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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7922/2011**

% **Date of Decision : 25th November, 2011.**

MAGICON IMPEX P. LTD

..... Petitioner

Through: **Mr. Rajesh Mahna and Mr. Ramanand
Roy, Advs.**

versus

**COMMISSIONER, TRADE AND TAXES
AND ORS**

..... Respondents

Through: **Mr. Pradeep Tara and Mr. Vishva
Wadhwa, Advs. for R-1 to R-3.**

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest?

SANJIV KHANNA, J: (ORAL)

Magicon Impex Pvt. Ltd. has filed the present writ petition, which was amended pursuant to the order dated 09.11.2011, praying inter alia for the following reliefs:-

- (a) Issue a writ, order or direction in the nature of certiorari or any other writ, order or direction of like nature, quashing the orders dated 29.10.2011 and 4.11.2011;

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Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

(b) Issue a writ, order or direction in the nature of mandamus or any other writ, order or direction of like nature directing Respondents to release the goods of the petitioner and the goods vehicle carrying the said goods.”

2. The aforesaid order permitting amendment of writ petition was passed as it was pointed out by the counsel for the respondents that by an order dated 04.11.2011 tax and penalty of Rs. 1,94,412/- each has been imposed.

3. The petitioner had imported mobile phones and components and the consignment was cleared on payment of customs duty of Rs.76,207/- and Rs.61,289/-, respectively, on 29.10.2011. After the customs clearance, the goods were loaded on a Goods Carrier bearing registration No.DL-1LG-5406. The said carrier left the IGI Airport Air Cargo at about 10.30 P.M. on 29.10.2011 and was stopped by the officers of Department of Trade and Taxes at Centure Hotel, which is at a distance of about one kilometer. Statement of Inder Pal, driver of the truck was recorded. The said statement is on the cyclostyled proforma in which blanks had been filled up by hand. In the relevant column under the heading “reasons” it was mentioned “verification of bills”. Thereafter, an order was passed under the heading “maal-roko-aadesh” which transcribed in English language will mean “order to stop the goods”. The said order is also on a cyclostyled proforma in which blanks have been filled up in handwriting. The relevant column

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relating to reasons reads "verification of documents/bills".

4. On 31.10.2011 the petitioner wrote a letter to the Value Tax Officer stating that they had imported the mobile phones and spare parts which were assessed to duty by the customs authorities at the IGI Airport and after custom clearance on payment of duty they were loaded in truck No.DL-1LG-5406 to be transported to the godown of the petitioner at H-42, Balinagar, New Delhi. The truck was stopped at 10.30 P.M. on 29.10.2011 and was taken into the respondent's possession. The petitioner had enclosed relevant papers/documents with regard to import and payment of customs duty on the consignment.

5. On 04.11.2011 the respondent authorities passed an assessment/penalty order imposing total penalty of Rs.3,88,824/- consisting of VAT @ 5% and penalty equal to the amount of VAT i.e. Rs. 1,94,412/- each. The said order is on a printed standardized format in which blanks had been filled up in hand writing. The said order is addressed to Inder Pal i.e. the driver of the truck. It ignores the letter dated 31.10.2011 relied upon, submitted and filed by the petitioner. This letter dated 31.10.2011 is not disputed by the respondent and is on their record. It is the contention of the petitioner that this order has been passed without even giving notice to him.

This is correct as the order does not record the presence of the petitioner and

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only records the name of the Inder Pal, the driver of the truck and states as under:-

“Whereas Sh. Inderpal & Sh. _____
(Advocate/Transporter/Driver/Dealer/Owner as the case may be)
appeared before me on 3-11-11 for the release of goods
contained in the above said vehicle.”

6. The order at the bottom is addressed to Inder Pal and the signatures of Inder Pal are available on the said order and he had written that he has received a copy of the said order. Thus, the petitioner who is the owner was not heard before the order was passed. The printed format of the order provides two options for reasons for passing of assessment/penalty order, which reads as under:-

“Goods being transported without bills/Proper documents.
Or
Verification of bills/GRs”.

7. The second option “verification of bills/GR” has been tick marked. No other reasons or grounds have been stated. Thus the assessment and penalty of Rs.3,88,824/- has been imposed for verification of Bills/GRs.

8. In the counter affidavit filed to the writ petition the respondents have alleged that the goods were transported without Goods Receipt or GR. This fact is not stated in the statement recorded while seizing the goods on
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29.10.2011 and in the maal-roko-aadesh of the same date. As noticed above in the statement and in the maal-roko-aadesh, the averment made is; “verification of bills” and “verification of documents/bills” respectively. In case GR was not available with the driver, it should have been indicated and mentioned in the statement and in the maal-roko-aadesh. In the assessment/penalty order again it is not stated that goods were being transported without bills/proper documents i.e. GR.

9. Learned counsel for the respondent has submitted that along with the counter affidavit they have filed copy of statement of Manoj Chauhan, and Rajinder Singh manager and owner of the transport company which are dated 17.11.2011 and 18.11.2011. Both of them have stated that the GR or Goods Receipt produced by the petitioner has not been issued by them and the stamp and signatures on the GR do not belong to any person working for the said company. They have stated that they have manual GR register and do not have computerized GR register. Learned counsel for the petitioner, on the other hand, has filed in this Court details of computerized GR receipts issued by Rajinder Tempo Service and has submitted that similar receipts had been issued by several other transporters who have rendered services to the petitioner from time to time. It is alleged that these statements have been extracted under threat and coercion.

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10. The statement of the manager and owner of the transporter company, as noticed above, were taken on 17.10.2011 and 18.10.2011 and the order of penalty was passed on 04.11.2011. These statements were not the basis/foundation of the order. The statement, maal-roko-aadesh and the order of assessment/penalty as noticed above refers to verification of bills, verification of documents/bills and verification of bills/GRs. Now the respondents in the counter affidavit have taken a different stand and have stated that the GR was not available with the driver when the goods were transported and the vehicle was stopped. This fact is not mentioned in any of the three documents namely; statement, maal-roko-aadesh and the penalty/assessment order. As noticed above, the column relating to "goods been transported without bills/proper documents" has not been tick marked in the order dated 4.10.2011. What has been specifically tick marked is "verification of bills/GRs".

11. In these circumstances, we do not understand how the assessment/penalty order was passed on 04.11.2011 imposing tax and penalty of Rs.3,88,824/-. The respondent it is apparent has proceeded with great haste and hurry in passing the order after they have come to know that the petitioner may be approaching the Court. Petitioner was not even heard.

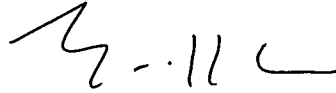
12. We do not agree with the contention of the respondent that this Court

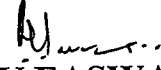
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should not exercise writ jurisdiction in the present case in view of alternative remedy by way of appeal. The facts in the present case justify exercise of extra ordinary power. There is violation of principle of natural justice and otherwise also the orders show complete non-application of mind by the authorities concerned. The action and conduct of the respondents is arbitrary. In these circumstances, we have no option but to strike down and issue a writ of certiorari and quash the order dated 04.11.2011. The goods detained will be released to the petitioner immediately.

13. Writ petition is disposed of. However, it will be open to the respondent authorities to pass fresh assessment/penalty order in accordance with law and after hearing the petitioner.

Dasti.


SANJIV KHANNA, J


R.V.EASWAR, J

NOVEMBER 25, 2011
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