BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.09.2019

CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.13781 of 2019
and
W.M.P.(MD)No.10324 of 2019

Tvl.Vijay Earth Movers,
Represented by its Proprietor,
P.Vijayan. : Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The State Tax Officer,
Periyakulam Assessment Circle,
Commercial Taxes Office,
No.3, Quai e Millath Ngar,
Vadakarai,
Periyakulam,
Theni District-625 601. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for records pertaining to the impugned proceedings of the second respondent in Asst.No.33675061571/2017-18, dated 30.05.2019 and quash the same.

For Petitioner : Mr.B.Rooban

For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader

ORDER

The petitioner is doing business by hiring the earth movers and excavators. He purchased one JCB chain mounted excavating vehicle and duly accounted the same in his monthly returns. On 29.03.2019, a notice was issued by the respondents, pursuant to a surprise inspection conducted by the Enforcement Wing Officers on 30.09.2015, for not reporting closure of business and for not paying tax to the Government, and on explanation by the petitioner, the proceedings were dropped. Again on 29.03.2019, a pre-revision notice was issued for production of the documents with regard to possession of the vehicle, profit and loss account, bank account details, income tax statement copies for the year 2015-2016, 2016-2017 and 2017-2018, failing which, it will be deemed that the vehicle purchased by him was sold. In response to the pre-revision notice, the petitioner submitted his reply on 06.05.2019, along with the details of possession of vehicle, bank account details, income tax statement copies for the relevant years. After considering the reply, the impugned order came to be passed repeating the very same words contained in the proposal. In spite of verifying the documents, it is held that the petitioner has not produced details in respect of payment of tax regarding the closure of business and it was deemed as a sale and imposed tax on the escaped VAT due by confirming the proposal. Aggrieved over the same, the petitioner is before this Court.

2. The payment of service tax will arise only when the Goods and Service Tax Act, 2017, comes into force. For the previous years, the respondents cannot claim service tax. When there is no proof that the vehicle was sold by the petitioner, the respondents cannot consider that the vehicle was deemed to have been sold. Despite the production of the required documents, such as income tax return, bank statement, possession of vehicle, without assigning any reason, the Assessing Officer has confirmed the assessment and deemed sales, which is not sustainable in law and accordingly, the impugned proceedings is set aside. The matter is remitted back to the authority concerned, for proper course of action.

3. The Writ Petition is allowed as indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Commissioner of Commercial Taxes,
   O/o. The Principal and Special Commissioner
   of Commercial Taxes,
   Ezhilagam,
   Chepauk,
   Chennai-600 005.

2. The State Tax Officer,
   Periyakulam Assessment Circle,
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   No.3, Quai e Millath Ngar,
   Vadakarai,
   Periyakulam,
   Theni District-625 601.

+1 CC to Mr.B.ROOBAN, Advocate (SR-87809[F] dated 19/09/2019)
+1 CC to Spl.GP (SR-88709[F] dated 23/09/2019)

Order made in
W.P.(MD)No.13781 of 2019
Dated: **19.09.2019**

sml
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