IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 07.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.24207 of 2004

M/s Samyu Motors (P) Ltd.,
rep. by its Director
Mrs.Urmila Sathyanarayanan ... petitioner

versus

The Commercial Tax Officer
Kilpauk Assessment Circle
Sowrashtra Nagar
Choolaimedu, Chennai. ... respondent

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records on the file of the respondent herein in his proceedings in TNGST No.1120762/2001-02 dated 06.08.2004 and quash the same and direct the respondent herein to refund the excess amount of entry tax of Rs.2,52,425/- to the petitioner herein relating to the Assessment year 2001-2002.

For petitioner ... Mrs.R.Hemalatha
For respondent ... Mr.K.Venkatesh, G.A.

O R D E R

Heard Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

2.The petitioner who is a dealer under the erstwhile Tamil Nadu General Sales Tax Act, has come forward with this Writ Petition for quashing the proceedings of the respondent dated 06.08.2004 and to direct the respondent to refund the excess amount of entry tax of Rs.2,52,425/- to the petitioner herein relating to the Assessment year 2001-2002.

3.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].

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.

4. In the light of the above legal position, the Writ Petition is 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.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rpa
To
The Commercial Tax Officer
Kilpauk Assessment Circle
Sowrashtra Nagar
Choolaimedu, Chennai.
1 cc to Special Government Pleader(Taxes), sr.50845
1 cc to Mr.R.Hemalatha, Advocate, sr.50698

W.P.No.24207 of 2004

ca co
kra 23.09.2016