IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.37649 of 2016 and

W.M.P.No.32274 of 2016

Philips India Limited ... Petitioner

Vs

Deputy Commercial Tax Officer,
The Check Post Officer,
Puzhal (outpost) Check Post,
Chennai. ... Respondent

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India to issue Writ of Certiorarified mandamus to call for the impugned proceedings of the respondent passed in GDN No.4255/2016-17 dated 18.10.2016 and quash the same and further direct the respondent to release the consignment at once.

For Petitioner : Mr.N.Murali for
Mr.I.Joseph

For Respondent :Mr.K.Venkatesh,G.A.

O R D E R

Heard Mr.N.Murali, the learned counsel for the petitioner and Mr.K.Venkatesh, the learned Government Advocate, who accepts notice on behalf of the respondent.

2. The petitioner has filed this writ petition challenging the goods detention notice, issued by the respondent, detaining the goods which are medical equipments, which are to be consigned to M/s.Park Health Systems Pvt Ltd., with shipment to 'The Deccan Hospital Diagnostic Centre', Hyderabad.

3. On a perusal of the grounds of detention it is seen that the respondent does not dispute the import transaction, but would state that the consignor/petitioner has not produced any document for transfer of documents of title to the goods changed, before the goods have crossed the customs frontiers of India. Hence, exemption is not allowed under Section 5(2) of the Central Sales Tax Act, 1956 (hereinafter referred to as 'CST Act' for short)

4. The petitioner's case is that the respondent has failed to appreciate the difference between the first and second limb of Section 5(2) of the CST Act, especially when in the instant case, the transfer of document of title to the goods would arise only in case of import sale falling under the second limb of Section 5(2) of the CST Act, 1956. As long as the purchase and sale in the course of import are integrally and inextricably connected, the sale would fall under the first limb of Section 5 (2) of the CST Act, 1956. In support of his contention, the learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of INDURE LTD AND ANOTHER VS. COMMERCIAL TAX OFFICER AND OTHERS (2010) 34 VST 509(SC).

5. I have heard the learned Government Advocate on the above submissions.

6. Considering the fact that the petitioner is an assessee on the file of the respondent, in the Large Tax Payer Unit-II, Chennai, and a reputed company and also considering the documents, which are produced before this Court and taking note of the fact that the goods, which were detained, are medical equipments, to be transported to Hyderabad, for a diagnostic center, this Court is of the view that the goods should be directed to be released, subject to certain conditions, so as to safe-guard the interest of the revenue.

7. Accordingly, the petitioner is directed to furnish a bank guarantee towards one time tax, as quantified in the compounding notice, dated 20.10.106, for a sum of Rs.3,51,443/-, in favour of the assessing officer of the petitioner and on furnishing such bank guarantee, the respondent shall forthwith release the goods in question. There will be a further direction to the petitioner to file revision petition before the jurisdictional Joint Commissioner as against the compounding notice dated 20.10.2016, within a period of two weeks from the date on which the goods are released and till the revision petition is heard and disposed of by the Joint Commissioner, the bank guarantee furnished by the petitioner shall be kept alive.

8. The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

Deputy Commercial Tax Officer,
The Check Post Officer,
Puzhal (outpost) Check Post,
Chennai.

+1cc to Mr.I.Joseph, Advocate Sr.61481

W.P.No.37649 of 2016

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srg 26/10/2016