IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.11.2016

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THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.39525/2016 & WMP.No.33808/2016

International Cargo Agents
rep.by its Managing Director,
210, Lingi Chetty Street,
Chennai-01. .. Petitioner

Vs

The Commercial Tax Officer
Roving Squad-V, Enforcement
[North], Chennai-06. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the respondent dated 04.11.2016 in Goods Detention No.2080/16-17 and quash the same and direct the respondent to release the goods.

For Petitioner : Mr.Adithya Reddy
For Respondent : Mr.Kanmani Annamalai, AGP [T]

ORDER

Heard Mr.Adithya Reddy, learned counsel appearing for the petitioner and Mr.Kanmani Annamalai, learned Additional Government Pleader appearing on behalf of the respondent and with the consent on either side, the writ petition is taken up for final disposal.

2 The proceedings impugned in this writ petition is the Goods Detention Notice issued by the respondent dated 04.11.2016. The petitioner is the Transporter of the goods and he is neither the purchaser nor the seller. The goods have been detained for the reason that the Electronic KK Forms and other documents produced by the petitioner / Transporter, shows that the dealer in West Bengal, has raised a Sale Invoice towards the sale of goods to the dealer in Bangalore and that the import was made at the Chennai Port ended / terminated in the State of Tamil Nadu and the movement of goods commenced / originated from the State of Tamil Nadu. Hence, the respondent was of the view that the appropriate State is the State of Tamil Nadu to collect and levy tax on the sale. Further, it was observed that the importer in the other State, i.e., West Bengal, is not a registered dealer in the State of Tamil Nadu and that the genuineness of the transaction has to be verified and the vehicle along with the goods have been detained.

3 The undisputed facts are goods were imported by a company by name M/s.Piyush Ply Boards Private Limited at West Bengal and admittedly, the said company is a registered dealer in the State of West Bengal. The goods have landed in the Chennai Port and the Bill of Entry was filed by the said dealer, viz., M/s.Piyush Ply Boards Private Limited, for release of the goods and after which, the sale has been effected in favour of M/s.Sobia Plaster, Bangalore, who is also a registered dealer under the Karnataka Value Added Tax Act. The Tax Invoice raised by M/s.Piyush Ply Boards Private Limited shows that the goods are to be delivered at Bangalore from Chennai Harbour and they have raised an invoice including 2% CST, amounting to Rs.10,08,528/-. The E-Sugam Form issued by the Government of Karnataka Department of Commercial Taxes, shows that the VAT had been collected at the rate of Rs.21,280/- and the same has been paid. The question would be as to whether the transaction having terminated / ended in the State of Tamil Nadu, would be a sale within the State of Tamil Nadu and whether the State of Tamil Nadu would be the appropriate State to levy tax.

4 This issue can be agitated by the petitioner after the compounding notice is issued, by filing a revision before the concerned Joint Commissioner. The learned Additional Government Pleader, on instructions, would submit that the compounding notice has been sent to the petitioner by Registered Post. However, while protecting the interest of revenue, the interest of the petitioner also has to be balanced. The reason for detention of the goods, *prima facie* show that the respondent does not dispute that the goods are to move from Chennai Harbour to Bangalore. Thus, even assuming that the sale is treated to be a sale within the State of Tamil Nadu, the respondent would admit that the goods are to be moved to Bangalore and therefore, it would be an inter-state sale. If it is an inter-state sale, then tax can be levied at 2% under the provisions of the Central Sales Tax Act. The learned Additional Government Pleader would submit that the correct rate of tax is at 14.5% which is Rs.1,86,675/-.

5 Considering the fact that even in the impugned detention notice, the respondent does not disbelieve that the movement of goods commenced / originated from the State of Tamil Nadu, thereby showing that the respondent is aware of the fact that the goods have moved from the State of Tamil Nadu to the State of Karnataka, this Court is of the view that an appropriate condition can be imposed to enable the petitioner to get release of the goods, leaving it open to the petitioner to raise all the issues before the concerned Joint Commissioner.

6 Accordingly, the writ petition stands disposed of by directing the petitioner to remit a sum of Rs.50,000/- [Rupees fifty thousand only] towards the pending liability and if the same is remitted, the respondent shall forthwith release the goods along with the vehicle and the petitioner is given two weeks time to file a revision before the Joint Commissioner concerned challenging the compounding notice and the payment made by the petitioner pursuant to the order passed by this Court, will be subject to the orders to be passed by the Revisional Authority. No costs. Consequently, the connected miscellaneous petition is closed.

17.11.2016

NOTE:Issue order copy today [17.11.2016].

AP

To
The Commercial Tax Officer
Roving Squad-V, Enforcement
[North], Chennai-06.

T.S.SIVAGNANAM, J.
AP

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