

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition No.17068 of 2017

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W.M.P.Nos.18546 & 18547 of 2017

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W.P.No.15714 of 2017

&

W.M.P.No.16996 of 2017

M/s.Magnetic Auto Controls Pvt. Limited
Rep by its Authorised Signatory
Mr.Ramanathan Kumar

... Petitioner
in both petitions

vs

1.The Commercial Tax Officer
Air Cargo Vehicle Check Point
Chennai- 600 027

2.The Commercial Tax Officer
Puducherry Assessment Circle
No.75, 100 Feet Road, Ellapillaichavadi
Puducherry - 605 005

3.The State of Tamil Nadu
Rep. by its Secretary
Commercial Taxes and Registration Department
Fort St. George
Chennai - 600 009

... Respondents
in both petitions

Prayer in W.P.No.17068 of 2017: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in G.D.40007/2017-18 dated 17.06.2017, quash the same as illegal, ultravires and without jurisdiction under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and further direct the first respondent to release the goods detained in GD 4007/2017-18 dated 09/06/2017.

Prayer in W.P.No.15714 of 2017: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in G.D.40007/2017-18 dated 09.06.2017 and the

consequential notice in G.D.No.40007/2017-18 (Most urgent/Top Priority) dated 13.06.2017, quash the same as illegal, ultravires and without jurisdiction under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and further direct the first respondent to release the goods detained in G.O 40007/2017-18 dated 09.06.2017.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.K.Venkatesh
Govt. Advocate for R1 and R3

Mr.K.N.NARIN
Additional Govt. Pleader for R2

COMMON ORDER

The petitioner has filed these two writ petitions challenging the Good Detention Notice dated 13.06.2017 and the consequential order passed by the respondent dated 17.06.2017 rejecting the petitioner's objections for the detention notice and levying one time tax and compounding fee. Though the impugned order dated 17.06.2017 appears to be an elaborate order, much of the observations made by the Officer are uncalled for and totally unrelated to the dispute on hand.

2. The goods imported by the petitioner from Brazil was detained pursuant to the impugned detention notice dated 12.06.2017 in which the reason for detaining the goods has been stated that in the commercial invoice dated 30.05.2017, the notified party is the petitioner company with an address at Kottivakkam, Chennai-41. Therefore, the respondent suspected the nature of transaction that there is a likelihood of disposal of the imported goods within the State of Tamil Nadu and the concern with office at Kottivakkam being not registered in the Tamil Nadu under the provisions of the Tamil Nadu Value Added Tax Act or Central Sales Tax Act, detained the goods.

3. The petitioner submitted their detailed objection pointing out that in the commercial invoice the consignee is the petitioner with their unit at Pondicherry. The airway bill also shows that the consignee is at Pondicherry and imported equipment is required for their own purposes and is being transported to Pondicherry. Thus, the respondent was required to consider as to merely because the notified party in the commercial invoice contains an address in Chennai, can the transaction be suspected to be one for sale within the State of Tamil Nadu. In fact, when the Detention Notice was issued on suspicion, there was no tangible material available with the officer to suspect that the imported goods were intended for sale in Tamil Nadu. Therefore, when the petitioner raises

objections, the respondent was bound to consider the contention put forth on the side of the petitioner and take a decision as to whether equipment was imported for their factory at Pondicherry. Since the equipment was a costly equipment and the import was a time bound, the petitioner had paid the one time tax and the goods have been released.

4. Before me, the learned counsel for the petitioner has placed necessary records to show that the consignment left customs barrier and reached Pondicherry in the same vehicle and adequate proof has been shown that the equipment is now with the petitioner. Thus, merely because the address of the notified party is in Chennai cannot be a sole reason to disbelieve the contention raised by the petitioner especially when the petitioner has been able to produce sufficient records to establish the genuinity of their transaction. Thus the impugned Detention Order as well as the consequential compounding order are completely not sustainable.

In view of the above, these writ petitions are allowed and the Good Detention Notice dated 09.06.2017 and 17.06.2017 and the consequential notice dated 13.06.2017 are quashed. The respondent is directed to refund the one time tax paid by the petitioner, namely Rs.4,69,804/- within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

gpa

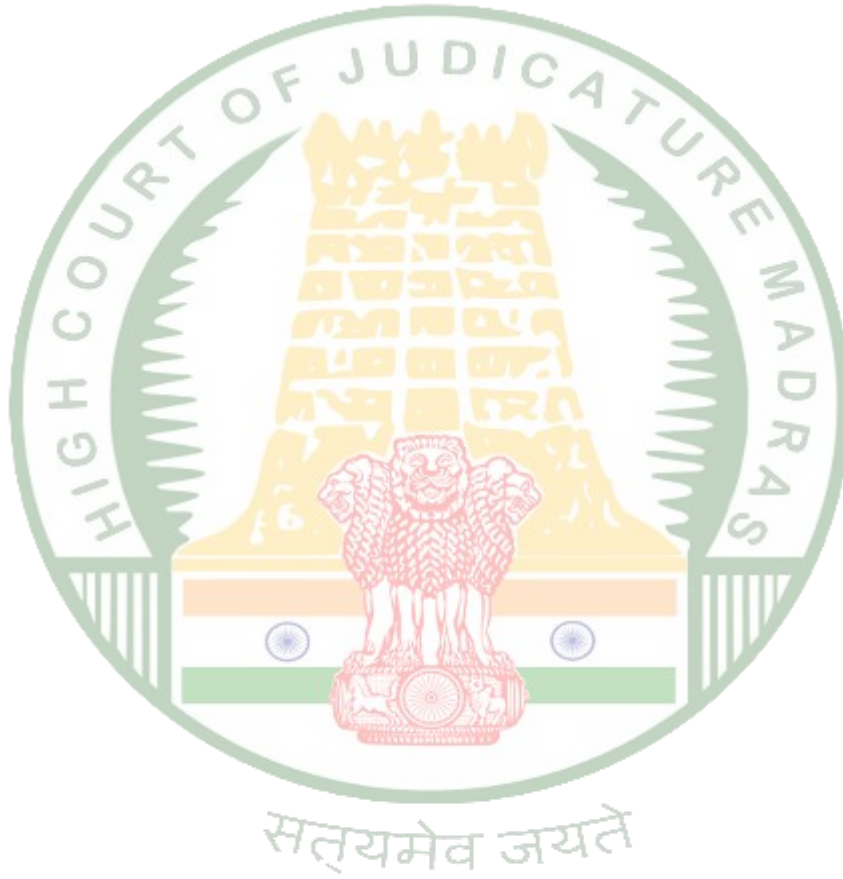
To

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+1 CC Special Govt.Pleader Advocate SR.No.73581
+1 CC Mr.V.Sundareswaran Advocate SR.No. 73551

RR (CO)
EGR 14/11/2017

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