IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2016

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.24458 to 24465 of 2016

W.P.No.24458 of 2016

M/s.Escorts Ltd.,
Rep. By its Assistant Manager Finance,
Now at
New No.811, Old No.434,
Poonamallee High Road,
Arumbakkam, Chennai – 600 106.
.. Petitioner in All Writ Petitions

Vs

The Assistant Commissioner (CT),
Egmore – I Assessment Circle,
Chennai.
.. Respondents in all Writ Petitions

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondent to refund the excess entry tax paid by the petitioner for the assessment years 1996-97, 1997-98, 1998-99, 1999-2000, 2000-01, 2002-03, 2003-04 & 2005-2006.

For Petitioner
in all W.Ps. : Mr.R.L.Ramani
Senior Counsel
for Mr.B.Raveendran

For Respondent
in all W.Ps. : Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)

COMMON ORDER

Heard Mr.R.L.Ramani, learned Senior Counsel assisted by Mr.B.Raveendran, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) appearing for the respondent. With the consent of either side, the writ petitions are taken up for disposal.

2.The prayer sought for by the petitioner in all these writ petitions is for a direction upon the respondent to revise the excess entry tax paid by the petitioner for the relevant assessment years.

3.The petitioner is a Public Limited Company engaged in the manufacture of the tractors having its factory in the State of Haryana and depots and branches in several places including Chennai. The petitioner is a registered dealer on the file of the respondent under the erstwhile Tamil Nadu General Sales Act (TNGST Act) and at present Tamil Nadu Value Added Tax (TNVAT Act) as well as under the provisions of the Tamil Nadu Tax on Entry of Motor Vehicles in Local Areas Act, 1990 (Entry Tax Act). The petitioner's case is that in terms of Section 3(1) of the Entry Tax Act, there is a liability towards the payment of entry tax on the entry of any motor vehicle into the State of Tamil Nadu at the rate specified. In respect of imports of tractors into the State of Tamil Nadu from the petitioner's factory at Haryana, the petitioner has paid the entry tax at 6%. The petitioner would further state that this entry tax which was paid by the petitioner was from and out of the own fund and it was not collected from the customers. The petitioner's further case is that in cases where an importer (dealer of motor vehicles) is liable to pay entry tax under Section 4(1) of the Entry Tax Act, it provides for reduction in the liability in the payments of sales tax under the TNGST Act, additional sales tax under the Tamil Nadu Additional Sales Tax Act and surcharge and additional surcharge under the Tamil Nadu Sales Tax Surcharge Act by virtue of the sale of motor vehicles to the extent of tax paid under the entry Tax Act. Therefore, the petitioner would contend that they being a dealer in the tractors are entitled for a reduction in its liability under the TNGST Act to the extent of entry tax paid under the Entry Tax Act.

3.The petitioner states that the assessments under the Entry Tax Act for the years 1996-97 to 2005-06 has not been taken up and completed by the respondent. However, the assessment under the TNGST Act for the said years has been completed and in the said order, the respondent followed the mandate of Section 4(1) of the Entry Tax Act and adjusted the payment of entry tax towards the liability under the TNGST Act. However, after adjustment there was an excess entry tax payment for every assessment year which have been refunded to the petitioner. Therefore the petitioner approached the respondent by way of a representation to effect refund of the excess entry tax paid by them. This application was rejected by the respondent by an order dated 21.05.2010 on the ground that the decision of the Hon'ble Division Bench in the case of Khivraj Motors vs. Assistant Commissioner (CT) reported in 139 STC 233 has been challenged by way of filing writ appeals before the Hon'ble Division Bench and since the appeals are pending application for refund cannot be considered. The petitioner challenged this order by way of filing a writ petition in W.P.No,17586 of 2010. The said writ petition was allowed by order dated 05.08.2010 and the order reads as follows:

> "The prayer sought for in this writ petition is to quash the order, dated 21.05.2010 passed by the respondent and further direct the respondent to refund the excess entry tax paid by the petitioner for the assessment years 1996-97 to 2000-01, 2002-03, 2003-04, 2005-06.
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> 2.Learned senior counsel appearing for the petitioner submits that while passing the impugned order, rejecting the request for refund, the respondent has wrongly stated that W.A.Nos.3201 to 3204 of 2004 is still pending before this Court. But in fact, the said Writ Appeals were disposed of by a Division Bench of this Court on 04.02.2010 and the copy of the order that whenever an entry tax is paid on the higher side and once section 4 is made applicable correspondingly the excess amount, if any paid by the dealer is to be refunded in terms of Section 11 of the Act. Thus, there

is a mistake committed by the respondent, while passing the impugned order, treating the said Writ Appeals as pending.

