IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.24575 of 2015
and M.P.Nos.1 and 2 of 2105

M/s Sri Swamy Ayyappan Construction Company,
rep by its Managing Director - T. Amsaveni,
No.3, Ground Floor,
Mariyasusai Nagar,
Silver Beach Road,
Vannarapalayam,
Cuddalore-607 001,
Cuddalore Distirict ... Petitioner

Vs

The Assistant Commissioner (CT).
Cuddalore (Town) Assessment Circle,
No.8, Sub jail Road,
Manjakuppam,
Cuddalore-607 001
Cuddalore District ... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings made in Rc.826/2015/A4-TIN No.33944384702/2015-16(Entry Tax) dated 08.07.2015 and quash the same, which is contrary to the Act.

For Petitioner : Ms.R. Hemalatha
For Respondent : Mr.S. Manohar Sundaram AGP

O R D E R

Heard the learned counsel appearing for the petitioner and Mr.S. Manohar Sundaram, learned Additional Government Pleader, who took notice for the respondent and with his consent, the main writ petition itself is taken up for disposal.

2. The writ petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings made in Rc.826/2015/A4-TIN No.33944384702/2015-16(Entry Tax) dated 08.07.2015 which is contrary to the Act and quash the same,.

3. The case of the petitioner is that the petitioner had intended to purchase Agro 4000 Self Loading Concrete Mixer for their own use and accordingly they placed an order with M/s Ajax Fiori Engineering India (P) Ltd., No.3, 16 & 17, KIADB Industrial Area, Doddaballapur - 561 203, Bangalore District. Based on the purchase order raised by the petitioner Company, M/s Ajax Fiori Engineering (India) P. Ltd., Doddaballapur, Karnataka State supplied Agro 4000 Self Loading Concrete Mixer vide Invoice No.0005120153 dated 30.04.2015 for Rs.40,57,593.75. The above said machinery was transported from Doddaballapur to Cuddalore in Truck No.AP-03-X-2167.

4. Pursuant to the same, the Respondent issued a Notice in Rc.826/2015/A4-TIN No.33944384702/2015-16 dated 06.07.2015 stating that the petitioner has imported Agro 4000 Self Loading Concrete Mixer from M/s Ajax Fiori Engineering (India) Pvt Ltd, Karnataka State and directed to produce tax clearance certificate. The petitioner though furnished copies of invoices and insurance payment certificate, had not furnished proof for payment of freight charges incurred for bringing the vehicle from Karnataka State to Tamil Nadu. Hence under the powers vested with the Respondent vide Section 8 of the Tamil Nadu Tax on Entry of Motor Vehicles Act, 1990 the purchase value under section 2(k) is proposed to be determined to best of judgment and the Entry Tax due on the above vehicle has been arrived.

5. In response to the above said notice, the petitioner submitted a reply dated 7.7.2015 stating that the petitioner purchased the above said machinery from Karnataka State and paid full tax and requested to adjust the above tax with their entry tax due. Without considering the same, the impugned order came to be passed adding huge amount of freight charges. Hence, the petitioner is before this Court.

6. The learned counsel for the petitioner submitted that the Respondent has passed the impugned proceedings in Rc.826/2015/A4-TIN No.33944384702/2015-16(Entry Tax) dated 08.07.2015, wherein, the respondent has stated that CST was charged in the invoice at 14.5%, hence deduction cannot be made. But as per section 4(2) of Entry Tax Act the liability of the importer can be reduced to the extent of the amount of tax paid, if any, under the law relating to General Sales Tax, (now VAT) as may be in force in that State. Therefore, the respondent has wrongly stated that since CST was charged in the invoice, reduction cannot be made and the entry tax liability has been determined as a result of the purchase of Mixer by the petitioner from the Karnataka State. Hence she pleaded to set-aside the impugned order.

7. The learned Additional Government Pleader has not refuted the contentions of the counsel for the petitioner and fairly submitted that inadvertently the Officer has construed the payment of VAT as CST.

8. Sec.4(2) of Tamil Nadu Tax on Entry of Motor Vehicles reads as follows:

> 4. Reduction in tax liability:
> (1) ...
>
> (2) Where an importer who, not being a dealer in motor vehicles, had purchased the motor vehicle for his own use in any Union Territory, or any other State then his liability under this Act shall, subject to such conditions as may be prescribed, be reduced to the extent of the amount of tax paid, if any, under the law relating to General Sales Tax as may be in force in that Union Territory or State:

9. As per the said provision, the necessary deductions have to be made. While passing the order, the respondent, instead of taking into consideration the VAT paid in the other States, has wrongly construed it as CST. Since "C" Form was not produced by the petitioner, the other State Authority collected 14.5% as local VAT and issued certificate to that effect. But in the sale invoice, it was mentioned as CST instead of VAT. Though the category of tax was mentioned wrongly, the Respondent could have applied the relevant provisions of the Act and passed appropriate orders.

10. Under such circumstances, this Court finds it appropriate to set aside the impugned order and remit the matter back to the Assessing Authority for passing fresh orders.

11. Therefore, the impugned order is set aside. The respondent is directed to consider the reply, already filed on 7.7.2015 and pass appropriate orders on the basis of the materials produced as well as invoking Sec.4(2) of the Tamil Nadu Tax on Entry of Motor Vehicles Act. The said exercise shall be completed within a period of four weeks from the date of receipt of the copy of this order, after affording an opportunity to the petitioner.

12. With the above direction, the writ petition is disposed of. No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr

To

The Assistant Commissioner (CT).
Cuddalore (Town) Assessment Circle,
No.8, Sub jail Road,
Manjakuppam,
Cuddalore-607 001
Cuddalore District

+1cc to Mr.R. Hemalatha, Advocate, S.R.No.43754

+1cc to the Government Pleader, S.R.No.44210

KU(CO)
EU(14/09/2015)

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