IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.7.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.26351 of 2016 & WMP.No.22589 of 2016

ASR Dredging Services Pvt. Ltd.,
rep.by its Director, Kochi-26. ...Petitioner

Vs

1.The Chennai Port Trust, rep.by
its Chairman, Chennai-1.

2.The Commercial Tax Office rep.by
the Assistant Commissioner, TDS
Circle, Greams Road, Chennai-6. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents herein to forthwith refund the sum of Rs.70,84,128/- being value added tax erroneously deducted by the 1st respondent from the petitioner's invoices and subsequently remitted to the 2nd respondent together with interest in a time bound manner.

For Petitioner : Mr.R.Parthasarathy
For Respondent-1 : Mr.M.Palanimuthu
For Respondent-2 : Mr.S.Manohar Sundaram, AGP

ORDER

Mr.M.Palanimuthu, learned Standing Counsel accepts notice for the first respondent. Mr.S.Manohar Sundaram, learned Additional Government Pleader takes notice for the second respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner participated in a tender called for by the first respondent for deepening of the eastern side of Dr.Ambedkar Dock Basin including along side berths of Second Container Terminal, Jawahar Park Basin and Berths and Maintenance Dredging at entrance Chennai in Chennai Port. The petitioner was successful and the contract was awarded to the petitioner and has been successfully completed by the petitioner.

3. In this writ petition, the petitioner seeks a direction the respondents to refund the value added tax collected in relation to the work performed under the contract and remitted by the Chennai

Port Trust to the second respondent. According to the petitioner, the nature of work done by the petitioner is purely a service contract and it is not amenable to payment of sales tax/value added tax.

4. When such a request was made to the first respondent, the Financial Advisor and Chief Accounts Officer of Chennai Port Trust addressed to the second respondent a letter dated 24.3.2015 on the following lines :

> "M/s.ASR Dredging Services Private Limited in their letter cited, has requested the Finance Department of Chennai Port Trust for arranging refund of VAT deducted and remitted to your office.
>
> A sum of Rs.70,44,010/- has been deducted towards VAT under Section 13 of the Tamil Nadu Value Added Tax Act, 2006 pertaining to dredging work this may be refunded to the firm subject to eligibility rules of Tamil Nadu Value Added Tax Act, 2006. Under information to this office.
>
> Chennai Port Trust has no objection for the same. "

5. Along with the above communication, the details of the amounts remitted and the dates of remittances have also been furnished. Thus, according to the first respondent, the petitioner is entitled to refund of the value added tax, which has been collected from the petitioner by the first respondent and remitted to the second respondent.

6. Learned Additional Government Pleader appearing for the second respondent submitted that the petitioner will not be straight away entitled to refund, unless and until the second respondent is satisfied with regard to the nature of work, which has been performed by the petitioner, for which purpose, the petitioner is bound to produce all the records before the second respondent.

7. The learned counsel for the petitioner, on instructions, submitted that the petitioner is ready and willing to appear before the second respondent and produce all the records to establish that the nature of the contract performed by them to the first respondent, does not attract value added tax.

8. Accordingly, the writ petition is disposed of with a direction to the petitioner to submit a detailed representation along with records in support of their stand before the second respondent within a period of one week from the date of receipt of a copy of this order. On receipt of such representation, the second respondent shall verify the documents, examine the nature of transaction, take into consideration the communication sent by the first respondent dated 24.3.2015 referred supra, call for details from the first respondent, if any further clarification is required, thereafter consider the

representation to be submitted by the petitioner and pass appropriate orders on merits and in accordance with law, within a period of three weeks from the date, on which, such a representation is made. No costs. Consequently, the above WMP is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Chairman, Chennai Port Trust, Chennai-1.

2.The Commercial Tax Office rep.by the Assistant Commissioner, TDS Circle, Greams Road, Chennai-6.

+1 cc to Spl.Govt.Pleader,sr.43242

+1 cc to mr.Sathish parasaran, Advocate,sr.42954

+1 cc to Mr.M.Palanimuthu, advocate,sr.42730.

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