IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11298 of 2011
and M.P.No.1 of 2011

Purushothaman Cranes
represented by its Authorised signatory
B.Shanmugam,
S/o.Balaraman,
No.1, Krishnadoss Road,
Otteri, Chennai - 600 012. ... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary to the Government,
Commercial Taxes Department,
Fort St.George, Chennai - 600 009.

2.The Assistant Commissioner of Commercial Taxes,
Perambur II Assessment Circle, Chennai.

3.The Regional Transport Officer,
Chennai (North), Chennai. ... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, call for the records in pursuance of the order in TIN:33681062207/2010-11, dated 04.01.2011 passed by the second respondent in respect of vehicle Reach Staker for Container Handling, Chassis No.34192, Engine No.7009176112 (Model - TAD942 VE) was purchased from TIL Limited, Invoice No.1149/100, dated 02.05.2010 and quash the same as illegal and to directing the third respondent herein with new registration mark.

For Petitioner : Mr.N.Baaskaran
For Respondents : Mr.V.Veluchamy
Government Advocate

O R D E R

The Notice issued in proceedings dated 04.01.2011 stating that the respondent Assessing Authority proposed to levy penalty under Section 15 (1) of Tamil Nadu Tax on entry of Motor Vehicle into Local Areas Act, 1990.

2. Thus an opportunity is provided to the petitioner to submit their objections within seven days from the date of receipt of the notice. If the dealers fail to complete with the conditions, the notice shall be confirmed without any further notification.

3. The notice was issued providing an opportunity to the writ petitioner to submit their objections with reference to the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act. This Court is of the considered opinion that the petitioner is expected to respond to the notice by submitting their objections, if any. Contrarily, at this stage, challenge of notice need not be entertained as the High Court cannot adjudicate the merits with reference to the documents and evidences.

4. No writ against a show-cause notice is entertainable. The writ against the show-cause notice needs to be entertained only if the said show-cause notice is issued by the incompetent Authorities having no jurisdiction or an allegation of malafides are raised and in such an event, the authority against whom such an allegation is raised shall be impleaded as a party respondent in its personal capacity in writ proceedings. Thus, in all circumstances, show-cause notices issued are to be responded and the authorities are bound to consider the objections, explanations and documents and thereafter, take a decision and pass orders by affording the opportunity to the assessees concerned.

5. This being the procedures to be followed, at the stage of show-cause notice, the petitioner cannot be construed as aggrieved person as far as the merits involved in the allegations.

6. This Court cannot undertake the process of adjudication of disputed facts on merits. Such an exercise is to be done by the Authorities Competent, based on the documents and evidences available. The power of judicial review under Article 226 of the Constitution of India, scrutinize the processes through which a decision is taken by the Authorities in consonance with the provisions of the statutes and the Rules but not the decision itself. Therefore, the exercise of adjudication of facts must be drawn by the Authorities Competent and all the grounds raised with reference to the merits in the writ petition, deserves no adjudication by this Court and the petitioner has to submit all the grounds and objections before the respondent enabling them to consider and pass orders by following the procedures contemplated.

7. The petitioner is at liberty to submit their objections within a period of two weeks from the date of receipt of a copy of this order and on receipt of any such explanations / objections from the petitioner, the respondent shall consider the same on merits and in accordance with law and pass appropriate orders by affording opportunity to the writ petitioner. Such an exercise is to be done by the respondents, as expeditiously as possible.

8. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

Pns

To
1.The Secretary,
Government of Tamil Nadu,
Commercial Taxes Department,
Fort St.George, Chennai - 600 009.

2.The Assistant Commissioner of Commercial Taxes,
Perambur II Assessment Circle, Chennai.

3.The Regional Transport Officer,
Chennai (North), Chennai.

+1cc to Mr.N.Baaskaran, Advocate, S.R.No.31881
+1cc to Special Government Pleader(Taxes), S.R.No.37676

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GPL(CO)
CB(11/08/2021)