IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.25992 of 2016 & W.M.P.No.22240 of 2016

APM Terminals Private Limited, Rep. by
its Chief Financial Officer, Mr.Robson Scott,
CFS Division at No.78, Anuppampattu Village,
T.H.Road, Ponneri Taluk,
Thiruvallur District,
Chennai-601 203. ... Petitioner

Vs.

1. The State of Tamil Nadu, Rep. by the Secretary,
   Commercial Taxes and Registration Department,
   St. George Fort, Chennai.

2. The Assistant Commissioner (CT),
   Cholavaram Assessment Circle, Chennai-52.

3. Ayya Steels Private Limited,
   Plot No.165 & 166, Manali New Town,
   Chennai-600 103. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to recovery Notice-Form U issued by the second respondent on 30.12.2014 and quash the same as illegal, arbitrary and consequentially direct the respondent No.2 to refund the amount Rs.50,06,823.00/- collected by them from the petitioner towards tax arrears of respondent No.3 contrary to the provision of Section 45 of TNVAT Act and Section 150 Customs Act 1962.

For Petitioner : Mr.A.K.Rajaraman

For Respondents : Mr.S.Kanmani Annamalai for R1 & R2
Additional Government Pleader

No appearance-for R3

O R D E R

Heard Mr.A.K.Rajaraman, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for respondents 1 & 2. Though notice has been sent on the third respondent, they have refused the notice which was sent to them.

2.The petitioner is before this Court challenging the Form U notice issued under Rule 9(4) of the Tamil Nadu Value Added Tax Act, 2006 (in short "TNVAT Act") Rules, claiming a sum of Rs.1,25,34,480/- from the petitioner being the amount payable by the third respondent towards sales tax dues to the Commercial Taxes Department.

3.The petitioner is a Container Freight Station (in short "CFS") licensed by the Customs Department. The third respondent imported steel and the same were stored in the petitioner's CFS. The third respondent failed to clear the goods by paying appropriate customs duty and the goods were left to lie within the CFS. In terms of the provisions under the Customs Act and relevant Rules, the petitioner was entitled to recover the dues payable to them by bringing for sale the goods lying in their CFS with appropriate permission from the Customs Department. After following the required procedure, the goods were brought for sale by E-auction and the sale proceedings were appropriated by the petitioner towards part of the dues payable by the third respondent to the petitioner for having kept the cargo in their CFS.

4.For the balance money, the petitioner is proceeding against the third respondent for recovery by way of independent proceedings. In the interregnum, the Commercial Taxes Department viz., Assessing Officer of the third respondent, who is the second respondent herein has issued the impugned notice. Admittedly, the petitioner is not a garnishee as they are only CFS duly licensed by the Customs Department. The amount, which they have recovered by sale of the goods is the amount which is lawfully due to them and the sale proceeds of the steel did not cover the entire dues and it is stated that some more amount is recoverable from the third respondent. Thus, the petitioner is not rquired to pay any monies to the third respondent, but the case is vice versa.

5.Identical issue arose for consideration before this Court in the case of Tvl.Sical Multimodal and Rail Transport Ltd., v. The Assistant Commissioner (CT), Cholavaram Assessment Circle and others in W.P.No.17145 of 2015, wherein the Assistant Commissioner (CT), Cholavaram assessment circle is the second respondent herein. In the said writ petition, the second respondent was M/s.Ayya Steels, the third respondent herein. In the said case also, similar Form U notice was issued by the second respondent herein to the petitioner therein. The correctness of such notice was challenged in the writ petition and the writ petition was allowed and a direction was issued to refund the amount, which was recovered by the Commercial Taxes Department by attaching the bank account of the petitioner. Before me, identical submission has been made by the learned Additional Government Pleader by referring to Section 45(1)(b) of the TNVAT Act. This submission was rejected in the case of Tvl.Sical Multimodal and Rail Transport Ltd (supra).

6.The learned Additional Government Pleader would fairly submit that the revenue preferred a writ appeal as against said order, which was dismissed. At this juncture, it would be beneficial to refer to the operative portion of the order passed in W.P.No.17145 of 2015, dated 15.07.2015 (referred supra).

> "9.Though the learned Additional Government Pleader (Tax) submitted that as per Section 45(1)(b) of the TNVAT Act, the assessig authority may by way of issuance of notice, required any person to pay to the assessing authority the amount due under this Act on account of the dealer or other person who has become liable to pay any amount due under this Act, I do not find merit in the submission, for, in the present case, even though the petitioner sold the goods belonging to the section respondent in E-auction on 28.11.2014 and thereby realised a sum of Rs.40,77,000/-, yet they incurred with additional expensed of Rs.21,243 /- after making necessary payment as stated in the preceding paragraphs, therefore, in such scenario, the respondent cannot resort to apply Section 45(1)(b) of the TNVAT Act. However, on the contrary, the respondent, without application of mind, erroneously restored to attach the bank account of the petitioner Company.
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> 10.Further, as highlighted above, even before bringing the goods belonging to the second respondent to sell in E-auction, the petitioner Company had issued notice dated 22.07.2013 under

Section 48 of the Customs Act requesting the second respondent to clear the said cargo, otherwise, necessary steps would be taken to dispose of the said goods. Again, finding no reply, the petitioner issued another notice dated 08.08.2013 under Section 48 of the Customs Act for disposal of the said goods and finally, since there was no response from the second respondent, the petition Company, with due intimation to the first respondent, sold the goods belonging to the second respondent for a sum of Rs.40,77,000/- vide E-auction dated 28.11.2014, therefore, I do not find any irregularity in selling the goods as they admittedly issued notices to both the respondents before selling the goods.

11.Thus, for the aforesaid reasons, the impugned order is liable to be set aside and accordingly, the same is set aside. Consequently, the first respondent is directed to refund the amount of Rs.75,27,657/- to the petitioner Company within a period of two weeks from the date of receipt of a copy of this order. It is open to the first respondent to proceed against the second respondent for recovery of the arrears towards the sales tax in accordance with law. In fine, the writ petition stands allowed. No costs. Consequently, connected miscellanous petitions are closed."

7.In the light of the above, the petitioner cannot be treated as a garnishee of the third respondent and the impugned Form U notice is wholly without jurisdiction. For the above reasons, this writ petition is allowed and respondents 1 & 2 are directed to refund the entire amount of Rs.50,06,823/-, which has been recovered from the petitioner by attaching their bank account and such refund shall be effected within a period of 15 days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Secretary, The Government of Tamil Nadu,
   Commercial Taxes and Registration Department,
   St. George Fort, Chennai.

2. The Assistant Commissioner (CT),
   Cholavaram Assessment Circle, Chennai-52.

+1cc to Mr.A.K.Rajaraman, Advocate, S.R.No.69248

W.P.No.25992 of 2016

CS/13/10/17