IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.04.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.4135 of 2018

Murugan Earth Movers,
rep. by its Proprietor, J.Arul. ...Petitioner

Vs.

1. The State Tax Officer (Main)
Tindivanam.

2. The Deputy Commercial Tax Officer,
Pethikuppam Checkpost,
Gummidipoondi- 601 201.

3. The Joint Commissioner (CT)
Chennai North Division,
Greams Road, Chennai - 600 006. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the first respondent, in notice, dated 09.02.2018, in TIN No.33294723832/2013-14, and to quash the same, to direct the first respondent to issue refund of Rs.7,72,300/- along with interest immediately.

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.M. Hariharan
Additional Government Pleader

O R D E R

Heard Mr.Adithya Reddy, the learned counsel appearing for the petitioner and Mr.M. Hariharan, the learned Additional Government Pleader appearing on behalf of the respondents.

2. In this Writ Petition, the petitioner has impugned the notice, dated 09.02.2018, by which, the respondent has proposed to tax the petitioner in respect of interstate purchase of Tata Hitachi Earth Moving Machine against Form 'C' from M/s. Tata Hitachi Construction Machinery Company Ltd., Khargpur.

3. The tax, which has been proposed is Rs.7,54,068/-. Under normal circumstances, this Court will not entertain the Writ Petition, challenging the notice, especially, when the impugned notice is a notice, proposing to assess the petitioner under Section 22 (4) of the TNVAT Act, 2006. However, the facts of the case has made the Court to take a different view in the present matter. This conclusion is supported with the following reason.

4. The Tata Hitachi Earth Moving Machine was detained by the Check Post Officer, by a Goods Detention Notice, dated 05.01.2014. The petitioner paid the entire tax as well as the compounding fee of Rs.7,70,300/- and the Earth Moving Moving was released. The petitioner, thereafter, filed a Revision Petition before the Joint Commissioner (CT), Chennai, North Division, which was taken on file in R.P.No.16 of 2014. The Joint Commissioner, by a detailed order, dated 05.01.2018, allowed the Revision Petition and set aside the levy of compounding fee and the operative portion of the order reads as follows:-

> " The contention raised in the revision petition has been examined with the OR file. In this case, the petitioner is a registered dealer in Tindivanam Assessment Circle, Purchased (Excavator) to his own operation. The purchase earth moving machine was supported by the proper tax invoice issued by other state seller. In the tax invoice, the petitioner's TIN was also noted. Thus, the movement of goods have been supported by proper tax invoice. The Check Post Officer has not proved with material evidence that there was any evasion of tax and attempted to evade any payment of tax. In the absence of any attempt to evade any payment of tax,the check post officer is not correct in following the tax amount and C fee. I therefore, set aside the levy of 'C' fee and thus, the Revision Petition is allowed. "

5. The above order will clearly show that, no sales tax was leviable on the transaction of earth moving equipment. This finding would bind the Assessing Officer, as the Joint Commissioner is the Superior Authority over the Assessing Officer. Even assuming that the first respondent took up the return filed by the petitioner for assessment, the question of demanding tax from the petitioner does not arise, in the light of the observations contained in the order passed by the Joint Commissioner. Therefore, this Court can safely presume that the impugned notice has been issued to somehow, deny the petitioner

the refund of tax, which was paid by the petitioner at the time when the equipment was detained. Thus, the first respondent cannot be permitted to achieve indirectly, what, he cannot achieve directly.

6. Accordingly, the Writ Petition is allowed, the impugned order is set aside and the first respondent is directed to refund the compounding fee as well as the tax paid by the petitioner, pursuant to the goods detention notice, dated 05.01.2014. The above direction shall be complied with within a period of eight weeks from the date of receipt of a copy of this order. No costs.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

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To

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   Tindivanam.

2. The Deputy Commercial Tax Officer,
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   Gummidipoondi- 601 201.

3. The Joint Commissioner (CT)
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+1 CC to Mr. Adithya Reddy, Advocate sr 29901.
+1 CC to Spl. Govt. Pleader sr 30444.

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NA(CO)
SP(08/05/2018)