IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2017

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.35911 of 2007
and
M.P.No. 1 of 2007

Sri Krishan Tractors
represented by its partner
Mr.P.Pannerselvam
No.16-D, Diversion Road
Polur. ..Petitioner

The Deputy Commercial Tax Officer
Polur Assessment Circle
Polur. .. Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in TNGST No:4541875/2005-2006 and quash the impugned proceedings dated 31.10.2007 as the same has been passed in excess of his jurisdiction and without authority of law and to direct the respondent to pass a fresh assessment order in accordance with law after granting reasonable opportunity to the petitioner.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.S.KanmaniAnnamalai
Additional Government Pleader

O R D E R

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing on behalf of the respondent and perused the materials placed on record including the parawise instructions given by the respondent to the learned Additional Government Pleader vide letter dated 20.12.2007.

2. The short question which falls for consideration in the instant case is, whether the petitioner can be treated as a

first seller of tractors inside the State of Tamil Nadu. To decide this question, the following facts would be sufficient.

3. The petitioner is one of the authorised dealer of the manufacturer of Tractors M/s.Mahindra & Mahindra Limited, ["M&M Ltd." in short]. Its spares and accessories and a registered dealer on the file of the respondent, under the Provisions of the Tamil Nadu General Sales Tax Act, 1959 ["TNGST" in short]. M/s.M & M Ltd., has got a branch in chennai. The petitioner purchased one tractor from the M&M Ltd. and an invoice was raised for the tractor and the petitioner paid totally a sum of Rs.12,64,350/- [Rupees Twelve Lakh Sixty Four Thousand and Three Hundred Fifty Only], this being one of the sample invoices dated 04.01.2006. In the invoice, apart from the value /rate of the tractor of the goods, there is a column shown as Entry Tax value and the rate mentioned is 6%. A sum of Rs.71566.97 [Rupees Seventy One Thousand and Five Hundred Sixty Six and Ninety Seven Paise] was collected from the petitioner by the M&M Ltd. This amount formed the total consideration of Rs.12,64,350/-.

4. The M&M Ltd., had informed the petitioner, they being the first seller within the State of Tamil Nadu when they transferred the goods from the place of manufacturer to their branch in the State of Tamil Nadu, that they are required to pay Entry Tax @ 6% under the provisions of the Tamil Nadu Tax on Entry of Motor Vehicles into the Local Areas Act 1990. The petitioner's case is that they are required to pay tax @ 4% within the State of Tamil Nadu being the first purchaser from the M&M Ltd., and this 4% was contained in the 6% which was collected by the M&M Ltd. from the petitioner.

5. Therefore, the petitioner would state that by no stretch of imagination they can be treated as first seller within the State of Tamil Nadu. The petitioner filed its returns and the accounts were called for and checked and on verification of the invoices the Assessing Officer noticed that there was an entry "paid entry tax value at 6%".

6. Taking note of this entry the respondent opined that the petitioner had not remitted the Sales Tax and they have paid only Entry Tax at 6% on the purchase of tractors.

7. Therefore, the respondent opined that collection of Entry Tax gives no right to the petitioner to state that they have paid tax under the TNGST Act at 4% and surcharge at 5% on the said 4%, in all, at 4.2%. This led to issuance of revision notice dated 10.07.2007 proposing to reject the monthly return and assess the turn over to the best of judgment. The assessment relates to the year 2005-2006.

8. The petitioner submitted their objections, reiterating their stand that they can never be treated as the first seller within the State and they being the dealer of the manufacturer had purchased the tractors on payment of TNGST which has been collected by the M&M Ltd., in excess of what is liable to be paid. In other words, the case of the petitioner is that the TNGST and surcharge payable is at 4.2% and the petitioner had paid 6%.

9. The petitioner's contention was duly supported by the M&M Ltd., by their letter dated 29.10.2007. They have, in unequivocal terms, stated that the M/s.M&M Ltd., is the first seller of the tractor inside the State of Tamil Nadu and they have brought the tractor inside the State of Tamil Nadu from their factory for which, they have remitted Entry Tax at 6% and they have also collected. the same from the petitioner. Further, they certified that in respect of the Assessment Year 2005-06 and the period ending 31.12.2006, the Entry Tax collected from the petitioner have been paid towards Sales at 4% and surcharge at 5% as tax, totally at 4.2% on their sales of tractors till 31.12.2006 by way of adjustment of the Entry Tax paid to the department as provided under Section 4(1) of the Tamil Nadu Tax on Entry of Motor Vehicles into the Local Areas Act 1990. In spite of having produced the letter before the Assessing Officer, the assessment has been completed, rejecting the petitioner's contention.

10. In my considered view the presumption arrived by the Assessing Officer to treat the petitioner as the first seller of the tractor inside the State is mis-conceived. The description of entries found in the invoice should not be the sole guiding factor.

11. The Assessing Officer should have conducted an enquiry, more so, when, M&M Ltd., being a registered dealer within the State of Tamil Nadu. There was no material available with the Assessing Officer to disbelieve the certificate issued by the M&M Ltd., dated 29.10.2007 wherein, they have clearly stated that they are the first seller of the tractor inside the State of Tamil Nadu.

12. Further, the respondent did not endeavour to make any enquiry as to whether the M & M Ltd., have paid Sales Tax at 4% and surcharge at 5% on tax (totally at 4.2%) by way of adjustment under Section 4 (1) of the Tamil Nadu Tax on Entry of Motor Vehicles into the Local Areas Act 1990. Without resorting to such procedure, penalizing the petitioner is incorrect and not sustainable. Even in the parawise instructions given by the

respondent to the learned Additional Government Pleader, apart from reiterating the stand taken in the impugned order, no fresh material has been placed. Thus, it is clear that even after the writ petition was filed, no attempt was made by the Assessing Officer to verify the stand taken by the M&M Ltd., by resorting to the procedures available in the office manual.

13. Thus, for all the above reasons, I am of the clear view that the impugned order is wholly unsustainable. In the result, the writ petition stands allowed and the impugned order stands quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar

dna/maya

To

The Deputy Commercial Tax Officer
Polur Assessment Circle
Polur.

1 cc to MR.P.Rajkumar, Advocate, Sr. 74295
1 cc to Spl.Government Pleader, Sr. 74457

SR (CO)
kk 24/11