BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2019

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THE HONOURABLE **MR.JUSTICE. ABDUL QUDDHOSE**

W.P(MD).No.7031 of 2016
and
W.M.P.(MD)No.5988 of 2016

M/s.Siva Engineering Company,
Rep.by its Partner
M.Sivakumar. : Petitioner

Vs.

The Commercial Tax Officer (FAC),
Shengottai Assessment Circle,
Shengottai. : Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus, to call for the records of the respondent in his proceedings in TIN No.33065700409, dated 27.01.2016 and quash the same as it is unlawful and in violation of the principles of natural justice and further direct the respondent to withdraw the notice in Form U issued to the Manager, Tamilnadu Mercantile Bank, Shengottai Branch and to make assessment and demand taxes due thereon, in accordance with law as contemplated in TNVAT Act.

For petitioner : Mr.R.R.Ramesh Bapu

For Respondent : Mr.D.Muruganantham,
Additional Government Pleader

ORDER

The instant Writ Petition has been filed challenging the impugned notice dated 27.01.2016 passed by the respondent in TIN No.33065700409.

2.It is the case of the petitioner that they are a registered dealer under the Tamil Nadu Value Added Tax Act 2006. According to them, they are manufacturers of “Vertical Band saw machines, Horizontal Sawing (Trolly) Machines, Log Saw Mill and all kinds of wood working Machines”, which were all 'Capital goods' as defined under Section 2(11) of the Tamil Nadu Value Added Tax Act 2006. Being capital goods, taxes are payable only at the rate of 5%. Accordingly, they have also paid the tax for the 'capital goods' to the respondent at the rate of 5%.

3.But, during the inspection in the business premises of the petitioner by the Enforcement Wing Officers of the respondent dated

26.09.2015, the Enforcement Wing Officials collected four cheques for a total sum of Rs.9,28,317/- from the petitioner on the ground that they had paid lesser tax at the rate of 5% instead of 14.5% for the sales effected to un-registered dealers. According to the petitioner, the said cheques were given to the Enforcement Wing Officers only under the threat of coercion and undue influence. According to the petitioner, immediately, after the cheques were obtained from the petitioner, they gave stop payment instructions to their Bankers on 12.10.2015 as they were not liable to pay the excess tax to the respondent as demanded by the Enforcement Wing Officials. According to the petitioner, even without affording sufficient opportunity, the respondent issued the impugned proceedings dated 27.01.2016 to the petitioner's Bankers namely, The Manager, Tamil Nadu Mercantile Bank, Shengottai under Section 45 of the Tamil Nadu Value Added Tax Act 2006, calling upon the Bank to remit the entire arrears outstanding in the petitioner's account by way of demand draft in favour of the Commercial Tax Officers, Shengottai. Aggrieved by the impugned proceedings dated 27.01.2016, the instant Writ Petition has been filed.

4.Heard Mr.R.R.Ramesh Bapu, learned counsel for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader for the respondent.

5.According to the learned counsel for the petitioner, the aforesaid cheques were obtained by the Enforcement Wing Officials only under the threat of coercion and undue influence. According to him, after obtaining cheques under coercion, the petitioner had given stop payment instructions to their Bankers as they were not liable to pay the excess tax demanded by the Enforcement Wing Officers. According to him, the goods involved are all capital goods as per Section 2(11) of the Tamil Nadu Value Added Tax Act 2006 and therefore, the tax liable to be paid is only at the rate of 5% on the sale value and not at the rate of 14.5% as demanded by the Enforcement Wing Officers of the respondent. According to him, even without affording sufficient opportunity to the petitioner and without passing any assessment order, the respondent has arbitrarily issued the impugned notice under Section 45 of the Tamil Nadu Value Added Tax Act 2006, calling upon the petitioner's Bankers to remit the entire arrears of outstanding in the petitioner's account by way of demand draft in favour of the Commercial Tax Officer, Shengottai.

