IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.12930 of 2017

M/s.Gestamp Automotive Chennai Private Limited,
Represented by its Chief Financial Officer,
Mr.V.Subramanian,
Plot.No.B-12,SIPCOT Industrial Park, Phase-II,
Vengadu Village, Pillaipakkam Post,
Sriperumbudur Taluk, Kanchipuram District,
Tamilnadu - 602 105. ... Petitioner

Vs

The Assistant Commissioner (CT),
Sriperumbudur Assessment Circle,
Varadarajapuram,
Chennai – 600 056. ... Respondent

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records in respect of the order in TIN33281667319 dated 18.04.2017 passed by the respondent, quash the same and to direct the respondent to refund Rs.1,61,78,498/- or permission for adjusting the said amount.

For Petitioner : Mr.S.Sivakumar

For Respondent : Mr.K.Venkatesh,
Government Advocate

ORDER

Mr.S.Sivakumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate, appearing for the respondent.

2.With the consent of the learned counsel on either side, the main writ petition itself is taken up for final disposal.

3.The petitioner, who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax, 2006 ("TNVAT Act" in short), has approached this Court, challenging the order passed by the respondent rejecting their petition dated 16.09.2016.

4.In the said petition, the petitioner had sought for filing a revised return for the month of September 2015 in respect of four invoices on the ground that they have effected High Sea Sales during the said month. While filing return for the said period, the turnover under High Sea Sales were inadvertently classified under the TNVAT Act and the VAT was paid to the tune of Rs.1,61,78,498/-. The respondent has rejected the petition referring to Rule 7(9) of the TNVAT Act Rules, 2007.

5.No doubt it is true, in terms of Rule 7(9) of the TNVAT Act Rules, there is a time limit fixed for rectifying omissions or errors by filing revised return and the said Rule does not provide for entertaining a revised return beyond the said period. However, in the instant case, if the petitioner is able to substantiate that those four invoices pertain to High Sea Sales, then, obviously the tax remitted by the petitioner under the TNVAT Act cannot be appropriated by the Department. In other words, if the petitioner establishes that he has done High Sea Sales, then, the amount remitted by the petitioner as tax in respect of the transaction effected during the said period cannot be retained by the Department, as, if it is done, it would amount to unjust enrichment. Hence, the petitioner should not be left without a remedy.

6.In the light of the above, the writ petition is disposed of directing the petitioner to file a petition under Section 84 of the TNVAT Act to rectify the alleged mistake in respect of the return filed for the month of September 2015, enclose documents in support of their claim and on receipt of the said petition, the respondent is directed to consider the same on merits and in accordance with law, after affording an opportunity of personal hearing. Till a decision is taken on the said petition, no coercive steps shall be taken against the petitioner.

7.However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KM

To

The Assistant Commissioner (CT),
Sriperumbudur Assessment Circle,
Varadarajapuram,
Chennai - 600 056.

+1cc to Mr.S.Sivakumar, Advocate, S.R.No.46204
+1cc to the Government Pleader, S.R.No.46237

W.P.No.12930 of 2017

CS V
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