IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.8177 of 2005

M/s.DRS Industries Ltd.,
(A Unit of Millenium Motors)
rep. by its Managing Director
D.Sivakumar,
S.F.No.501/1, Avinashi Road,
Goldwins,
Civil Aerodrome Post,
Coimbatore-641 014. ...Petitioner

V.

The Commercial Tax Officer,
Peelamedu North Circle,
Dr.Nanjappa Road,
Coimbatore-641 018. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the respondent in his Notice of demand of penalty (Form No.29) (Penalty Notice U/s.24 (3) of the Act) in TNGST No.2121521/2003-2004 (Entry Tax) dated 05.01.2004 for the belated payment of Entry Tax in respect of October 2003 and to quash the same.

For Petitioner : Mr.S.Rajasekar
For Respondents : Mr.M.Hariharan, AGP

O R D E R

The Notice of Demand of Penalty under Section 15(2) of the Tamil Nadu Tax on Entry of Motor Vehicles Act, 1990 (hereinafter referred to as 'Entry Tax Act') is under challenge in the present Writ Petition.

2. Heard Mr.S.Rajasekar, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing on behalf of the respondent.

3. Though the petitioner has raised several grounds challenging the impugned demand, the learned counsel for the petitioner predominantly embarked on the ground that the impugned notice issued under Form 29 of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) for a penalty to be levied under the provisions of the Entry Tax Act, cannot be sustained.

4. The learned Additional Government Pleader, by relying on the averments made in the counter affidavit submitted that there is no specific demand notice prescribed under the Entry Tax Act and therefore the notice in Form 29 of the TNGST Act was issued for demand of penalty.

5. I am not in agreement with the stand taken by the respondent that there is no provision under the Entry Tax Act for making a demand for penalty. Form 6 under the Entry Tax Act empowers the department to impose penalty under Section 15(2) of the Entry Tax Act. When there is a specific form for imposing the penalty, there is no justification on the part of the respondent to adopt Form 29 under the TNGST Act, which is a form prescribed for imposing of penalty under Section 24(3) of the TNGST Act.

6. The petitioner herein has not seriously opposed their liability to pay the Entry Tax and their grievance seems to be with regard to the authority of the respondent to levy penalty. In view of the aforesaid specific finding that the relevant form to claim penalty would be Form 6 of the Entry Tax Act, it would be appropriate to grant liberty to the respondent to issue a fresh notice of demand under the provisions of the Entry Tax Act.

7. It would not be out of place to mention here that by dispatching a wrong Form under the TNGST Act for the demand of penalty for belated payment of entry tax under the Entry Tax Act, the department was faced with a threat of loss of revenue, in view of the challenge made to the same in this Writ Petition. The Government should seriously consider to issue instructions to all the concerned officials to desist from committing such careless mistakes which could possibly end up with the revenue loss to the Government.

8. In view of the above findings, the present Notice of demand of penalty (Form No.29) (Penalty Notice U/s.24(3) of the Act) in TNGST No.2121521/2003-2004 (Entry Tax) dated 05.01.2004 is hereby set aside. Consequently, the respondent herein is granted liberty to issue a fresh notice of demand of penalty

under the provisions of the Entry Tax Act together with details of the calculations for the proposed penalty. The Writ Petition stands ordered accordingly. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

DP
To

The Commercial Tax Officer,
Peelamedu North Circle,
Dr.Nanjappa Road,
Coimbatore-641 018.

+1 cc to the special Government Pleader(Taxes) sr50801
+1 cc to Mrs.R.Hemalatha Advocat sr49756

W.P.No.8177 of 2005

pa(co)
aa21/10/2019