IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.03.2016

Coram

The Hon'ble Mr.Justice M.DURAISWAMY

W.P.No.13812 of 2004

M/s. Susee Trades (P) Ltd.,
Formerly known as Susee Auto
Rep. by its Managing Partner
N.Jayabalan
No.69/70, Theni Main Road
Madurai
...Petitioner

Versus

The Commercial Tax Officer (FAC)
Madurai Rural South
Madurai
....Respondent

Writ Petition, filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Certiorarified mandamus calling for the records on the file of the respondent herein in his B-6 Notice in TNGST No.5163214/03-04 dated 23.4.2004 issued to the petitioner's Bankers namely the Canara Bank, Grand Central, Madurai for the recovery tax arrears of Rs.4,59,791/- and quash the same and direct the respondent herein to raise the Bank Attachment.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.Manoharan Sundaram
Additional Government Pleader

O R D E R

The petitioner has filed the above writ petition to issue a writ of certiorarified mandamus to call for the records on the file of the respondent dated 23.4.2004 issued to the petitioner's Bankers namely the Canara Bank, Grand Central, Madurai, for the recovery of tax arrears of Rs.4,59,791/- and to quash the same and to direct the respondent to raise the Bank Attachment.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent.

3. The question involved in this writ petition has already been decided by a Division Bench of this Court in W.A.No.1228 of 1995.

4. The learned Additional Government Pleader submitted that as against the order passed by the Division Bench of this Court, the Government had preferred an appeal before the Hon'ble Supreme Court and the same is pending.

5. The learned counsel for the petitioner submitted that the Hon'ble Supreme Court has not stayed the order passed by the Division Bench of this Court.

6. Since the Division Bench decision is still holding the field, I am bound by the ratio of the said decision. Keeping in view of the said decision, which is subsequently followed in Writ Petitions in W.P.Nos.9017 and 9018 of 2003 and several other cases, I allow the writ petition with a direction to the respondent to enquire into the matter and if it is found that excess amount has been paid at the time of payment of Entry tax, the balance amount should be refunded to the petitioner, by adjusting the tax payable under the Tamil Nadu General Sales Tax Act. This may be done within a period of six weeks from the date of receipt of a copy of this order. In the case of the respondent succeeding in the appeal before the Hon'ble Supreme Court of India, it is open to the respondent to recover the amount refunded to the petitioner. No costs.
rg

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer (FAC)
Madurai Rural South
Madurai

+ 1 cc to Mr.R.Hemalatha, Advocate SR 20288

+ 1 cc to Spl.Govt.Pleader (Taxes) SR 20078

sv(co)
prk11/4

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30.03.2016