IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.14744 & 14745 of 2017
and
W.M.P.Nos.15972 to 15975 of 2017

M/s.Akash Cable Corporation
Represented by its Proprietrix
Shop No.G-4,
No.221, Govindappa Naicken Street,
Chennai-600 001. ...Petitioner
(in WP.Nos.14744 & 14745 of 2017)

Vs.

1.The Commercial Tax Officer
Enforcement, (Roving Squad)
Villupuram.

2.The Assistant Commissioner (CT)
NSC Bose Road Circle,
Chennai. ...Respondents
(in WP.Nos.14744 & 14745 of 2017)

Prayer :

Writ Petition No.14744 of 2017 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in his proceedings in Goods Detention Notice No.1252/2017-18, quash the Goods Detention Notice dated 06.06.2017 issued therein and further direct the first respondent to release the goods detained under Goods Detention Notice No.1252/2017-18 without insisting on payment of any tax or compounding fee.

Writ Petition No.14745 of 2017 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in his proceedings in Goods Detention Notice No.1253/2017-18, quash the Goods Detention Notice dated 06.06.2017 issued therein and further direct the first respondent to release the goods detained under Goods Detention Notice No.1253/2017-18 without insisting on payment of any tax or compounding fee.

For Petitioner : Mr.P.V.Sudakar
For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader (Tax)
(in WP.Nos.14744 & 14745 of 2017)

C O M M O N O R D E R

The petitioner is aggrieved by the goods detention notice dated 06.06.2017 and the compounding notice dated 07.06.2017.

2. Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Tax) takes notice for the respondents. By consent of the parties, these main writ petitions are taken up for final disposal at the admission stage itself.

3. The learned counsel appearing for the petitioner submitted that no event of sale has taken place between the parties within the State of Tamil Nadu and therefore, the present impugned proceedings issued based on such erroneous presumption of sale, cannot be sustained. It is the case of the petitioner that they purchased the subject matter goods from the seller at Somnath, Daman and during the transit of those goods, the petitioner has effected two Inter State sales to a buyer at Pondicherry viz., M/s.Ganesh Electricals at No.37 Pari Street, First Floor, Koundampalayam, Pondicherry. Therefore, it is contended that when the subject matter goods are sold by way of Inter State sales, the respondents are not justified in imposing the one time tax and compounding fee on the petitioner. In support of such contention, the invoices dated 29.05.2017 are relied on by the petitioner.

4. The learned Additional Government Pleader (Tax) appearing for the respondents, on verification of the invoices dated 29.05.2017, fairly submitted that the transaction between the parties is only an Inter State sale and therefore there is no occasion for the respondents to impose the one time tax and compounding fee.

5. Upon hearing the learned counsel for the petitioner and the learned Additional Government Pleader (Tax) appearing for the respondents and on perusing the invoices dated 29.05.2017, the copies of the same are made available in the typed set of papers, it is evident that the petitioner, who originally purchased the goods from its seller at Daman, has effected the Inter State sales to another buyer at Pondicherry as stated supra, during the transit of those goods. When those details are very much available in the invoice itself, I don't think

that the respondents can have any justification for doubting the nature of transaction, in the absence of any other contra materials. The only reason stated for detention is that the petitioner has not effected separate invoice. When the original invoices itself contain the name of the buyer as the customer at Pondicherry, to whom the goods have to be delivered, even assuming that there was no sale between the buyer and the seller of the petitioner, still the transaction is to be construed only as Inter State sales between the seller at Daman and the buyer at Pondicherry. The respondents have failed to consider all these aspects before passing the impugned proceedings and hence they cannot be sustained.

6. Accordingly, these writ petitions are allowed and the impugned orders are set aside. Consequently, the respondents are directed to release the subject matter goods forthwith. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To
1.The Commercial Tax Officer
Enforcement, (Roving Squad)
Villupuram.

2.The Assistant Commissioner (CT)
NSC Bose Road Circle,
Chennai.

+2 ccs to M/s.P.V.Sudakar Advocate sr 41604
+1 cc to the Special Government Pleader sr 41746

W.P.Nos.14744 & 14745 of 2017

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