IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.9951 of 2014

M/s.Leo Fasteners -Unit II,
(A unit of M/s. Grace Infrastructure Private Ltd.,
Factory – II, Rep by its Managing Director Mr.L.M.Shah,
Thiruchitrambalam, Vanur Taluk,
Villupuram District. ...Petitioner

Vs

1. Additional Commissioner (RP),
Office of the Commissioner of Commercial Taxes,
Chepauk, Chennai – 600 005.

2. The Deputy Commercial Tax Officer (CT)
Roving Squad, Enforcement-Thiruvannamalai ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records pertaining to the Impugned Order dated 12.11.2013 of the 1st Respondent in Revision Petition No.J2/RP/95/2013 and quash the same to the extent of retention of an amount of Rs.1,55,612/- towards one time tax.

For Petitioner : Mr.G.Derrick Sam

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

This Writ petition is filed challenging the order of the first respondent dated 12.11.2013, wherein and whereby the first respondent retained the one time tax of Rs.1,55,612/-.

2. The petitioner's company purchased certain goods from a company at Bangalore, under cover of two invoices dated 29.09.2012. The said goods were detained by issuance of Goods

Detention Notice dated 05.10.2012. The reason for detention is that a wrong TIN number was mentioned in the invoices. Therefore, the petitioner was imposed with the one time tax and a compounding fee.

3. Challenging the same, the petitioner filed a revision before the Joint Commissioner of Commercial Taxes, Vellore. The said revision petition was rejected on 08.10.2012 by confirming the imposition of tax and compounding fee. The petitioner filed further revision before the first respondent, who in turn passed the impugned order.

4. The learned counsel appearing for the petitioner submits that when the first respondent has chosen to find that there is no evasion of tax by the petitioner and that the technical difficulties of mentioning a wrong TIN number will attract only the compounding fee of Rs.2,000/-, he is not justified in retaining the one time tax, out of the amount already collected from the petitioner. In other words, it is the contention of the learned counsel that in the absence of tax evasion, levy of the one time tax on the petitioner is totally unwarranted.

5. The learned Government Advocate fairly submitted that the sale is found to be Inter State sale and the consignor is also discharged the tax liability under CST, and hence there is no necessity for retaining the one time tax, as ordered by the first respondent.

6. Heard both sides.

7. A perusal of the order passed by the first respondent would show that the subject matter sale is found to be an Inter State sale and the consignor namely the seller has already charged CST at the rate of 2%. It is further seen from the findings rendered by the first respondent that there is no evasion of tax by the petitioner and that only a sum of Rs.2,000/- should be levied as a compounding fee for furnishing a wrong TIN number. Having given such findings, it is not known, as to why the first respondent has chosen to retain the one time tax, out of the amount collected from the petitioner. Absolutely, there is no justification or necessity warranting such collection from the petitioner. Therefore I find that the petitioner is justified in contending that he is entitled to get the amount refunded from the respondent.

8. Accordingly, this writ petition is allowed and the impugned order of the first respondent is set aside, only insofar as the direction to retain the one time tax alone.

Consequently the petitioner is entitled to get refund of such amount of Rs.1,55,612/- from the concerned authorities / officials, within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

mk

To

1. The Additional Commissioner (RP),
Office of the Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

2. The Deputy Commercial Tax Officer (CT)
Roving Squad, Enforcement-Thiruvannamalai.

+1cc to Special Government Pleader sr.22342

W.P.No.9951 of 2014

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