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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31970 of 2017
and
W.M.P.Nos.35129 & 35130 of 2017

M/s.Eureka Automobiles Private Ltd.,
Rep., by its Director, Mr.N.S.Srinivasan,
No.10, T.P.Chatram, Shenoy Nagar,
Chennai-600 030.

.. Petitioner

-vs-

The Assistant Commissioner (CT),
T.Nagar Assessment Circle,
No.46, Greenways Road, III Floor,
Chennai-600 028.

.. Respondent

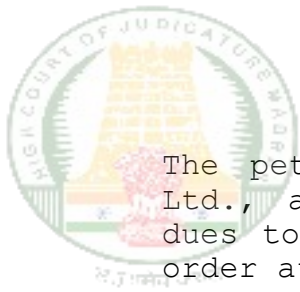
Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the respondent in VAT/33326401290/2016-17/A3 along with Form U dated 05.09.2017 issued to M/s.Ford Credit India P. Limited, S.P.Koil Road, Chengalpet, Chennai-603 204, quash the same.

For Petitioner	:	Mr.V.Sundareswaran
For Respondent	:	Mr.V.Veluchamy, Government Advocate

ORDER

The order impugned dated 05.09.2017, regarding recovery of arrears of monthly payment for the year 2016-17 is under challenge in the present writ petition.

2.Admittedly, the defaulter of payment of sales tax arrears is M/s.MPL Cars Pvt. Ltd. In respect of the sales tax arrears to be paid by the said M/s.MPL Cars Pvt. Ltd., the respondent issued notice to the petitioner M/s.Eureka Automobiles Pvt. Ltd.



The petitioner has paid the amount due to M/s.MPL Cars Pvt. Ltd., and informed the authorities that they have no further dues to be paid and accordingly, the Department cannot pass any order attaching the properties belong to the petitioner.

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3.The learned counsel for the petitioner made a submission that the petitioner has clearly stated that there is no arrears of amount due to be paid by the petitioner-company to M/s.MPL Cars Pvt. Ltd., and once there is no due to be paid to the defaulter, then under Section 45(5) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act"), no further action can be taken against the garnishee. In this regard, the petitioner has drawn the attention of this Court with reference to the notice issued by the Department as well as the reply given by the petitioner on several occasions. It is contended that the petitioner has repeatedly informed the respondent that there is no arrears of money due to be paid to M/s.MPL Cars Pvt., Ltd., by the petitioner and therefore, under Section 45(5) of the TNVAT Act, they are to be exonerated from the liability and no order attaching the property belongs to the petitioner shall be issued. Without considering any of these aspects, the respondent passed the impugned order of attachment.

4.The learned Government Advocate appearing on behalf of the respondent made a submission that due to the business transactions between the petitioner and M/s.MPL Cars Pvt. Lt., the respondent issued the order and therefore, there is no infirmity or perversity as such.

5.Let us consider Section 45(5) of the TNVAT Act, which reads as under:-

"Section 45(5) Where any person to whom a notice under this section is served, objects to it by a statement in the prescribed form that the sum demanded or any part thereof is not due by him to the dealer or that he does not hold any money for or on account of the dealer, then nothing contained in this section shall be deemed to require such person to pay the sum demanded or part thereof, as the case may be, to the assessing authority, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the assessing authority to the extent of his own liability to the dealer on the date of the notice or to the extent of the liability of the dealer for the amount due under this Act, whichever is less."



6. In view of the fact that the notice issued by the respondent was promptly responded by the petitioner and the amount due to the defaulter had already been deposited and further, the petitioner informed the respondent that there is no further dues to be paid to M/s.MPL Cars Pvt. Ltd., Section 45(5) of the TNVAT Act would be applicable to the case of the petitioner and this Court is of the opinion that the respondent may proceed against the petitioner, if at all they could able to discover any such additional materials or found that the statement made by the petitioner is false or incorrect. Under these circumstances, the order impugned cannot be sustained.

7. The learned counsel for the petitioner further made a submission that M/s.MPL Cars Pvt. Ltd., is now functioning at Bangalore and the Directors are also residing at Bangalore. Therefore, the respondent has an opportunity to recover the amount from the original defaulter by invoking the provisions of the TNVAT Act. Knowing the fact that the defaulter is very much residing and functioning at Bangalore, there is no reason whatsoever to initiate action against the petitioner. If at all arrears of sales tax is to be recovered, the Department has to initiate action against the defaulter, as the defaulter is very much available at Bangalore, and this fact was also informed by the petitioner to the Department. Under these circumstances, the respondent shall take appropriate steps against the defaulter, viz., M/s.MPL Cars Pvt. Ltd., by following the procedures contemplated.

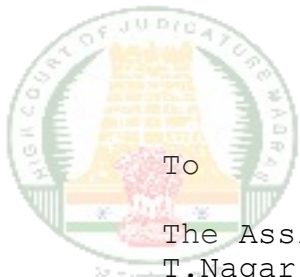
8. Accordingly, the impugned order passed by the respondent dated 05.09.2017 is set aside and the writ petition is allowed. However, the respondent is at liberty to proceed further, if at all they found that the statement and the affidavit filed by the petitioner are false or incorrect as contemplated under Section 45(5) of the TNVAT Act. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS)

// True Copy//

Sub Assistant Registrar

abr



To

The Assistant Commissioner (CT),
T.Nagar Assessment Circle,
No.46, Greenways Road, III Floor,
Chennai-600 028.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.35793
+1cc to the Government Pleader, S.R.No.36067

W.P.No.31970 of 2017

PCH(CO)
SU(16/08/2021)