BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.3393 of 2021
and
W.M.P.(MD)Nos.2753 & 2756 of 2021

M/s.Senthil Timber Traders
Rep. by its Mr.AKS Kalyan Kumar,
No.116, Railway Road,
Tenkasi-627 811. ... Petitioner

-Vs-

1.The Joint Commissioner (ST)
Office of the Joint Commissioner of Intelligence/Enforcement
Commercial Taxes Building,
Dr.Thangaraj Salai,
Madurai.

2.The State Tax Officer(ENF.) RS (Addl.)
Commercial Taxes Building,
Dr.Thangaraj Salai,
Madurai. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in Order No.01/2019-2020/RS (Addl.) Madurai(ENF) and quash the order dated 11.06.2019 along with consequential order in Reference No.ZA331219000004630, dated 06.12.2019 as unlawful & invalid and further, direct the second respondent to refund the amount of penalty of Rs.52,800/- collected as per Section 129 of GST Act.

For Petitioner : Mr.A.Satheesh Murugan
for Mr.R.D.Ganesan
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2.The case of the petitioner is that they were transporting the petition mentioned consignment of teak logs under proper documentation. Though E-way bill was obtained, only the photocopy of the invoice was with the driver. For this reason, the second respondent called upon the lorry driver to pay tax and penalty. Since the petitioner could not afford to leave the goods stranded, the amount of Rs.52,800/- was paid.

3.His specific case is that mandatory formalities such as issuing notice were not complied with in this case. Even the impugned order was obtained by him only under Right to Information Act. Alleging that the very demand and collection of the tax and penalty was illegal, the present writ petition has been filed seeking refund of the amount already remitted by him.

4.I am of the view that since factual aspects are involved, the petitioner can as well avail the alternative remedy of appeal. Taking note of the facts and circumstances of the case, if the appeal is filed before the appellate authority within a period of three weeks from the date of receipt of a copy of this order, the appellate authority will entertain the same without reference to limitation. I make it clear that I have not gone into the merits of the matter. All the contentions of the petitioner are left open. The Writ Petition is disposed of with the aforesaid liberty to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Joint Commissioner (ST)
Office of the Joint Commissioner of Intelligence/Enforcement
Commercial Taxes Building,
Dr.Thangaraj Salai,
Madurai.

2.The State Tax Officer(ENF.) RS (Addl.)
Commercial Taxes Building,
Dr.Thangaraj Salai,
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+1 CC to M/s.R.D.GANESAN, Advocate (SR-15234[F] dated 01/04/2021)

W.P.(MD)No.3393 of 2021
and
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ES(CO)
TR(24.04.2021) 3P 4C