

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
19.09.2017	05.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNAM

**W.P.No.17807 of 2017 &
W.M.P.No.19316 of 2017**

M/s.Eye Foundation Ltd.,
Authorised Signatory,
Having registered office at 582-A,
D-B, Road, R.S.Puram-641 002.

... Petitioner

Vs.

1.The Joint Commissioner (Commercial Taxes)
Chennai (East) Division,
No.1, Greams Road, Chennai – 600 006.

2.The Commercial Tax Officer,
Air, Cargo, Vehicle Check Point,
Chennai (2) International Air Old,
Airport Buildings, Meenambakkam,
Chennai – 600 027.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records culminating in the order of the second respondent dated 11.05.2017, made in G.D.No.40003/17-18 and quash the same and consequently pass such further or other order.

For Petitioner : Mrs.G.Thilakavathy Senior counsel for
Mr.R.Gopinath

For Respondent : Mr.K.Venkatesh G.A.

ORDER

The petitioner is a hospital established and functioning in Coimbatore, specializing in Eye surgery . During the year 2012, the petitioner secured an import licence for importing sophisticated equipments and devices for performing highly advanced eye surgeries. From then on the petitioner is stated to have been periodically importing surgical and other allied equipments. In this Writ Petition, the petitioner has challenged the order passed by the respondent dated 11.05.2017, by which the goods imported by the petitioner from Germany on 18.04.2017, was sought to be detained and one time tax has been demanded and compounding fee being two times of the one time tax has also been demanded.

2. The petitioner's case is that they had legitimately imported a surgical Microscope for Ophthalmic surgery, from Germany for a value of Rs.63,30,642/- and this equipment was exclusively meant for their personal use in their hospital. The second respondent has treated the import transaction as a sale within the State of Tamil Nadu

and tax has been proposed to be imposed at 14.5% by proceedings, dated 02.05.2017, and the petitioner was called upon to file their objections. When the equipment arrived in the Chennai Airport, the second respondent chose to intercept the import consignment which according to the petitioner was made overlooking the fact that it is a legitimate import made by the hospital not only levied tax, but also compounding fee being two times of the one time tax. The petitioner challenges the impugned order on the ground that it is a sheer harassment meted out to them and the procedure adopted by the second respondent is wholly untenable and it is *per se* violative of the circular issued by the Commissioner, dated 03.02.2014. The petitioner had placed the import order on the foreign supplier by using their import export code and the import was for their own use. Since the petitioner is not carrying on any commercial business within the State of Tamil Nadu, they are not required to take any registration under the provisions of the Tamil Nave Value Added Tax Act, 2006, (TNVAT Act), or the Central Sales Tax Act, 1956, (CST Act) and therefore, the very exercise adopted by the second respondent is manifestly unsustainable and *ab initio void*. That the second respondent did not afford an opportunity of personal hearing, which was held to be mandatory by the circular issued by the Commissioner.

3. When the case came up for hearing on 24.07.2017, the second respondent, Mr.G.Vedanayagam, was present in Court and the Court took note of the admitted fact that the petitioner had a valid import licence for import of the subject equipment. The reason for the second respondent to initiate action by issuing a detention notice is that the subject 'import' has been made for the purpose of sale within the State of Tamil Nadu. The second respondent who was present in Court, narrated certain unpleasant events owing to the conduct of the Customs House Agent of the petitioner namely, Sri.Vinayagar Customs Agent Private Limited, more particularly one Mr.Alex, who was the staff of the said company. The allegation was though Mr.Alex, received the copy of the detention notice from the second respondent, he walked away from the customs area along with the cargo. Thus, the Court after elaborately hearing the parties, found that the controversy lied in a very narrow compass, as the issue that was required to be considered is whether the imported equipment is being used by the petitioner in their hospital or as alleged by the second respondent, it is intended for sale within the State of Tamil Nadu. If the imported equipment was used by the petitioner in the hospital, then obviously, the petitioner cannot be termed as a dealer and the question of insisting on a registration under the TNVAT Act or CST Act does not

arise. Thus, to ascertain the factual position, a direction was issued to the Joint Commissioner (Enforcement), Commercial Taxes Department, Coimbatore to cause an inspection of the petitioner's hospital to ascertain as to whether the imported equipment is being used by them in their hospital and submit a report to this Court through the first respondent. It was ordered that on receipt of the report, the Court will consider as to what is the nature of the relief that can be granted in the Writ Petition.

