IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 21.6.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.9653 to 9656 of 2008 and 9678 to 9682 of 2008

W.P.No.9653 of 2008

M/S. KHIVRAJ & COMPANY
REP. BY ITS PARTNER BHARAT KUMAR CHORDIA
623 ANNA SALAI CHENNAI-6. ... Petitioner in W.P.NO.9653 to 9656/2008

M/S. KHIVRAJ AUTO MOBILES LTD
REP. BY ITS PARTNER BHARAT KUMAR CHORDIA
617 ANNA SALAI CHENNAI -6 .... Petitioner in W.P.9678 to 9687/2008

versus

COMMERCIAL TAX OFFICER
NUNGAMBAKKAM ASSESSMENT CIRCLE
SPUR TANK ROAD CHENNAI-31. ... Respondent (in all Wps)

Writ petition filed under Article 226 of the constitution of India praying for a writ of mandamus directing the respondent herein to grant refund of excess entry tax paid amounting to Rs.11,97,984/- to the petitioner relating to the assessment year 1999-2000 in (WP 9653/08), to Rs.9,76,315/- to the petitioner to relating to the assessment year 2000-2001 (in WP 9654/08), to Rs.40,444/- to the petitioner relating to the assessment year 1998-99 (in WP 9655(08), to Rs.4,02,926/- to the petitioner relating to the assessment year 2001-2002 (in WP 9656(08), to Rs.9,28,283/- to the petitioner relating to the assessment year 1997-98 (in WP 9628 (or) to Rs.12,77,942/- to the petitioner relating to the assessment year 1998-99 (in WP 9679/08) to Rs.9,18,863/- to the petitioner relating to the assessment year 1999-2000 (in WP 9680/08) to Rs.14,50,262/- to the petitioner relating to the assessment year 2001-2002 (in WP 9681/08) to Rs.6,64,624/- to the petitioner relating to the assessment year 2000-2001(in WP 9682/08) as per representation dated 29.03.2008.

For petitioner ... Mr.R.Hemalatha all WPs

For respondent ... Mr.Manokaran Sundaram, A.G.P. all WPs

COMMON ORDER

In all these Writ Petitions, the petitioners who are dealers under the erstwhile Tamil Nadu General Sales Tax Act, are seeking for a direction to the respondent to grant refund of the excess entry tax paid, by considering their representation.

2. This Court had an occasion to consider a similar case as to how refund claims have to be processed in M/s.Ganesh Cars (P) Ltd., rep. by its Chairman N.Gajendran vs Commercial Tax Officer, Vellore, (W.P.No.31252 of 2003). The said Writ Petition was for a Writ of Certiorari, where the rejection of refund was put to challenge. The operative portion of the order dated 15.6.2016, in the said Writ Petition reads as follows :-

> 3. Learned counsel on either side submit that the legal issue involved in these matters pertaining to refund is covered by the Hon'ble Division Bench judgment of this Court in the case of Khivraj Motors Limited Vs. Assistant Commissioner (CT) and another [W.A.Nos.3201 to 3204 of 2014] dated 4.2.2010 and based on the said decision, the petitioner is entitled to refund of the excess amount of entry tax collected. The said judgment of the Hon'ble Division Bench was followed by a learned Single Judge in M/s.Susee Auto Sales & Services (P) Ltd. Vs. CTO (FAC) [W.P.No.4927 of 2004 dated 10.2.2016].
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> 4. Following the same, the writ petitions are allowed with a direction to the respondent to enquire into the matters and if it is found that excess amounts had been collected at the time of payment of entry tax, the balance amounts shall be refunded to the petitioner by adjusting the tax payable under the Tamil Nadu General Sales Tax Act. The above direction shall be complied with within a period of eight weeks from the date of receipt of a copy of this order. No costs.

3. In the light of the above legal position, there shall be a direction to the respondent to consider the petitioners' representation and pass appropriate orders, in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

4. The Writ Petitions are disposed of with the above direction. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. COMMERCIAL TAX OFFICER
NUNGAMBAKKAM ASSESSMENT CIRCLE
SPUR TANK ROAD CHENNAI-31.

4 cc to M/s.R.Hemalatha, Advocate Sr.35029

1 cc to Spl.Government Pleader(Taxes) Sr.34783

W.P.Nos.9653 to 9656 of 2008
and 9678 to 9682 of 2008

rk(co)
kra 28.07.2016