IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 09-02-2017
Coram
THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
W.P.No.3280 of 2017
and W.M.P.No.3245 of 2017

M/s. Excelence Mobile Tech India Private Limited
Represented by its Authorized Signatory and Executive Director
Mr.V. Srikanth
No.11, First Floor (NP) Development Plot
Industrial Estate,Ekkatuthangal
Guindy,Chennai - 600 032 .. Petitioner

Vs.

1. The Checkpost Officer/
Commercial Tax Officer
Puzhal (Out) Checkpost
Chennai - 600 006

2. The Assistant Commissioner (CT)
Ekkatuthangal Assessment Circle
Chennai - 32

3. The Assistant Commissioner(CT)
Enforcement (North)
PAPJM Building
Greams Road
Chennai - 600 006

4. The Deputy Commissioner (CT)
Enforcement (North)
PAPJM Building
Greams Road
Chennai - 600 006

5. The Joint Commissioner (CT)
Enforcement (North)
PAPJM Building
Greams Road
Chennai - 600 006 .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in G.D.No.4352/2016-2017 dated 06-02-2017 and to quash the same as issued contrary to the provisions of the CST Act read with the provisions of the TNVAT Act and to further direct the respondents to release thedetained consignment of 4350 Nos of YU6000 Mobiles without insisting on the payment of one time tax and two times of tax as compounding fees and pass orders.

For Petitioner : Mr. P.Raj Kumar
For Respondents: Mr. K. Venkatesh,
Govt. Advocate(Taxes)

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ORDER

1. Issue notice. Mr. K. Venkatesh, learned Government Advocate (Taxes) accepts notice on behalf of the respondents.

1.1 With consent of the learned counsel appearing for the parties, the writ petition is taken up for hearing and final disposal.

2. This is a second round of litigation initiated by the petitioner. In the first round, the petitioner had filed a writ petition which was numbered as W.P.No.2589 of 2017. The said writ petition was disposed of by me vide order dated 02-02-2017.

2.1 By virtue of the said order, I directed the respondent to rule on the representation dated 25-01-2017 preferred by the petitioner. While passing the operative direction, I had made the following observations in Paragraph No.8 of the said order:

> "8. Having heard the learned counsel for the parties, and perused the records, it appears that an exercise was carried out by the first respondent, which established that the IMEI numbers of all mobile phones, which are 4350 in number, tallied with the list supplied by the Executive Director of the petitioner. The petitioner's claim that the mobile phones had been received at its Chennai unit from its unit in Manaser, for the purpose of repair, has not been dealt with by the first respondent, while issuing the impugned notice. Furthermore, as point out correctly by the learned counsel for the petitioner, the impugned notice, which is dated 10.01.2017 was passed, at a point in time,when, the first respondent had not competed the exercise of tallying the IMEI numbers."

3. The respondent, has, in accordance with the direction issued by me vide order dated 02-02-2017, passed the impugned order and disposed of the petitioner's representation dated 25-01-2017. A perusal of the representation would show that the respondent does concede that the movement of goods from Chennai to Delhi did not involve sale.

4. It has been the petitioner's case before me today as well as on 02-02-2017, that the goods had been received by the petitioner for repair and after that, they have been despatched to Delhi. This aspect of the matter, which is, that it does not involve sale comes through upon a perusal of the observations made by the respondent in Paragraph No.12 of the impugned order.

> "12. Their request for release of the goods has been considered. The detention of goods has been ordered on the grounds that the consignor is delivering goods to a third party with the claim that the same is not for sale and is being returned after repair but that no proof of the claim was available. Subsequently, this position has been clarified by the consignors by production of documents showing inward movement of goods to their own facility in Haryana from the owner of the goods, Tvl .Yu Televentures Pvt Ltd and for the further movement from their Haryana facility to Chennai facility. The matching of the IMEI numbers of the consignments has also been established through physical verification. Hence, their claim that there is no sale involved in the instant transactions is found to be admissible."
>
> (emphasis is mine)

4.2 Furthermore, a perusal of the observations made in Paragraph No.19 of the impugned order shows that the respondent seems to be of the view that the movement of goods could take place only if there is a sale or there is a branch transfer.

4.3 This reasoning prima facie seems to be unsustainable and, as has been correctly argued by the learned counsel for the petitioner, this view would exclude from the concept of 'movement of goods' generally the movement of goods for the purpose of repairs. The petitioner's case as noted above is that the subject goods were moved because they had to be repaired.

4.4 The respondent, however, has, by virtue of the impugned order, levied tax amount to Rs.26,88,518/-(Rupees Twenty Six Thousand Eighty Eight thousand Five hundred Eighteen Only) and a compounding fee equivalent to twice the amount of the tax imposed on the petitioner. Accordingly, a sum of Rs.53,77,036/- (Rupees Fifty Three thousand Seventy Seven hundred Thirty Six Only) is demanded by way of compounding fee under Section 72(1)(a) of the Tamil Nadu Value Added Tax Act, 2006('the Act' in short).

5. The learned counsel for the petitioner says that the goods have been detained for far too long a period and therefore, are causing detriment to the petitioner. In these circumstances, the learned counsel for the petitioner says that only to expedite the release of the detained goods, the

petitioner would be willing to pay some amount towards tax to show its bona fide, without prejudice to its rights and contentions.

6. Accordingly, having regard to the facts and circumstances of this case, the petitioner is directed to deposit for the moment a sum of Rs.5,00,000/-(Rupees Five lakhs Only) with the second respondent. Upon deposit of the said amount, the second respondent will release forthwith, the detained goods. In addition thereof, the petitioner will also furnish a personal bond for the remaining amount of the tax and compounding free.

7. It is made clear that payment of tax and the factum of furnishing of a personal bond, will be, without prejudice to the rights of the petitioner to challenge both the imposition of tax and compounding fee, by taking recourse to an appropriate remedy, in accordance with the provisions of the Act.

8. The writ petition is disposed of, in the aforementioned terms. Consequently, the connected miscellaneous petition shall stand closed. However, there shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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+1 cc to M/s.P.Rajkumar Advocate sr 8331
+1 cc to the Government Pleader sr 8516

W.P.No.3280 of 2017

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