4. In terms of the direction, the Joint Commissioner had issued authorization to the Commercial Tax Officer, Central Enforcement Wing II, Coimbatore, for causing verification as per the Court direction. The said Officer, by report dated 06.09.2017, addressed to the Joint Commissioner(CT), Enforcement, Coimbatore, certified that he has verified that the imported equipment is being used for eye surgery by the petitioner. The report further states that the imported machinery has been installed in the hospital on 12.05.2017 and 13.05.2017 and at the time of verification, it was found that the imported equipment is being used by the petitioner for eye surgery. A statement was recorded from the concerned person of the petitioner and the report was submitted along with statements and photographs

of the imported equipment. Based on the said inspection report, the Joint Commissioner (CT), Enforcement, Coimbatore, submitted a report to the first respondent vide letter dated 07.09.2017. The report clearly states that the imported equipment is being used by the petitioner in their hospital.

5. The report was placed before this Court and the matter was heard on 19.09.2017, and during the hearing Mr.G.Vedanayagam, the second respondent was also present in Court and made submissions and also submitted a note, apparently being his notes of submission.

6. I have heard Mrs.G.Thilakavathy, learned Senior counsel appearing for Mr.R.Gopinath, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents and Mr.G.Vedanayagam, Commercial Tax Officer, Air Cargo, Chennai.

7. As mentioned above, the reason for issuing a detention notice in respect of the imported equipment is owing to a suspicion, which had arisen in the minds of the second respondent stating that the imported goods are meant for sale within the State of Tamil Nadu.

Therefore, the second respondent opined that the petitioner should have a valid registration as a dealer under the TNVAT Act and CST Act and in the absence of such registration proposed to treat the import transaction as a sale within the State and imposed tax at 14.5% and levied compounding fee at the rate of two times the one time tax.

8. The second respondent, in their written submissions filed by him on 19.09.2017, accepts that the fact the petitioner is a hospital having various branches and also obtained import and export code during 2012. The second respondent would contend that the concept of "own use" is of no relevance under the sales tax statute and exemption from tax net and concessional levy in the rate of tax is only available with the registered dealers under the provisions of the TNVAT Act and CST Act and such concession cannot be extended to unregistered dealer like the petitioner. It is further stated that the burden of proof that a sale was effected outside the State is on the petitioner and if no proof is placed, then the sale can be treated as local sale. The import effected by the petitioner has not been disputed by the second respondent, rather admitted as the petitioner has a valid import licence. In such circumstances, the only fact that has to be ascertained is whether the suspicion in the minds of the second

respondent that the goods are meant for sale within the State of Tamil Nadu is correct or not. For this purpose, this Court directed the Joint Commissioner (CT), Enforcement, Coimbatore, to submit a report. Upon due verification, a report has been submitted, which clearly states that the imported equipment is used by the petitioner in their hospital. This goes to show that the import has been effected by the petitioner using the import licence granted in their favour and the goods are put to use in their hospital. Thus, there is no grounds to treat the transaction as a sale within the State of Tamil Nadu.

For the above reasons, the Writ Petition is allowed and the impugned order is quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

05.10.2017

Index:Yes/No
pbn

WEB COPY

To

- 1.The Joint Commissioner (Commercial Taxes)
Chennai (East) Division,
No.1, Greams Road, Chennai – 600 006.
- 2.The Commercial Tax Officer,
Air, Cargo, Vehicle Check Point,
Chennai (2) International Air Old,
Airport Buildings, Meenambakkam,
Chennai – 600 027.



WEB COPY

T.S.SIVAGNANAM, J.

pbn



Pre-Delivery Order in
**W.P.No.17807 of 2017 &
W.M.P.No.19316 of 2017**

WEB COPY

05.10.2017