IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.02.2020

Pronounced on : 19.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.28470 of 2013
and
M.P. No.2 of 2013

Vestas Wind Technology
India Private Limited having its registered office at
No.298, Old Mahabalipuram Road,
Sholinganallur, Chennai - 600 119,
represented by its Senior Executive ..Petitioner

Versus

1.The Commercial Tax Officer,
Enforcement,
Roving Squad, Chengalpet,
Enforcement South,
Greams Road,
Chennai - 600 006.

2.The Deputy Commissioner of Commercial Taxes,
Enforcement (Chennai South)
Greams Road, Chennai - 600 006.

3.The Joint Commissioner of Commercial Taxes,
Enforcement Taxes, Enforcement II,
Greams Road, Chennai - 600 006.

4.The Commissioner of Commercial Taxes,
Commercial Taxes, Ezhilagam,
Chepauk - 600 005. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified mandamus, to call for the records pertaining to the issue of the compounding order in proceedings bearing GD No.41/2013-14 O.R.No.11798/13-14 dated 05.09.2013 vide Form No.46 duly issued by the Commercial Tax Officer, Roving Squad, Chengalpet, Enforcement South Chennai, the 1st respondent herein and quash the same and direct the respondents to refund the compounding fee at Rs.2,74,048/- to the petitioner company that had been collected illegally.

For Petitioner : Mr.D.Ashok Kumar

For Respondents : Mr. R.Swarnavel, G.A.

O R D E R

The petitioner has prayed for quashing of the impugned Compounding Notice dated 5.9.2013 bearing reference GD No. 41/2013-14 OR No. 11798/13-14 issued by the 1st respondent Commercial Tax Officer, Roving Squad, Chengalpet, Enforcement South Chennai and for consequential direction for a refund of ? 2, 74, 048/-paid by the petitioner as the compounding amount/fee for release of the goods detained vide Goods Detention Notice No 41/2013-14 in Form No. 41 dated 2.9.2013.

2. The petitioner had purchased a wind energy gearbox from M/s.Siemens Limited from their factory at Sriperumbadur Taluk, Tamil Nadu and had directly consigned to a site office from where the wind energy gearbox was to be installed for a customer of theirs along with the goods equipments. While the consignment was in transit it was intercepted and detained at the Paranoor Check Post, near Chengalpet District on the ground that on verification of the document produced at the time of detention, it was found that the goods were to be delivered at an unregistered place and an enquiry through phone, the dealer was not clear regarding the registration of the place of unloading. Hence, the goods along with the vehicle were detained at the Commercial Tax Office premises at Greams Road Chennai 6 for verification of particulars of the transaction.

3.It appears from the facts that were narrated during the course of hearing the petitioner is engaged in development of wind energy parks in Tirunelveli District wherein it installs wind energy generators for its customers and for the aforesaid purpose it had procured the aforesaid gearbox.

4.The contention of the respondent is that since the petitioner did not have registration for the site office, the transportation was improper and without payment of duty.

5.It is a contention of the petitioner that the power to levy compounding fee under section 72 of the Tamil Nadu Value Added Tax Act 2006 by a Check Post officer at the Check Post was without the authority of law and therefore the compounding fee paid by the petitioner was without the authority of law and therefore prayed for refund.

6.In this connection learned counsel for the petitioner has placed reliance on the following decisions of the courts:-

i.Rajasthan investment Corporation versus The Deputy Commercial Tax Officer T Nagar (1968) 21 STC 500;

ii.Sundaresan versus The Board of Revenue (CT) Madras (1972) 29 STC 691;

iii.K.J. Lingan versus Joint Commercial Tax Officer (1967) 19 STC 349;

iv.Supreme Industries Ltd Versus The Deputy commercial tax Officer And Others

7.Heard learned counsel for the petitioner and the respondent. Though the present writ petition is of the year 2013, the respondents have not filed any counter.

8.However, the learned counsel for the respondent on instructions have submitted that all rules and regulations, notifications clarifications orders made or issued under any of the provisions of the TNGST Act, 1959 will continue to be in force insofar as long as they are not inconsistent with the provisions of the Tamil Nadu Value Added Tax Act, 2006.

