

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.11.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.40635 of 2016 &
WMP Nos.34647 & 34648 of 2016

Ms.A.Dalin Jancy
rep. by its Authorised signatory Mr.Dathison
... Petitioner

..Vs..

- 1.The Check Post Officer
Puzal (Incoming) Check Post
Pethikupam.
 - 2.The Joint Commissioner (CT)
Enforcement I Chennai Division
Greams Road, Chennai 600 006.
- .. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in O.R.No. / 2016-17 (G.D.No.9141/2016-17) dated 10.11.2016, quash the same and further direct the first respondent to release the TATA Hitachi Z X 220 construction equipment without any condition regarding payment of tax or compounding fee.

For Petitioner : Mr.V.Sundareswaran

For Respondents: Mr.S.Kanmani Annamalai
Addl.Govt.Pleader

O R D E R

Heard Mr.V.Sundareswaran, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice on behalf of the respondents. With the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for final disposal.

2.The petitioner has come forward with this Writ Petition challenging the notice issued by the first respondent dated 10.11.2016, in and by which the first respondent on presumption

computed the income earned by the petitioner, if she utilised the machinery in question.

3.The concerned Officer namely the first respondent who is present in Court agreed that he is not the Assessing Officer of the petitioner, but his only plea is that the petitioner is an unregistered dealer.

4.In any event, the first respondent is not entitled to pass such an order calculating the rate per hour for right of use and then demand tax. It is for the Assessing Officer to take note of those issues. Hence, the impugned proceedings is held to be without jurisdiction.

5.For all the above reasons, the Writ Petition is allowed, the impugned order is set aside and the first respondent is directed to forthwith release the goods in question. However, this will not prohibit the concerned Assessing Officer, within whose jurisdiction the petitioner is carrying on business, to verify the factual details and also to verify the details from Shree Amman Minerals, No.143, Sethupathi Nagar, South Sellianullur, Selianallur Post, Tirunelveli District, who is the registered dealer in Tirunelveli, so as to ensure that there is no transfer of right to use the machinery and the petitioner herself will be operating the equipment. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1.The Check Post Officer
Puzal (Incoming) Check Post
Pethikupam.

2.The Joint Commissioner (CT)
Enforcement I Chennai Division
Greems Road, Chennai 600 006.

+1 cc to M/s.V.Sundareswaran,advocate,sr.67806

+1 cc to Spl.G.P.,sr.67907.

sm(co)
krd 23/11

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