

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8832 of 2017
andW.M.P.Nos.9685 to 9688 of 2017

Pratham Automobiles,
No.10, Indira Nagar, Plot No. 252 & 253,
Kancheepuram,
Rep by its Partner R. Deepak Kumar

..Petitioner

Vs.

1.The Assistant Commissioner(CT),
Kancheepuram Assessment Circle,
Kancheepuram.

2.Tamil Nadu Mercantile Bank Ltd,
No.40-A, Vanigar Street, Kancheepuram,
Rep by its Branch Head.

..Respondents

सत्यमेव जयते

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for a issuance of Writ of Certiorarified Mandamus calling for the records relating to the hand written order of the 1st respondent dated 27.03.2017 and consequential letter of attachment of bank account in Rc.33871641629/ 2013-2014/ A3 dt nil.03.2017 signed on 30.03.2017 issued by the 1st respondent to 2nd respondent bank in respect of the petitioner's account bearing No.105150050800180 and quash the same and consequently

direct the 1st respondent to adjust the sum of Rs.8,11,241/- towards arrears of entry tax for the AY 2013- 2014 demanded by the 1st respondent from the sum of Rs.23,04,986/- towards excess entry tax paid during AY 2012- 2013 available as on 01.04.2013 adjustable for payment of arrears of entry tax for AY 2013- 2014 based on the reply/representation dated 27.03.2017 to revise the order of assessment and refund the excess amount available after adjustment by invoking the provisions of Section 11 of Tamil Nadu Entry of Motor Vehicles into Local Areas Act, 1990 (Entry Tax Act).

For Petitioner : Mr.Palani Selvaraj

For Respondents : Mr. Kanmani Annamalai,
Additional Government Pleader

ORDER

Heard Mr.Palani Selvaraj, learned counsel for the petitioner and Mr. Kanmani Annamalai, Additional Government Pleader for the respondents.

2. The petitioner, who is a registered dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act 2006, is aggrieved by a hand written order passed by the first respondent dated 27.03.2017 and the consequential letter of attachment of the petitioner's bank account dated 30.03.2017 and for a direction to the first respondent to adjust the arrears of entry tax for the Assessment year 2013- 2014 demanded by the 1st respondent from the sum of Rs.23,04,986/- towards excess entry tax paid

during Assessment year 2012- 2013 available as on 01.04.2013, adjustable for payment of arrears of entry tax for Assessment year 2013-2014, based on the petitioner's representation dated 27.03.2017 and refund the excess amount after invoking the provisions of Section 11 of Entry Tax Act.

3. The case of the petitioner lies in a very narrow campus. Firstly on the ground that the first respondent cannot unilaterally pass an unreasonable and cryptic order stating that there is no excess entry tax available and attach the petitioner's bank account for the recovery of the entry tax. That the first respondent failed to note Section 11 of the Entry Tax Act provides that in addition to refund of tax, at the option of the person, there shall be adjustment of such excess tax in respect of any other period. The petitioner's case is that there has been excess entry tax in the hands of the first respondent, which has to be adjusted and the remaining to be refunded to the petitioner.

4. The first respondent vide notice dated 28.03.2016 stated that the petitioner has adjusted the excess entry tax. This stand taken by the first respondent was denied by the petitioner by stating that the entry tax paid in advance, i.e. a sum Rs.23,04,986/- as on 01.04.2013, has not been adjusted towards the output tax payable. The representation/reply dated 04.04.2017

was not considered in a proper perspective but the first respondent has made a hand written endorsement on the very same letter stating that the same cannot be adjusted. The manner in which the first respondent has passed the hand written endorsement is deprecate. Not stopping with that the petitioner's bank account has been attached.

5. The Hon'ble Division Bench in the case of *Commercial Tax Officer Vs. Coimbatore Auto Garage (P.) Ltd. (2017) 77 taxmann.com 64 (Madras)* held as follows:

In our opinion, the submission made by the learned Special Government Pleader deserves to be rejected. The Division Bench in Ganesh Automobiles case (supra) considered the scope of Section 4 as well as Section 11 of the Entry Tax Act and found that whenever excess tax was paid byway of entry tax, it could be adjusted by the assessee while paying the sales tax to the extent of excess amount paid. If any excess amount is paid, the assessee is entitled to refund in terms of Section 11 of the Entry Tax Act.

The above decision has been affirmed by the Hon'ble Supreme Court in the decision reported in *(2017) 77 taxmann.com 70 (SC)*.