6.Per contra, the learned Additional Government Pleader for the respondent would submit that since there is an admission by the petitioner that they had paid lesser tax and having issued cheques towards admitted tax amount, the respondent has rightly issued the impugned notice calling upon the Bankers of the petitioner to pay the entire arrears outstanding in the petitioner's account by way of demand draft in favour of the Commercial Tax Officer, Shengottai, which is in accordance with Section 45 of the Tamil Nadu Value Added Tax Act 2006. Further, it is the case of the learned Additional Government Pleader for the respondent that as per Section 2(11) of the Tamil Value Added Tax Act 2006, since the petitioner have admitted that the sales have been effected from unregistered dealer, Section 2(11) of the Act, is not attracted.

Discussion:

7.Even though, the petitioner has issued four cheques valued at Rs.9,28,317/- to the Enforcement Wing Officers towards alleged tax amount payable by the petitioner, the said tax according the petitioner is not payable by them. According to the petitioner, the aforesaid four cheques were obtained by the Enforcement Wing Officers from the petitioner, only under the threat of coercion and undue influence. After issuing the cheques, the petitioner has also issued stop payment instructions to their Bankers for the cheques handed over to the Enforcement Wing Officers. The same was also intimated to the respondent by the petitioner by his letter dated 12.10.2015.

8.Section 2(11) of the Tamil Nadu Value Added Tax Act 2006 reads as follows:

"Sec.2(11) "capital goods" means-

(a)plant, machinery, equipment, apparatus, tools, appliances or electrical installation for producing, making, extracting or processing of any goods or for extracting or for bringing about any change in any substance for the manufacture of final products;

(b) pollution control, quality control, laboratory and cold storage equipments;

(c) components, spare parts and accessories of the goods specified in (a) and (b) above;

(d) moulds, dies, jigs and fixtures;

(e) refractors and refractory materials;

(f) storage tanks; and

(g) tubes, pipes and fittings thereof

used in the State for the purpose of manufacture, processing, packing or storing of goods in the course of business excluding civil structures and such goods as may be notified by the Government."

9.Whether Section 2(11) of the Tamil Nadu Value Added Tax Act 2006 is attracted for sales effected to unregistered dealers also is clarified by the Principal Commercial Taxes Officer under Section 48-A of the Tamil Nadu Value Added Tax Act 2006 by his proceedings dated 11.09.2007, wherein he has clarified that it is applicable even for sales to unregistered dealers. Accepting the fact that the petitioner had handed over the aforesaid four cheques to the Enforcement Wing Officers at the time of inspection, it has been seen from the records that it is his consistent stand that he is liable to pay tax for the 'capital goods' only at the rate of 5% and not at the rate of 14.5%. This *prima facie* cannot be considered as admission of liable by the petitioner as alleged by the respondent. Whether the handing over of the cheques amounts to payment cannot be decided now and it can be decided only after considering all the materials and evidence available on record submitted by the petitioner as well as the respondent.

10.In the instant case, even without affording an opportunity to the petitioner, the respondent has issued the impugned notice under Section 45 of the Tamil Nadu Value Added Tax Act 2006 on the presumption that the petitioner has admitted his liability whereas as seen from the available records excepting for the issuance of cheques, there is no conclusive evidence to prove that the petitioner had admitted his liability.

11.For the forgoing reasons, this Court is of the considered view that even without sufficient opportunity being afforded to the petitioner, the respondent has concluded that the petitioner has admitted his liability and proceeded to issue the impugned notice to the petitioner bankers under Section 45 of the Tamil Nadu Value Added Tax Act 2006.

12.In the result, the impugned notice dated 27.01.2016 is hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent is granted liberty to initiate fresh legal action after affording sufficient opportunity to the petitioner to raise all objections available to them under law and pass final orders in line with the clarification issued by the Commissioner of Commercial Taxes, Shengottai, under Section 48-A of the Tamil Nadu Value Added Tax Act 2006, dated 11.09.2007, with in a period of eight weeks from the date of receipt of a copy of this order.

13.With the aforesaid direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

To

The Commercial Tax Officer (FAC),
Shengottai Assessment Circle,
Shengottai.
+1 CC to M/s.M.V.MANI BABU, Advocate in SR-54694
+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.54949

W.P(MD).No.7031 of 2016
and
W.M.P.(MD)No.5988 of 2016
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das
PK/11.04.2019 : 4P/4C