In the High Court of Judicature at Madras

Dated : 24.7.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.18314 of 2017 & WMP.Nos.19884 & 19885 of 2017

M/s.Ingenico International India Pvt. Ltd., rep.by its Director A.S.Narayanan, New Delhi. ...Petitioner

Vs

The Commercial Tax Officer, Roving Squad Poonamallee Enforcement (South), CT Admn. Buildings, II Floor, Greams Road, Chennai-9. ...Respondent

PETITION 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 Goods Detention Notice No.22/2016-17 dated 21.2.2017 and consequential proceedings in G.D.No.22/2016-17 dated 28.4.2017 along with Form 046 compounding order in G.D.No.22/2016-17 dated 28.4.2017, quash the same as illegal and direct the respondent to release the goods of 572 point of sale terminal covered by Invoice No.ING/SAL/3386 dated 16.2.2017 and detained vide goods detention Notice No.22/2016-17 dated 21.2.2017 immediately.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.K.Venkatesh, GA

ORDER

Heard the learned counsel on both sides as well as Mr.N.Moorthi, Commercial Tax Officer, Roving Squad Poonamallee Enforcement (South), Chennai-9. By consent of the learned counsel on either side, the writ petition itself is taken up for final disposal.

2. The State Bank of India placed a purchase order on the petitioner for supply of POS Terminals vide order dated

19.11.2016. The purchase order specifies that the payment will be processed only after getting from their service provider M/s.Worldline India Private Limited and M/s.Hitachi Payment Services Private Limited upon receipt of terminals on the good condition and certification of all required applications and execution of agreement as well. Further, the purchase order states that the billing address will be the State Bank of India, Merchant Acquiring Business, Navi Mumbai and the shipping address will be M/s.Worldline India Private Limited and M/s.HItachi Payment Services Private Limited. The tax invoice dated 16.2.2017 also mentions the above details inclusive of the purchase order and the date. The packing list also contains the relevant details as well as lorry receipt.

3. The goods, which entered the Tamil Nadu border, were detained by the respondent by issuing a detention notice dated 21.2.2017 on the ground that in the course of lorry check, on verification of the dealer's profile and monthly returns, it revealed that they have purchased huge quantity of such machines, but no proof of payment of tax was found out and suspecting the genuineness of the transaction, the goods were detained, following which, the compounding notice dated 10.3.2017 was issued referring to the terms and conditions of the agreement.

4. The petitioner submitted their representation dated 24.4.2017 to the Joint Commissioner, Enforcement (South), Commercial Tax Office, Chennai for release the goods and also enclosed the certificate issued by the State Bank of India dated 11.4.2017 certifying that it is the State Bank of India, Navi Mumbai, which purchased 572 units from the petitioner as per invoice dated 16.2.2017 and the shipment from the petitioner through M/s.Startek (Sporton) Logistics is to be delivered at the premises of M/s.Hitachi Payment Services Private Limited, Tambaram Velacherry Main Road, Chennai, which is their service partner for the upkeep of their units and therefore, requested for movement of the shipment to the warehouse of M/s.Hitachi Payment Services Private Limited. However, the respondent detained the goods and passed a compounding order directing the petitioner to pay tax at the rate of 14.5% as per Entry 69, I Schedule to the Tamil Nadu Value Added Tax Act, 2006.

5. The respondent - Officer, who is present in Court, has produced the file, from which, it is seen that the certificate given by the State Bank of India dated 11.4.2017 has not been furnished to the respondent. However, it appears that the certificate was enclosed along with the representation dated 24.4.2017 addressed to the Joint Commissioner, Enforcement (South).

6. Be that as it may, this Court has to see as to whether the order of detention passed by the respondent is valid and proper and as to whether the transaction could be treated as a sale within the State of Tamil Nadu and tax could be levied under the provisions of the said Act.

7. I have perused the agreement between the Prizm Payment Services Private Limited and the State Bank of India dated 01.2.2013, pursuant to which, the purchase order dated 19.11.2016 has been placed. If the terms and conditions are read along with the purchase order, the nature of transaction is that the State Bank of India, Navi Mumbai has placed the purchased on the petitioner, which is located in New Delhi with a specific condition that the products should be shifted to the agent, which is M/s.Hitachi Payment Services Private Limited and there are certain obligations to be carried on by them such as printing of logo of the State Bank of India, checking the equipment as regards its functioning qualities, etc., and then delivering the products at the State Bank of India, Chennai. This transaction cannot be doubted and it is abundantly clear from the documents produced before the Court. May be the transporter has not obtained the seal from the check post, which, though is incorrect, this Court can examine the nature of transaction done between the parties and find that there is no purchase by M/s.Hitachi Payment Services Private Limited from the petitioner nor there is any sale by M/s.Hitachi Payment Services Private Limited to the State Bank of India, Chennai.

8. As mentioned earlier, the contract is between the State Bank of India, Navi Mumbai and the petitioner at New Delhi with a specific condition that the goods are to be supplied to the State Bank of India, Chennai to be routed through their agent and service provider M/s.Hitachi Payment Services Private Limited. Thus, the impugned order is not sustainable, more so, when the State Bank of India themselves have given a certificate dated 11.4.2017, clearly explaining the nature of transaction.

9. Accordingly, the writ petition is allowed, the impugned order is set aside and the respondent is directed to release the consignment forthwith. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

RS

To

The Commercial Tax Officer,
Roving Squad Poonamallee Enforcement
(South), CT Admn. Buildings,
II Floor, Greams Road, Chennai-9.

+1cc to Mr.S.Ramanathan, Advocate SR.No.51726
+1cc to Special Government Pleader SR.No.52102

WP.No.18314 of 2017 &
WMP.Nos.19884 & 19885
of 2017

RK(CO)
GN(25/07/2017)