

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2017

CORAM

THE Hon'ble Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.5446 of 2017

and

WMP Nos.5773 & 5774 of 2017

K.Kumar Raja Projects (P) Limited,
No.11, Dharmalingapuram,
Panagudi, Tirunelveli District-627 109.

Represented by its
Authorised Signatory,
Riaz Elias, residing at No.11,
Panagudi,
Tirunelveli District- 627 109. PETITIONER

Vs

1. The Deputy Commercial Tax Officer
Katpadi Checkpost
Katpadi,
Vellore District.

2. M/s.Sri Ganesh Timber,
Depot and Furniture Works,
Panthulugari Meda,
Old Gajuwaka,
Visakhapatnam-530 026. RESPONDENTS

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified mandamus to call for the records pertaining to the issue of the Goods Detention Notice bearing No.1666/2016-17 dated 17.02.2017 and the notice also in proceedings bearing No.1666/2016-17 dated 17.02.2017 by the Deputy Commercial Tax Officer, Katpadi Check Post, Katpadi the respondent herein and claiming tax at Rs.3,98,471/- and compounding fee at Rs.7,96,942/- and in all amounting to Rs.11,95,413/- and quash the same and direct the respondent to release the consignment and vehicle bearin Regn No. TN52 T4399 to the petitioner company.

For Petitioner : Mr.D.Ashok Kumar

For Respondent : Mr.K.Venkatesh Govt. Advocate

O R D E R

By consent, this writ petition is taken up for final disposal at the admission stage itself.

2. The case of the petitioner is that the petitioner is a private limited company and it is dealing in works contract and its allied business and for the purpose of the said business, the petitioner company has been registered under the Provisions of Tamil Nadu VAT Act and CST Act. In the course of its business, the petitioner company has purchased timber and plywood from Andhra Pradesh and the said consignment was dispatched to Sankari for the purpose of construction of residential quarters for Indian Oil Corporation and the vehicle was stopped at Katpadi Checkpost for routine check up. Subsequently, on the same day, the respondent issued GDN.No. 1666/2016-17 dated 17.02.2017 claiming that there is an evasion of tax and fixed the tax amount at Rs.3,98,471/- and compounding fee at Rs.7,96,942/-, in all amounting to Rs.11,95,413/-. Aggrieved over the same, the petitioner has come up with the present writ petition.

3. Mr.D.Ashok Kumar, the learned counsel for the petitioner would submit that the petitioner is not liable to pay income tax and in any event, the petitioner would be liable to pay only 5%, but the respondent is demanding tax at the rate of 14.5%. It is further submitted that the petitioner is ready to pay one time tax under protest and the issue can be decided by the respondent after giving opportunity to the petitioner.

4. Mr.K.Venkatesh, learned Government Advocate taking notice for the first respondent, submitted that if the petitioner pays the entire one time tax, the first respondent is ready release the goods and his objections can be considered by the respondent at a relevant time.

5. Having regard to the submissions made by the learned counsel on either side, since the respondent had passed the impugned order without giving an opportunity of hearing to the petitioner, I am of the considered view that the impugned order is liable to be set aside and accordingly, the same is set aside. The petitioner is directed to pay the one time tax amount of Rs.3,98,471/- (Rupees Three Lakhs Ninety Eight Thousand Four Seventy One only) before the respondent and on payment of the said sum of Rs.3,98,471/-, the respondent is directed to release the goods and vehicle to the petitioner forthwith. It is made clear that the respondent shall proceed with the matter and pass orders on merits and in accordance with law, taking into consideration the objections and the documents, filed by the

petitioner and after affording due opportunity to the petitioner. With these observations, the writ petition is disposed of. No costs. Consequently, connected MPs are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

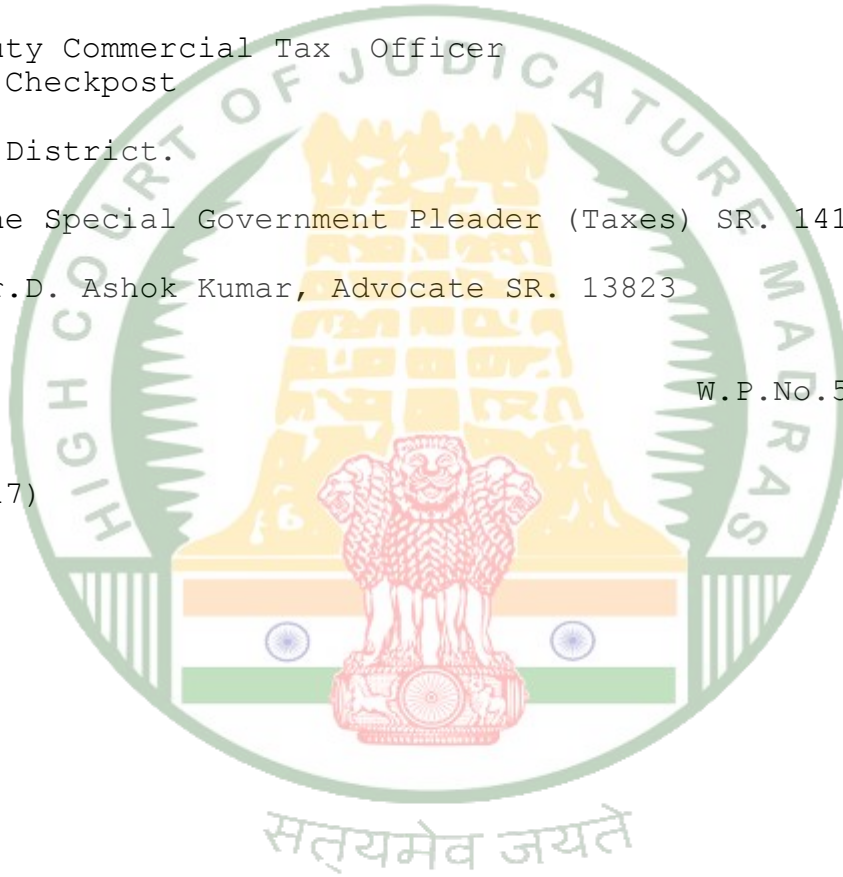
The Deputy Commercial Tax Officer
Katpadi Checkpost
Katpadi,
Vellore District.

+1cc to the Special Government Pleader (Taxes) SR. 14124

+1cc to Mr.D. Ashok Kumar, Advocate SR. 13823

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PA (CO)
VR(3/3/2017)



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