In the High Court of Judicature at Madras

Dated : 03.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.38100 of 2016

M/s.Paramount Bed India Pvt.Ltd.,
rep.by Authorized Signatory ...Petitioner

Vs

The Commercial Tax Officer, Roving
Squad II, Enforcement (North),
Chennai-6. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in G.D.No.612/2016-17/RS-II/(N)/TIN : 33776270039/dated 26.10.2016 and quash the same with a consequential direction to the respondent to release the goods and the vehicle without imposing any condition of payment of one time tax and double the amount of tax as compounding fee.

For Petitioner : Mr.Md.Ghafoor Ur Rahman
For Respondent : Mr.K.Venkatesh, GA

ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. In this writ petition, the petitioner challenges a goods detention notice and the consequential compounding notice dated 26.10.2016.

3. The case of the petitioner is that the detention of the goods in question is wholly unjustified, as the petitioner has not committed any offence under the provisions of the Tamil Nadu Value Added Tax Act, 2006. It is further submitted that the respondent had no evidence to allege that the petitioner had attempted evasion of tax and that it was not proper to allege an offence and demand tax and compounding fee for the release of goods. It is also submitted that the commodities are hospital beds, stretchers and accessories with certain specifications and design traded in the transaction actually representing medical equipment under Commodity Code No.2081 enumerated under Entry 81 of Part B of the First Schedule to the said Act, assessable at 5%. Without prejudice to their contentions, the learned counsel for the petitioner further submits that even assuming that the transaction is taxable, it can be taxed only at 5% and the respondent unmindfully assessed the same at 14.5%.

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

5. Considering the nature of goods namely medical equipments, this Court is of the view that the goods can be directed to be released and at the same time, interest of the Revenue should be safeguarded.

6. Accordingly, the writ petition is disposed of by directing the

petitioner to furnish bank guarantee in favour of the Assessing Officer for the tax quantified in the impugned compounding notice dated 26.10.2016 namely Rs.14,50,000/- (Rupees fourteen lakhs and fifty thousand only) and on furnishing of the bank guarantee, the goods shall be released forthwith. After release of the goods, the petitioner shall file a revision before the Joint Commissioner concerned and raise all contentions. If such a revision is filed, then the Joint Commissioner concerned shall consider the same, afford an opportunity of personal hearing to the petitioner and pass final orders on the revision within a period of four weeks from the date, on which, the revision is presented. It is made clear that the bank guarantee shall be kept alive and shall abide by the orders to be passed by the Joint Commissioner concerned in the revision to be filed by the petitioner. No costs.

03.11.2016

Internet : Yes

To
The Commercial Tax Officer, Roving Squad II, Enforcement (North),
Chennai-6.

RS

T.S.SIVAGNANAM,J

RS

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