9.It is thereforesubmitted that under Rule 53 of the TNGST Rules, 1959, the Assistant Commercial Tax Officer, the Deputy Commercial Tax Officer and the Asst Commercial Tax Officer may exercise the power specified in Section 46 of the TNGST Act, 1959 subject to the control and direction of the Deputy Commissioner of Commercial Taxes and the Commissioner of Commercial Taxes.

10.It is submitted that there is no error in the assumption of jurisdiction by the 1st respondent Commercial Tax Officer, Enforcement Roving Squad while detaining and levying tax and in asking the petitiioner to pay compounding fee.

11.I have considered the submissions of the learned counsel for the petitioner and the respondent. I have also perused the caselaw cited by the learned cause for the petitioner.

12.Short point that arises for consideration in the present writ petition is whether the 1st respondent was justified in detaining the goods at the Check Post and whether the demand for payment of Value Added Tax and compounding fee for release of the goods was justified or not in the fact and circumstances of the present case.

13.The goods in question were directly dispatched by the manufacturer to the Petitioner's site in Tirunelveli for being installed along with the other wind energy equipment at a later point time.

14.The petitioner had not affected any sale of the goods when the goods was detained by the 1st respondent at the Paranoor Check Post near Chengalpet. It is at a later stage, a sale would have taken place by the petitioner to its customer.

15.I am therefore of the view that detention of the goods on the assumption that the petitioner had already effected sale and that no tax was paid when the goods were in transit was is purely based on the assumption, presumption and conjecture. As and when the petitioner effects sale, the petitioner would be liable to pay tax.

16.In the era where there was scope for availing of input tax credit on the incidence of tax, it can hardly be assumed that the petitioner would not be paying tax as and when sale takes place.

17.The manufacturer's invoice filed along with the typeset indicates that the supplier-manufacturer had charged a sum of ? 1,3,024.05.This amount is available as input tax credit for being set off as input tax credit. Further, when the petitioner sells the same, there will be a markup and value addition. Therefore, the petitioner would be paying tax on the value addition and partly discharge the tax liability from the input tax credit earned.

18.It is however noticed that the same amount was again demanded as tax from the petitioner on the assumption that the detained goods had not suffered tax. The petitioner was given an option to release the detained goods on payment of compounding fee of ? 2,74,048/- (being twice the amount of tax) in the impugned proceeding.

19.In my view, there was an error in assumption of jurisdiction by the 1st respondent Commercial Tax Officer namely the Check Post officer on the ground that the goods had not suffered tax as the manufacturer had indeed charged tax in the invoice raised on the petitioner. The 1st respondent not only erred in demanding tax at the Check Post from the petitioner after wrongly detaining the goods but also erred in asking the petitioner to opt for compounding of the alleged offence under section 72(1)(a) of the Tamil Nadu Value Added Tax Act, 2006 by asking the petitioner to pay the aforesaid amount of Rs.2,74,048/-. Indeed, no casewas made for detaining the goods in transit on the assumption that no tax was paid.

20.At the same time, the petitioner was as at fault. Though the petitioner appears to have obtained VAT registration for its head office, it had not obtained separate registration for the site office as an additional place of business under Rule 5 (1) (a) of the Tamil Nadu Value Added Rules, 2007 read with Section 38 of the Tamil Nadu Value Added Tax Act,2006.

21.Failure to obtain separate registration for the site office attracts penal provision Section71(1)(b). As per the aforesaid provision any person who is obliged to register himself as a dealer under the Act and does not get himself registered shall on conviction by a Magistrate, be liable to fine which may extend to Rs.500 /- as the petitioner could have been proceeded only for the aforesaid violation.

22.Therefore, while upholding the invocation of Section 72 (1) of the Tamil Nadu Value Added Tax Act, 2006, I am of the view that the composition fee ought to have been restricted to an amount not exceeding Rs.2000/-under Section 72(1)(b) of the aforesaid Act.

23.In the light of the above discussion, I modify the impugned proceeding by restricting the compounding fee Rs.2000/- under Section 72(1)(b) of theTamil Nadu Value Added Tax Act, 2006. Respondents are therefore directed to refund the excess amount paid by the petitioner to towards compounding/composition amount. As far as the amount which was collected towards tax is concerned, same can be djusted towards the tax liability of the petitioner.

24.The writ petition stands partly allowed. Accordingly, miscellaneous petition is closed. No cost.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

arb/Arul

To

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Enforcement,
Roving Squad, Chengalpet,
Enforcement South,
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LN(CO)
GMY(01/07/2020)