IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.2589 of 2017

and

W.M.P.No.2554 of 2017

M/s.Excellence Mobile Tech India
Private Limited,
Rep. By its Authorised Signatory
and Executive Director,
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 Jiont Commissioner (CT)
Enforcement (North)
PAPJM Building,
Greams Road,
Chennai - 600 006. ... Respondents

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 10.01.2017 and 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 first respondent to release the detained consignment of 4350 Nos of Mobiles without insisting on the payment of one time tax and two times of tax as compounding fees.

For Petitioner : Mr.P.Rajkumar
For Respondents : Mr.K.Venkatesh,
Government Advocate.

COMMON ORDER

Issue notice. Mr.K.Venkatesh, accepts notice on behalf of the respondents.

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

3. The petitioner is aggrieved by the compounding notice dated 10.01.2017, issued by the first respondent.

4. By virtue of the impugned notice, the petitioner has been called upon to pay tax equivalent to Rs,26,88,518/- and compounding fee amounting to twice the amount of tax. The compounding fee, thus, has been pegged at Rs.53,77,036/-.

5. It is the petitioner's case that he is rendering service to the original owner of the consignment so detained, which comprises of mobile phones. The petitioner contends that for the purposes of reworking the mobile phones, the detained consignment which comprises of 435 boxes (containing 4350 mobiles) were transferred from its own facility at Manaser to Chennai.

5.1. It is the petitioner's case that reworked consignment, on being despatched to Delhi, was accompanied by documents, which, inadvertently, instead of referring to its own address, adverted to the address of an entity by the name Micromax Informatics Limited, New Delhi.

5.2. According to the petitioner, this was an inadvertent error and therefore, the conclusion reached by the respondent that it was a case of inter-state sale was erroneous.

5.3. It is stated that after the impugned order was passed, it indicated, again, erroneously, that numbers available in the IMEI certificate and those which were mentioned on the outer cover of the boxes, containing the mobiles, did not tally. That this observation in the impugned order was incorrect was sought to be demonstrated by drawing my attention to the note dated 18.01.2017 generated by the first respondent.

6. Counsel for the petitioner, thus, says that the first respondent ought not to have proceeded to pass the impugned compounding notice, and, on the other hand, should have awaited the completion of exercise initiated to tally the IMEI numbers.

6.1. It is the stand of the counsel for the petitioner that pursuant to the impugned notice, a representation dated 25.01.2017 was made to the first respondent, qua which, no orders have been passed to date.

7. Mr.Venkatesh, who appears for the respondent says that, if, directions are issued, the first respondent would pass an order on the representation dated 25.01.2017.

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 pointed 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 completed the exercise of tallying the IMEI numbers.

9. In these circumstances, the first respondent is directed to rule on the representation dated 25.01.2017, preferred before it by the petitioner. For this purpose, the petitioner's

authorised representative will present himself before the first respondent, on 03.02.2017 at 11.00 a.m. The first respondent will hear the authorised representative, and thereafter, pass a speaking order; a copy of the same will be supplied to the petitioner.

9.1. Needless to state, the aforementioned exercise will be completed with due expedition, though, not later than 06.02.2017.

10. Accordingly, the writ petition is closed in the aforementioned terms. Resultantly, the connected application is closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Checkpost Officer/
Commercial Tax Officer,
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Chennai - 600 006.

+1cc to Mr.P. Rajkumar, Advocate, S.R.No.6562
+1cc to the Government Pleader, S.R.No.6639

md(06/02/2017)