6. On this writ petition being filed, this Court granted an interim order of status quo on condition that the petitioner maintains a balance of Rs.8,15,000/- in his bank account. This order has been complied with by the petitioner and thus, bank attachment stood lifted.

7. In the counter affidavit, major part of the averments pertain to earlier proceedings and with regard to the excess entry tax available, in para 14 the first respondent states that there is no excess entry tax available in the account of the petitioner.

8. The petitioner filed a reply affidavit to the counter affidavit stating that the said allegations is false and there is excess entry tax available in their account. Not only reply affidavit has been filed, statement of accounts have been produced which *prima facie* shows that excess entry tax is available to the credit of the petitioner.

9. During the course of arguments, the learned Additional Government Pleader admitted that excess entry tax is available and it appears that the Assessing Officer has not perused the accounts and therefore submitted that the matter may be remanded to the first respondent for fresh consideration. Thus the error which has crept in appears to have been admitted by the first

respondent during the course of hearing of this writ petition.

10. In the light of the above factual position and the documents and accounts produced by the petitioner, it is prima facie clear that there is excess entry tax to the tune of Rs.23,04,986/- available to the credit of the petitioner as of 01.04.2013. Therefore, the impugned proceedings are liable to be set aside.

11. In the result the writ petition is allowed and the impugned orders are set aside and the matter is remanded to the first respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner to produce the books of accounts and take note of the excess entry tax available and proceed to redo the assessment in accordance with law. The above direction shall be complied with within three weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

03.08.2017

sli

Index:yes/no

Internet:yes

To

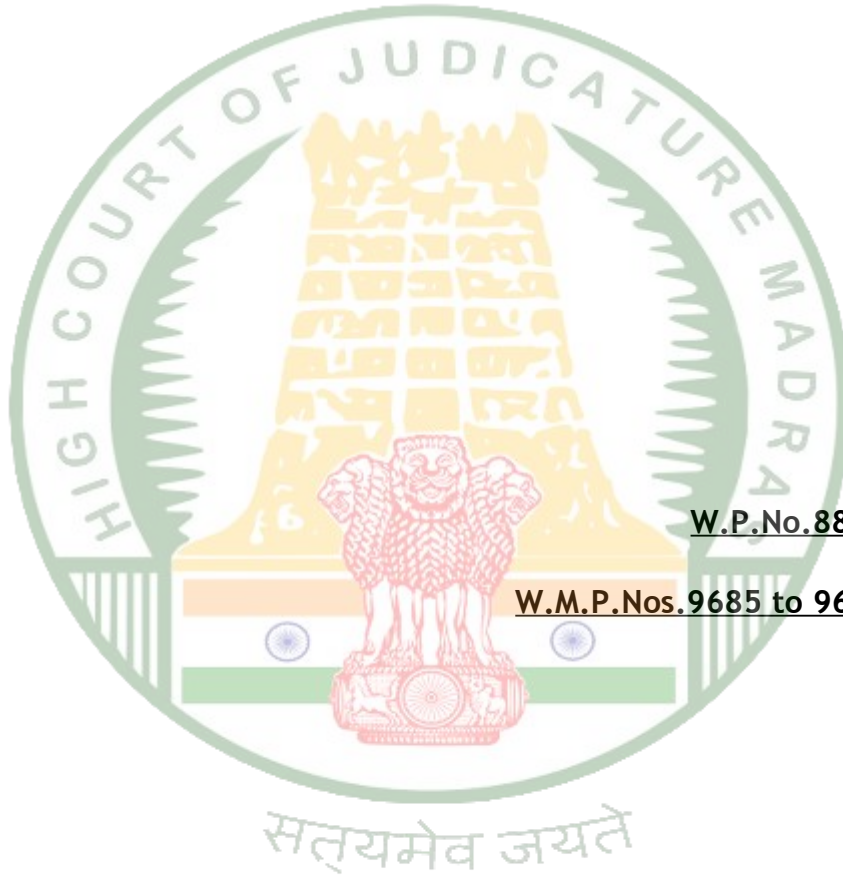
- 1.The Assistant Commissioner(CT),
Kancheepuram Assessment Circle,
Kancheepuram.
- 2.Tamil Nadu Mercantile Bank Ltd,
No.40-A, Vanigar Street, Kancheepuram,
Rep by its Branch Head.



WEB COPY

T.S.SIVAGNANAM,J.

sli



W.P.No.8832 of 2017

and

W.M.P.Nos.9685 to 9688 of 2017

WEB COPY

03.08.2017