(2012) 08 KL CK 0196

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 19841 of 2012 (E)

M/s. Mirc Electronics Limited — APPELLANT

Vs

Intelligence Inspector, Squad No. 1, Camp at S.L. Puram Office of The Inspecting Asst. Commissioner(Intelligence) Commercial Taxes Alappuzha — RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 47(2)

Citation : (2012) 08 KL CK 0196

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : A. Kumar, for the Appellant; Shobha Annamma Eapen Government Pleader, for the Respondent

Judgement

P.R. Ramachandra Menon, J.

APPENDIX

PETITIONER(S) EXHIBITS

EXT.P-1

True Copy of Invoice No. 3144730141 Dated 8.8.2012

EXT.P1(a)

True Copy of Invoice No .3144730149 Dated 13.8.2012.

EXT.P-2

True Copy of The Notice Dated 14.8.2012.

EXT.P-3

True Copy of The Reply Filed By The Petitioner Dated 17.8.2012.

EXT.P-4

True Copy of The Sale Bills Raised By The Petitioner Dated 18.7.2012.

RESPONDENTS'' EXHIBITS

NIL.

1. Petitioner Company is a registered dealer under the KVAT Act as well as the CST Act. The petitioner effected sale of some ''electronic goods'', covered by Exts. P1 and P1(a) invoices dated 8.8.2012 and 13.8.2012 respectively and the despatch of the goods was made on 14.8.2012 in the vehicle bearing No. KL 0T BS/8499, when it was intercepted in the course of transit by the respondent, issuing Ext. P2 notice u/s 47(2) of the KVAT Act, doubting evasion of tax and demanding security deposit as specified therein. The petitioner immediately rushed to the respondent filing Ext. P3 reply and pointing out that there was absolutely no basis for the doubt expressed as to the alleged evasion of tax, with reference to the ''delay'' in respect of the 1st invoice and also the alleged ''under-valuation''. This however did not turn to be fruitful and this made the petitioner approach this Court filing this writ petition.

2. Heard the learned Government Pleader as well.

3. The only two insinuating circumstances, as given in Ext. P2 detention notice are as extracted below:-

On verification of the documents for goods under transporting the following defects are noticed.

1. Invoice No. 3144730141 is raised on 8.8.2012 and despatched through Parcel Service on 14.08.2012, maximum time required for the transportation of the goods from Irumbanam to Kollam is only 5 hrs whereas six days have been elapsed for parcel booking and delivery. The reason for the inordinate delay is not explained. Repeated transportation of the goods using same documents is suspected.

2. MRP noted in the package of Induction Cooker is Rs. 3390/- whereas value disclosed in the invoice No. 3144730141 dated 8.8.2012 abd 3144730149 dated 13.8.2012 including tax is Rs. 1950/- which is 57% of the MRP noted. The under billing is with an ulterior motive and malafide intention to evade tax. Value estimated @ 70% MRP considering the wholesale price. Notice issued for SD on estimated value of Rs. 7,26,138/-

The Learned Counsel for the petitioner submits that there is no dispute with regard to the second transaction, i.e., the invoice covered by P1(a) but for alleged under-valuation; while delay is attributed only in respect of the 1st one, i.e., Ext. P1. It is stated that the consignee had issued a cheque in respect of the amount covered by Ext. P1 and it was after ensuring that the cheque got enchashed, that the materials were despatched by the petitioner on 14.08.2012. With regard to the question of ''under-valuation'', the Learned Counsel submits that the petitioner is a manufacturer and there is no rationale in fixing the actual value of the product with reference to ''MRP'', when the goods have to be passed through different hands/dealers, before reaching the consumer. This has necessarily to take in the profit margin at different levels, freiht/expenses incurred and such other aspects and as such, according to the petitioner, there is no ''under-valuation'' at all.

After hearing both the sides, this Court finds that, the reasons stated by the respondent cannot be a sufficient ground for continuing the detention; though it is open for the competent authority to pursue the adjudication proceedings, to see whether any actual intent was there to have the tax evaded in any manner. In the said circumstances, the goods shall be released to the petitioner forthwith, on executing a ''simple bond'' without sureties. This shall be without prejudice to the rights and liberties of the competent authority to proceed with the adjudication proceedings, which shall be completed in accordance with the relevant provisions of law, as expeditiously as possible.

Writ petition is disposed of.

