IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.12420 of 2012

Tvl.J.P.Shipping Agencies,
Rep. by its Proprietor,
Mangalam Towers, 1st Floor,
No.286/94, Thambu Chetty Street,
Chennai-600 001. ... Petitioner

Versus

The Commercial Tax Officer,
Group III (North),
O/o.The Deputy Commissioner,
Enforcement (North), 1st Floor,
CT Building, Greams Road,
Chennai-6. ... Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records of the respondent in G.D. 201/2010-11, dated 28.01.2011, quash the same and consequently direct the respondent to refund the sum of Rs.1,96,000/-.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mr.V.Haribabu
Additional Government Pleader

O R D E R

Heard Mr.S.Raveekumar, learned counsel appearing for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader, accepting notice on behalf of respondent.

2. The petitioner is a Shipping Agency, who had undertaken transportation of Cargo on behalf of M/s.Yash Marketing, who are registered dealers in Andhra Pradesh under the provisions of the Andhra Pradesh Value Added Tax Act.

3. The respondent detained the goods on the ground that for verification of the dealer (consignee) and they suspected that their registration is cancelled and that the goods vehicle was not accompanied by the documents prescribed under Section 67(5) of the Tamil Nadu Value Added Tax Act, 2006.

Since the goods had to be cleared, the petitioner was instructed by the consignee / importer, who is at Andhra Pradesh to pay the one time tax and clear the goods. Accordingly, as per the demand made, the petitioner paid the one time tax. Thereafter, the importer had taken the goods to Andhra Pradesh and sold the goods and has also paid tax. The petitioner enclosed all the documents and submitted a refund claim to the respondent. The respondent initially stated that the refund claim is under process, but, by the impugned order, dated 28.01.2011, they rejected the same, on the ground that the payment effected by the importer is not related to the tax paid as per the Court Order. The said observation in the impugned order is wholly untenable, since the tax paid is on account of goods detention notice issued in respect of the very same goods, which have been sold in Andhra Pradesh and proof produced to show it has suffered tax. Therefore, the respondent has passed the impugned order on the wrong premise. Hence, the Writ Petition is allowed and accordingly, the impugned order passed by the respondent is quashed and the respondent is directed to refund the one time tax paid by the petitioner, which is ***neither** registered dealer in Tamil Nadu ***nor** in Andhrapradesh. No costs.

Sd/-
Assistant Registrar(CS II)
Dt.27.7.2016

***Corrected as per the order of this Court dt.19.8.2016 and made herein.**
sd/-
Assistant Registrar (CS II)
Dt.26.8.16

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Group III (North),
O/o.The Deputy Commissioner,
Enforcement (North), 1st Floor,
CT Building, Greams Road,
Chennai-6.

***To be substituted to the order already despatched on 18.8.16 and made herein.**

+1cc to Mr.S.Raveekumar, Advocate, S.R.No.**47625**
+1cc to the Special Government Pleader(T), S.R.No.**47586**

W.P.No.12420 of 2012

AK(CO)
CA(02/08/2016)
krd 29/8