IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.47093 of 2006

M/s.ETA Engineering Private Limited,
Seethakathi Chambers, V Floor,
688, Anna Salai, Chennai-600 006,
rep.by Senior Manager-Commercial
Mr.Afzal Hussain .. Petitioner

Vs

1.The Government of Tamil Nadu
rep.by the Secretary,
Commercial Taxes and Religious
Endowments Department,
Fort St.George, Chennai-600 009.

2.The Commercial Tax Officer,
Nungambakkam Assessment Circle,
88, V.R.Ramanathan Road,
Chetput, Chennai-600 031. .. Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration declaring that Explanation V to Section 2(1)(aa) of the Tamil Nadu Additional Sales Tax Act, 1970 and consequential levy of interest, as ultra vires and beyond the legislative competence of the State of Tamil Nadu under Serial No.54, List II of the Seventh Schedule of the Constitution of India, being ultra vires Article 19(1)(g) are inoperative and the recoveries under the said provisions are violative of Articles 265 and 300A of the Constitution of India.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.K.Venkatesh,
Government Advocate

ORDER

Heard Mr.Joseph Prabakar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents.

2.The petitioner has filed this writ petition praying for issuance of a Writ of Declaration to declare that Explanation V to Section 2(1)(aa) of the Tamil Nadu Additional Sales Tax Act, 1970 and consequential levy of interest, as ultra vires and beyond the legislative competence of the State of Tamil Nadu under Serial No.54, List II of the Seventh Schedule of the Constitution of India.

3.The learned counsel for the petitioner has submitted that the issue involved in this writ petition is squarely covered by the decision of the Hon'ble Division Bench of this Court in the case of State of Tamil Nadu and another v. M/s.Taher Ali Industries & Projects (P) Ltd.in W.A.(MD)No.174 of 2013, reported in 2016-VIL-548-MAD (DB). The said appeal was preferred challenging the decision of the learned single Judge dated 27.09.2011 reported in 2011-VIL-106-MAD, wherein an identical prayer sought for in the present writ petition was allowed and it was held that Explanation V to Section 2(1)(aa) of the Tamil Nadu Additional Sales Tax Act, 1970, introduced by the Amendment Act 23 of 2002, is ultra vires the Constitution of India and beyond the competence of the State Legislature. The Hon'ble Division Bench dismissed the appeal filed by the State confirming the decision dated 27.09.2011. In the light of the same, the prayer sought for in this writ petition has to be allowed.

4.The learned counsel for the petitioner submitted that pending the writ petition, the petitioner has paid a sum of Rs.33,31,591/- on 31.01.2007 being the interest amount of the turnover of tax which was demanded by the Department by notice dated 07.07.2007.

5.The learned Government Advocate does not have any specific instructions with regard to the payment effected by the petitioner during the pendency of the writ petition. However, the respondents would definitely have record for the payment made by the petitioner, pending disposal of the writ petition.

6.Considering the fact that the prayer sought for by the petitioner is fully covered by the earlier decision, this writ petition has to be allowed and liberty should be given to the petitioner to seek appropriate relief of refund / adjustment of any amount paid, which the petitioner is not legally bound to pay in the light of the declaratory relief granted in the writ petition.

7.In the result, following the decision in the case of State of Tamil Nadu and another v. M/s.Taher Ali Industries & Projects (P) Ltd., reported in 2016-VIL-548-MAD (DB), the writ petition is allowed as prayed for and liberty is given to the petitioner to approach the second respondent byway of appropriate application for refund / adjustment of any amount paid during the pendency of the writ petition. If such application is made, necessary orders shall be passed by the second respondent within a period of three weeks from the date of receipt of the said application. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

KM

To

1.The Secretary to Government,
Government of Tamil Nadu,
Commercial Taxes and Religious
Endowments Department,
Fort St.George, Chennai-600 009.

2.The Commercial Tax Officer,
Nungambakkam Assessment Circle,
88, V.R.Ramanathan Road,
Chetput, Chennai-600 031.

+1cc to Mr.Joseph Prabakar, Advocate in sr.no.67164

W.P.No.47093 of 2006

MR(CO)
NR 13/10/2017