3.On the basis of the said submission, learned Additional Government Pleader is ordered to take notice, who also agreed that the above said Writ Appeals were disposed of on 04.02.2010.

4.In the light of the above submissions, the impugned order is set aside and the matter is remitted back to the respondent to consider the disposal of the Writ Appeals on 04.02.2010 and pass orders, taking into account the said orders passed in the Writ Appeals, within a period of two (2) weeks from the date of receipt of a copy of this order.

5.The Writ Petition is disposed of accordingly. No costs."

4.Thus in terms of the above direction, the matter has been remanded back to the respondent for fresh consideration and to pass orders within a period of two weeks. Though this order was passed in 2010, for six long years the respondent has not passed any orders. Even in these writ petitions counter has not been filed but para-wise instructions have been given. Certain paragraphs in the written instructions given to the Government Advocate by the respondent are in fact the findings rendered by the respondent while passing the order dated 21.05.2010. Therefore those factors cannot be the basis in considering the petitioner's application for refund since the order dated 21.05.2010 has been set aside. Two other reasons which have been mentioned is that as against the decision of the Hon'ble Division Bench in Khivraj Motor's case civil appeals are pending before the Hon'ble Supreme Court.

5.However, the learned Senior Counsel, on instructions, would submit that there is no such appeal pending and only set of appeals which were pending is in the case of Commercial Tax Officer vs. Coimbatore Automobile Private Limited in SLP(Civil) C.C.Nos.9028 to 9030 of 2011 which has already been disposed of on 11.06.2013. To establish the same, the case status downloaded from the official website has been produced.

6.The learned Additional Government Pleader submits that the appeal in the case of Khivraj Motors Limited is still pending as a Special Leave Petition in SLP(C)No.3042 of 2011. In any event the petitioner has not challenged the provisions of the Act nor the respondent has passed an order on the refund application. Therefore even assuming an appeal is pending against the judgment in the case of Khivraj Motors Limited, that will not come in the way of the respondent to consider the application filed by the petitioner for refund. One other reason given by the respondent in the written instruction is by stating that the constitutional validity of the Entry Tax Act is pending consideration before the Hon'ble Supreme Court before the Nine Judge Bench. Therefore, the respondent prays for dismissal of the writ petition.

7.So far as the issue relating to the validity of the Entry Tax Act which was challenged before the Hon'ble Supreme Court, the Hon'ble Supreme Court has since delivered judgment. However, in the instant case, the petitioner has not challenged the provision of the Entry Tax Act and their only prayer is that after adjustment the excess entry tax paid by the petitioner stated to be from and out of their own funds should be ordered to be refunded. The specific case of the petitioner is that this liability has not been passed on to the customers. Thus, since there is a binding direction issued by this Court in W.P.No.17586 of 2010 dated 05.08.2010, the respondent ought to have passed an order within the time frame fixed by the Court. Failure to obey the order amounts to committing contempt and as long as the order has not been complied with, the disobedience continues and this Court can even at this juncture initiate contempt proceedings. The petitioner is entitled to know as to why the petitioner's applicable for refund should not be ordered. Therefore, the respondent has to necessarily passed a speaking order as this Court has found that the two primary reasons stated in the written instructions dated 02.08.2016 are not tenable.

8.In the light of the above, the writ petitions stand disposed of with the direction to the respondent to consider the petitioner's application for refund of excess entry tax paid and pass appropriate orders on merits and in accordance with law after affording an opportunity of personal hearing to the authorized representative of the petitioner within a period of four weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cse
To

The Assistant Commissioner (CT),
Egmore - I Assessment Circle,
Chennai

+1cc to Mr.B.Raveendran, Advocate, S.R.No.71352
+1cc to the Spl Government Pleader(Taxes), S.R.No.71007

TM(CO)
BB(30/12/2016)

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