IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.04.2017

CORAM

THE HON'BLE MR. JUSTICE K. RAVICHANDRABAABU

W.P.Nos.8847 to 8849 of 2017
and
W.M.Nos.9705 to 9708 of 2017

M/s. Progeon Global Forwarding Pvt.Ltd.,
represented by its General Manager,
No.257, Angappa Naicken Street,
Chennai - 600 001. ...Petitioner in all the W.Ps.

Versus

The Commercial Tax Officer,
Roving Squad-III,
Enforcement (North)
Greams Road,
Chennai - 6. ...Respondent in all the W.Ps.

PRAYER: Petitions filed 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 his proceedings in G.D.No.1001/RS-III/(N)/2017-18, G.D.No.1002/RS-III/(N)/2017-18 & G.D.No.1003/RS-III/(N)/2017-18 and quash the Goods Detention Notice dated 05.04.2017 issued therein and further direct the respondent to release the goods detained under G.D.No.1001/RS-III/(N)/2017-18, G.D.No.1002/RS-III/(N)/2017-18 & G.D.No.1003/RS-III/(N)/2017-18 without insisting on payment of any tax or compounding fee.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr. S.Kanmani Annamalai,
Additional Government Pleader (Tax)

COMMON ORDER

These three Writ Petitions are filed challenging the Goods Detention Notice dated 05.04.2017.

2. Mr.S.Kanmani Annamalai, learned Additional Government Pleader takes notice for the respondent and by consent of the parties, the main writ petitions are taken up for final disposal.

3. The petitioner is a Customs Clearance Agent. One M/s. Photon Suryakiran Private Limited, having their registered office at New Delhi, imported the subject matter consignment from China to the Port of Discharge at Chennai. The petitioner was appointed as their Customs Clearance Agent for clearing the said consignment and to arrange for delivery of the same at their Project Site at Varavu Village, Nayakanahatty Hobli, Taluk Challakere District, Chitradurga, Karnataka State. On the said consignment reaching the Chennai Port, the petitioner filed Bill of Entry and cleared the consignment after completion of the customs formalities. After clearance by customs on import, the goods were accompanied with Bill of Entry, Declaration in Form-KK along with transport documents. However, out of 22 containers, for which, Form-KK were generated, 3 containers were intercepted by the respondent, followed by issuance of Goods Detention Notice, only on the reason that in Form KK, the address of the importer was wrongly noted as one M/s. Photon Vidyut Pvt. Ltd., while the actual importer as per the Bill of Entry is one M/s.Photon Suryakiran Pvt.Ltd. It is contended by the petitioner that it was due to human error and oversight, the Form-KK for three containers were generated by wrongly quoting the name as M/s.Photon Vidyut Pvt.Ltd. instead of M/s.Photon Suryakiran Pvt.Ltd., that too, at Section-E of Form-KK, while the petitioner has correctly mentioned the importers name in Section-B. Therefore, it is contended that such clerical mistake cannot be taken into account, especially, when the petitioner has explained the same to the respondent in person.

4. Learned Additional Government Pleader, based on instructions, submitted that since at one of the places in Form-KK, namely at Section-E, the petitioner has referred the name of the destination as M/s.Photon Vidyut Pvt.Ltd., the consignments were detained on the presumption that a sale has taken place.

5. Heard both sides.

6. The petitioner is the Customs Clearance Agent. The said M/s.Photon Suryakiran Pvt.Ltd. appointed the petitioner to clear the subject matter goods from Chennai Port. There is no dispute to the fact that the said M/s.Photon Suryakiran Pvt.Ltd. is the importer. A perusal of the disputed Form-KK would show that the petitioner has correctly stated under Section-B Column, the name of the importer as M/s.Photon Suryakiran Pvt.Ltd. However in Section-E, the name of the Bonded Warehouse was referred to as M/s.Photon Vidyut Pvt.Ltd., which according to the petitioner was due to oversight and mistake committed at the time of generating Form-KK. It is further stated that there is no element of sale involved in this case as the goods are meant only for the importer namely, M/s. Photon Suryakiran Pvt.Ltd., having their project at Karnataka. It is also admitted by the

learned Additional Government Pleader that out of the 22 containers, 19 containers were allowed to go when they carried information in Form-KK correctly. Therefore, I find every justification in accepting the contention of the petitioner that it is only due to such human error, the mistake taken place while describing the importer in Section-E as stated supra. In any event, as Form-KK submitted by the petitioner in respect of these three consignments are defective one, the petitioner is bound to pay a sum of Rs.2000/- being the composition fee. Accordingly, these writ petitions are allowed and the impugned notices of Goods Detention, are set aside, however, subject to the condition that the petitioner shall pay a sum of Rs.2,000/- each towards the composition fee before the respondent. On receipt of such payment, the respondent shall release the goods forthwith. No costs. consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vsi

To

The Commercial tax Officer,
Roving Squad-III,
Enforcement (North)
Greams Road,
Chennai - 6.

+3cc to Mr.P.V.Sudakar,Advocate sr.22153

W.P.Nos.8847 to 8849 of 2017

vsn(co)
ss(12/4/2017)