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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 1447/2016**

UNITED TELELINKS (BANGALORE) LTD. & ANR. ..... Petitioners

Through: Mr Rajesh Jain, Mr Virag Tiwari, Mr Rakesh Kumar and Mr K. J. Bhat, Advocates.

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent

Through: Mr Satyakam, Additional Standing Counsel.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **22.02.2016**

CM No.6325/2016

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 1447/2016 & CM Nos.6323-24/2016

3. Notice. Mr Satyakam, learned counsel appearing for the Respondent accepts notice.

4. M/s United Telelinks (Bangalore) Ltd., Petitioner No. 1, is a company having its head office at Bangalore and branches elsewhere in the country including Delhi. It is an importer of mobile phones in India. It is a registered dealer under the Delhi Value Added Tax Act, 2004 ('DVAT Act').

5. In January 2016 Petitioner No.1 imported 14,880 mobile phones of Chinese origin of Dazen 1 Coolpad. The import was made of two consignments, one of 5000 pieces and the other of 9880 pieces. As regards the 5000 pieces, an invoice was raised by M/s Coolpad Overseas Ltd. on 5th January 2016. On 7th January 2016, invoices were raised with regard to the 9880 pieces.

6. On 11th January 2016, a Bill of Entry ('B/E') was filed with New Custom House, IGI Airport, New Delhi and 5000 mobile phones were cleared after paying customs duty. On 13/14th January 2016, B/E was filed for 9880 mobile phones which were also cleared after paying customs duty.

7. The goods were to be sold online through the portal of Snapdeal. Since Petitioner No.1 was in need of an additional warehouse, where logistics and infrastructure support could be provided, it approached M/s Vulcan Express Pvt. Ltd. ('Vulcan') which had physical possession of the premises bearing Khasra No.631, Bijwasan, Palam Vihar, Delhi-110061. Snapdeal had marketing and distribution arrangement with Petitioner No.1. In terms of that agreement, Vulcan authorized Petitioner No.1 to utilize an area cab 1708 to keep its products in the "New Delhi Fulfilment Centre". Vulcan also expressed no objection to Petitioner No.1 being granted VAT and CST and FSSAI Licence for the said premises registrations.

8. On the basis of the above arrangement, Petitioner No.1 got its registration certificate amended to show the above area as an additional place of

business through DVAT-07 filed online on 11th January, 2016 with effect from 9th January, 2016.

9. The Petitioner No.1 states that Vulcan would allot slots for warehousing and for that purposes used to issue Stock Transfer Notes (STNs) carrying the Advance Stocking Request (ASR) number. For the 5000 mobile phones, Vulcan issued a STN on 13th January 2016. Since a slot was not available with Vulcan the said consignment of 5000 mobile phone could not be transferred to the godown. Copies of emails showing that the Petitioner No.1 sought the slots for 'in-warding' of 5000 units of Dazen 1 in Bijwasan Warehouse for 11 pm on 4th February 2016 and in respect of 9880 mobile phones for 11 pm on 5th February 2016 have been placed on record.

10. It is stated that after the slots were confirmed, 5020 pieces were loaded in three tempos. Two of the tempos carrying 2980 pieces reached Bijwasan in the wee hours on 5th February 2016.

11. The third tempo was driven by Petitioner No.2 Mr Bhero Mandal. The said tempo was carrying 2040 pieces. It is stated that at around 10:30 pm this third tempo driven by Petitioner No.2 was stopped by the Value Added Tax Officer (‘VATO’) (Enf.) and was asked to show the documents in connection with the goods.

12. There is a dispute as to whether Petitioner No.2 was carrying any STN given to him by Petitioner No.1. As the goods mentioned in the STJN was 5000 pieces and Petitioner No.2 was carrying 2040 pieces, the VATO did not believe him. According to the Petitioners, it was explained to the VATO

(Enf.) by Petitioner No.2 that the total quantity of goods were 5000 pieces and the remaining goods have been carried by other two tempos but the VATO (Enf.) nevertheless detained the goods. A pre-printed detention order with the remarks 'W/Bill' was issued. The copy given to Petitioner No. 2 bore no signature of the VATO and had “AC-75” simply written by hand. On the left column is the signature of the driver and his mobile number. The said goods detention order was in the printed form and contained all the columns with none of the inapplicable ones being struck off. When read as a whole, it would mean that there were some documents being carried by the transporter which according to the VATO were found to be inadequate. The other strange thing that was sought to be explained to the Court was that “W/Bill” should be read as “without bill”. While, the original of the said document was retained by the VATO, the copy thereof given to the Petitioner No. 2 was obviously unsigned.

13. It is stated that an inventory of the goods was drawn up three days later on 8th February, 2016 in the presence of Mr. Rajeev Nagpal of Petitioner No. 1. The question that arises is the manner of the detention of the goods. There are also questions that have been raised by the Petitioner regarding the proper authorization of the VATO (Enf.) who intercepted the tempo carrying the goods. It was sought to be urged that, in terms of Section 68(2) of the DVAT Act, there has to be a specific order of the Commissioner authorising the Additional Commissioner (Enf) to delegate the power to intercept the goods to the VATO (Enf).

14. In the meanwhile, on the basis of the above interception, the VATO

(Enf-II) proceeded to issue an "Assessment/Penalty Order" under Section 32 and 33 read with Section 86(19) of the DVAT Act raising a total tax demand plus penalty of Rs. 29,81,579/- on the driver i.e. Petitioner No. 2. Clearly, with Petitioner No.1 having come forward to claim the goods, it is not understood how an Assessment/Penalty order in the above manner could be passed against the driver of the tempo, Petitioner No. 2.

15. It is further not understood how assessment and penalty can be combined in one order as there are distinct proceedings envisaged under the DVAT Act as far as levy of penalty is concerned.

16. The order dated 8th February, 2016 passed by the VATO (Enf.) abounds in illegalities and, therefore, the Court has no hesitation in hereby setting it aside.

17. However, this is does not bring an end to the matter because the main grievance of the Petitioner No. 1 is regarding the continued detention of the seized mobile phones imported by it. The Court is of the view that the entire matter has to be examined afresh with an opportunity being given to the Petitioner No. 1 to produce all the documents in its possession and to urge all the points urged in the present petition, including questioning the authority of the VATO (Enf) to pass the order of detention and make an assessment.

18. The Petitioner No. 1 will appear before the VATO (Enf-II) AC-75 on 23rd February, 2016 at 11:00 am.

19. Learned counsel for the Petitioner No. 1 states that, without prejudice to its rights and contentions Petitioner No.1 is prepared to pay the entire amount of VAT on the detained goods in advance. It is directed that, if Petitioner No.1 pays the entire amount of the VAT on the value of the detained goods then the said goods shall be released forthwith to Petitioner No.1 by the VATO (Enf). This is without prejudice to the rights and contentions of either party and subject to the final order that may be passed by the VATO (Enf).

20. The VATO (Enf) will pass a final order within two weeks from today. The petition and the pending applications are disposed of in the above terms.

21. *Dasti* under the signature of the Court Master.

S.MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 22, 2016
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