IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.33955 of 2007

Sri.Dharmasasta Electrical and
Mechanical Service,
rep. by its Managing Partner,
Kadimisetty Venkat Rao,
Plot No.174, Block B, Industrial Estate,
Kakinada-533 005, Andhra Pradesh. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Roving Squad III, Enforcement (South),
Greams Road, Chennai-600 006. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings passed in G.D.8445198/O.R.5243/2006-2007 dated 28.06.2007 on the file of the respondent herein and consequently direct the respondent herein to pass an order refunding the sum of Rs.1,44,210/- obtained by them towards advance tax.

For Petitioner : Mr.K.Govi Ganesan

For Respondent : Mrs.G.Dhanamadhri,
Government Advocate

O R D E R

Heard Mr.K.Govi Ganesan, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate for the respondent.

2.The petitioner has filed this writ petition challenging the proceedings issued by the respondent dated 28.06.2007, by which the respondent rejected the petitioner's representation for refund of the tax collected from the petitioner and the compounding fee for alleged defects. Admittedly, the respondent is not an assessing officer, who is empowered to levy and collect tax. The respondent is only an Enforcement Officer attached to a Roving Squad. Therefore, the respondent would have absolutely no jurisdiction to collect tax.

3.The petitioner's further case is that sale was duly reported to their assessing officer viz., the Commercial Tax Officer, Kakinada in their monthly returns for the month August, 2006 and tax of Rs.2,28,904/- was paid by cheque dated 20.09.2006. Therefore, it is submitted that the collection made by the respondent clearly amounts to double taxation. Apart from that, on merits, the petitioner would contend that the respondent should have considered the correct delivery address of the assignee specifically mentioned in the Way Bill Form as Tvl.Hindustan Oil Corporation Ltd., and the consignee's registration number was also noted correctly in column No.5 of the Way Bill. Therefore, the reasons assigned by the respondent is wholly unsustainable.

4.In the light of the settled position that an Enforcement Officer or a Checkpost Officer cannot collect tax and the collection effected from the petitioner by the respondent is held to be without jurisdiction.

5.Accordingly, this writ petition is allowed, the impugned order is set aside and the petitioner is directed to appear before the respondent and produce the monthly returns for August, 2006 filed before the Commercial Tax Officer, Kakinada Circle, Kakinada and also produce proof for payment of tax and after perusal of the same, the respondent shall refund the amount collected from the petitioner viz., tax and compounding fee within a period of four weeks from the date on which the documents are produced by the petitioner. No costs.

abr

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To
The Deputy Commercial Tax Officer,
Roving Squad III, Enforcement (South),
Greams Road, Chennai-600 006.

+1cc to Mr.K.GoviGanesan, Advocate Sr.No.5657
+1cc to Special Government Pleader sR.no.6113/18

sm:20.2.2018

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