IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.34336 of 2015

Waves Aircon Pvt-Ltd. [Petitioner]
rep. by its Authorised Signatory
G.1 797 795 794-& 793
RIICO Indl Area Road
No.20-A Bhiwadi Alwar Dist
Rajasthan 301 019

Vs

The Commercial Tax Officer
Roving Squad V Enforcement (North)
Greams Road Chennai 600 006. [Respondent]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records of the respondent in his proceedings in GD No.4125/15-16/RS-V-N dated 16/10/2015 and quash the same and direct the respondent to release the goods.

For Petitioner : Mr.Adithya Reddy
For Respondent : Mr.S.Kanmani Annamalai, AGP(T)

O R D E R

Heard the learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main writ petition itself is taken up for disposal.

2.The writ petition has been filed under Article 226 of the Constitution of India challenging the Goods Detention Notice in GD No.4125/15-16/RS-V-N dated 16/10/2015 and to direct the respondent to release the goods.

3. The petitioner, who is a dealer in Air Handling Units and other electronic producds registered under Rajasthan VAT Act with TIN No.08220852237 dated 10.01.2003. According to the petitioner, one TRIL Info Park Limited, Taramani, Chennai, had placed an order for 5 Air Handling Units from the petitioner and accordingly, the petitioner despatched the same under Invoice No.WAPL/SEZ/0064 dated 30.09.2015 from the petitioner's premises on 30.09.2015 by engaging the services of one Capital Logistics

through Vehicle No.HR 55V 0283, which reached Chennai on 16.10.2015. Further, according to the petitioner, instead of taking the goods directly to the premises of the consignee in Taramani, the transporter, attempted to offload the goods in a go-down in Redhills, due to some internal arrangement of the transporter. The respondent, who was on roving squad duty, had detained the goods by the impugned proceedings on the following basis:-

> "On verification, the goods vehicle intercepted at ICM Logistics Pvt Ltd. No.1, Teachers Modern Town, Pully Lane, Redhills, Chennai for unloading the goods in unregistered godown and also another goods vehicle unloaded the goods at above said premises (Vehicle No.HR 55V 4489). The both vehicles are not submitted the invoice at income check posts and not affix the checkpost seal".

According to the petitioner, the fact that the goods were offloaded temporarily in a godown does not mean that the goods were meant for an unregistered dealer. That apart, according to him, since the goods will be delivered to the consignee, there is no question of any tax evasion. However, the respondent has served the impugned goods detention notice on the driver of the vehicle, demanding tax and penalty and refused to release the goods without the said payment. Aggrieved over the impugned detention notice, the petitioner is before this Court.

4. The learned counsel for the petitioner submitted that respondent has erred in coming to the conclusion that there is tax evasion since the goods were unloaded by the transporter temporarily before delivering them to the consignee. Further, according to him, when the goods were accompanied with valid documents, detention of goods is unsustainable.

5. Adding further, the learned counsel for the petitioner would submit that the petitioner is willing to pay one time tax which may be quantified by the respondent and on such payment, goods may be directed to be released and as far as compounding fee is concerned, liberty may be given to the petitioner to adjudicate the same.

6. The learned Additional Government Pleader (Taxes) submitted that a direction may be given to the respondent to quantify the tax to be paid by the petitioner and on such payment, goods may be directed to be released.

7. This Court has considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. Admittedly, the goods are detained from 16.10.2015. Till date, tax has not been quantified. Hence, for the purpose of release of goods, the respondent is directed to quantify the tax to be paid by the petitioner in consultation with the assessing authority and intimate the same to the petitioner within a period of one week from today and on such payment being made by the petitioner, the goods detained are directed to be released forthwith. As far as the compounding fee is concerned, it is open to the petitioner to adjudicate the same in the manner known to law.

The writ petition is disposed of with the above direction. No costs.

rg

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer
Roving Squad V Enforcement (North)
Greams Road Chennai 600 006.

+ 1 cc to Mr.Adithya Reddy,Advocate SR 58444

+ 1 cc to Special Govt.Pleader (Taxes) SR 58587

ctk(co)
prk29/10

W.P.No.34336 of 2015