IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.4162 of 2014
and
M.P.No.1 of 2014

Sri Shanmuga Traders,
14, Boo Begum 2nd Street,
Mount Road, Chennai - 600 002.
represented by its Proprietor
P.Balachandran. ... Petitioner

vs.

1.The Commissioner of Commercial Taxes,
Thiruvallikeni-II Assessment Circle,
Cathedral Road, Chennai - 86.

2.The Assistant Commissioner of Commercial Tax,
Thiruvallikeni-II Assessment Circle,
Cathedral Road, Chennai - 86. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Mandamus, directing the respondents to refund back the amount attached from the petitioner's bank account along with interest or to set off the amount taken away illegally for future payable tax by the petitioner.

For Petitioner : Mr.P.Subba Reddy
For Respondents: Mr.S.Kanmani Annamalai
Additional Government Pleader

ORDER

Heard Mr.P.Subba Reddy, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents. By consent, the writ petition is taken up for final disposal.

2.The petitioner has filed this writ petition seeking for a direction to the respondents to refund back the amount attached from the petitioner's bank account along with interest or to set off the amount taken away illegally for future payable tax by the petitioner.

3.The case of the petitioner is that they are dealing in Scrap Batteries which are unusable and the rate of tax is only 4%. However, the second respondent for one assessment year i.e. 2006-07 had issued a notice dated 13.06.2011 proposing to levy tax at the rate of 12.5%. The petitioner did not submit their objections. Therefore, the order has been confirmed by order dated 24.11.2011. It appears that the petitioner has not challenged the said order and therefore, the second respondent attached the petitioner's bank account and recovered the entire tax. It is thereafter the petitioner came to know that a clarification has been issued when sought for by another dealer by the Commissioner of Commercial Taxes vide letter dated 25.01.2008 stating that all the goods which are scrapes liable to tax at 4% and unserviceable machineries, radiators, etc., are only sold as scrap, otherwise taxable at 12.5%.

4.The petitioner's case is that only for the relevant assessment year i.e. 2006-07, this issue has arisen and not earlier or for the subsequent assessment years. With these facts, the petitioner approached the second respondent by way of a representation dated 23.08.2012. Since the same has not been considered, the petitioner has filed this writ petition for the aforementioned relief.

5.Though a positive direction has been sought for by the petitioner, the relief sought for the petitioner cannot be granted at this stage when the matter is pending consideration before the second respondent and the petitioner has not challenged the assessment order dated 24.11.2011. However, if the clarification issued by the Commissioner of Commercial Taxes is applicable to the petitioner's case then the second respondent could consider the same on merits.

6.In the light of the above, the second respondent is directed to consider the petitioner's representation dated 23.08.2012, afford an opportunity of personal hearing to the petitioner and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order.

7.With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

cse

To

1.The Commissioner of Commercial Taxes,
Thiruvallikeni-II Assessment Circle,
Cathedral Road, Chennai - 86.

2.The Assistant Commissioner of Commercial Tax,
Thiruvallikeni-II Assessment Circle,
Cathedral Road, Chennai - 86.

+1cc to Mr.P. Subba Reddy, Advocate, S.R.No.62376
+1cc to the Government Pleader, S.R.No.62658

SKV(CO)
EU(24/11/2016)

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