of a total quantity of 11.500 MTs of various of sandalwood for the total sale price of Rs.1,71,48,050/-. The same was confirmed by the 1st respondent by confirmation orders dated 24.06.2004 in respect of 3.500 MTs and 28.06.2004 in respect of 8.000 MTs. The 1st respondent effected delivery to the petitioner, on the petitioner making all the payments except the sales tax, as the petitioner was exempted from paying sales tax as the purchase was in the course of export. In respect of the sales tax amount, the petitioner was required to furnish a bank guarantee for the total sum of Rs.21,60,654/- which was to be kept alive till such time the petitioner produces Form-H to satisfy the respondent about the export of the goods. Accordingly, the petitioner furnished two bank guarantees (1) for Rs.13,08,324/- and another (2) for Rs.7,49,442/- issued by Dena Bank, Nungambakkam Branch and thereafter the delivery was taken on 05.07.2004 and the goods were taken to the petitioner's godown at Eluru, Andhra Pradesh. The Bank guarantees were furnished for a period of one year and would remain in force till 27.06.2005. The petitioner completed the exports in respect of 9.000 MTs and produced the requisite Form-H before the 1st respondent on 20.08.2004 and after being satisfied about the same, the 1st respondent discharged the Bank Guarantee for a sum of Rs.13,08,324/-. However, the petitioner could not complete the export of 2.500 MTs of sandalwood. Since the said 2.500 MTs was not exported to the foreign country, another bank guarantee was invoked and asked the 2nd respondent to forward a sum of Rs.5,57,575/-being the sale tax in respect of 2.500 MTs. Challenging the same, the petitioner preferred this writ petition.

3.The learned counsel appearing for the petitioner would submit that though no documents and invoices for the sale of 2.500 MTs were produced that the sale was effected to the foreign countries, however, the same was sold in the local market inside the State i.e. Andhra Pradesh and the petitioner has also paid the necessary sales tax and other dues in favour of the Government. Hence, invoking Bank guarantee and collection of sales tax for the said 2.500 MTs is improper and prays for appropriate relief.

4.The learned Government Advocate, appearing for the respondents would submit that the petitioner was exempted from the payment of sales for facilitating the exports for earning foreign money. However, the petitioner has exported only 9.000 MTs and 2.500 MTs were not exported and bank guarantee furnished for the purpose of securing sales tax arrears was invoked since the petitioner did not produce any documents to show that the 2.500 MTs was exported to foreign country. Hence, the sales tax arrears were encashed by invoking bank guarantee. Accordingly, prays for dismissal of the petition.

5.The short issue involved in the present case arises for consideration is whether the respondent invoking the bank guarantee is sustainable or not?. The undisputed facts are that the petitioner is the successful bidder in respect of total quantity of 11.500 MTs of sandalwood. It is also admitted that the petitioner has exported 9.000 MTs to the Foreign country, accordingly, the first bank guarantee released in favour of the petitioner and the remaining bank guarantee was invoked by the 1st respondent is for not exporting 2.500 MTs. The petitioner has also not filed any documents to show that the 2.500 MTs have been exported till date. Hence, the bank guarantee was encashed by the 1st respondent.

6.On a perusal of the letter sent by the Deputy Commercial Tax Officer dated 24.08.2004 to the District Forest Officer, Sathyamangalam i.e. 1st respondent, informing him that there is a due and non payment of sales tax in respect of 2.5 MTs. The relevant portion has been extracted hereunder for the ready reference:

> 5.Form H No.OJC 110485 dt.18.08.2004.
>
> From the above, it is found that out of 11.500 M.T. of sandalwood auctioned, only 9.000 M.T. of sandalwood has actually been exported. The documents filed in support of the claim of exemption are found to be in order.
>
> Hence, a turnover of Rs.1,27,22,850.00 representing 9.000 M.T. of sandalwood alone is found admissible for the claim of exemption under Section 5 (3) of the CST Act'56 and the remaining turnover of Rs.44,25,200.00 relating to the 2.500 M.T, of sandalwood is not eligible for exemption under Section 5(3) of the CST Act'56. Since the goods have not been actually exported as on date. I therefore, request you to keep alive the Bank Guarantee in respect of 2.500 M.T. till 5 months from the date of delivery. If the dealers fail to file any export documents withing 5 months of delivery of goods, then the Bank Guarantee may be encashed under intimation to this office.

7.In view of the above, it is clear that the petitioner has not complied with the condition of sale while executing the Bank guarantee. Hence, the 1st respondent is entitled to encash the bank guarantee for not availing the benefit of exemption of sales tax.

8.This Court does not find any error or infirmity in the impugned order passed by the 1st respondent. This writ petition stands dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To.

1.The District Forest Officer,
Sathyamangalam Division,
Sathyamangalam.

2.The Manager,
Dena Bank,
Numgambakkam Branch,
Chennai 600 034.

+1cc to the Special Government Pleader Sr.54360

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srg 01/08/2019