IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.10713 & 10714 of 2006 and W.M.P.Nos.12154 & 12155 of 2006

M/s.Maurya Motors,
rep. by its Partner, S.Gyanchand,
No.29, Dr.Nair Road,
T.Nagar, Chennai-600 017. ... Petitioner in both W.Ps.

Vs.

The Commercial Tax Officer,
T.Nagar (East) Assessment Circle,
46, Greenways Road, Chennai-600 028. ... Respondentin both W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records on the file of the respondent in TNGST No.1561547/2001-02 & 2002-03 (Entry tax) respectively, dated 30.11.2005 and quash the same as illegal and without jurisdiction and authority of law.

For Petitioner : Mr.T.Pramodkumar Chopda

For Respondent : Mr.S.Kanmani Annamalai, Additional Government Pleader

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C O M M O N O R D E R

Heard Mr.T.Pramodkumar Chopda, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent.

2.The petitioner is an authorized dealer of Maruti vehicles/spares and accessories and registered on the file of the respondent under the provisions of the Tamil Nadu General Sales Act, 1959 (hereinafter referred as “the TNGST Act”) as well as under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas, 1990 (hereinafter referred as “the Entry Tax Act”). The petitioner has filed these writ petitions challenging the orders passed by the respondent under the provisions of the Entry Tax Act, imposing penalty at 200% of the entry tax levied by invoking his power under Section 15 of the Entry Tax Act.

3.Learned counsel appearing for the petitioner submitted that the said provision viz., Section 15 of the Entry Tax Act, will not be attracted to the case on hand and on a misconception, the impugned proceedings have been passed. The following facts would be relevant for considering the correctness of the impugned order.

4.The petitioner imports motor vehicles into local area and in terms of Section 3 of the Entry Tax Act, he is liable to pay entry tax at the rate of 13%. The matters pertain to the assessment years 2001-02 and 2002-03. In terms of Section 4 of the Entry Tax Act, the petitioner is entitled for reduction in the tax liability under the General Sales Tax Act or under the Tamil Nadu Additional Sales Tax Act, 1970, which is popularly called as "set off", with that of the entry tax paid by the petitioner. The petitioner is stated to have paid entry tax for the assessment year 2001-02 and assessment was completed vide proceedings dated 30.01.2004. The respondent has also completed the assessment under the TNGST Act, for the very same assessment year and passed the assessment order on 29.01.2004, wherein he has allowed "set off" of the entry tax to the extent of the sale value of the motor vehicle and retained the excess amount of entry tax of Rs.5,05,367/- as per Section 4(1) of the Entry Tax Act. The impugned proceeding is as a result of an inspection, which was conducted in the place of business of the petitioner on 12.08.2002, during which, it was pointed out that the entire cost collected from the customer in the sale bill were not charged to sales tax and accordingly, the respondent held that the excess amount collected, which is not included in the taxable turnover under the TNGST Act is Rs.3,012/- and included the said amount as a part of the total and taxable turnover and collected sales tax on the said amount.

5.According to the petitioner, pursuant to the inspection, the respondent presumed that the petitioner had collected entry tax from his customer in each invoice and after giving "set off" to the extent of sales tax due under the TNGST Act, retained the balance amount with them and sought to treat the excess amount as alleged collection of entry tax and proposed to recover the same with penalty at the rate of 200% under Section 15 of the Entry Tax Act. The issue would be as to whether such presumption is correct or not. During the course of inspection, a statement was recorded from the partners of the petitioner by the Enforcement Wing officers, wherein, it has been recorded that on verification of the sale and purchase bill, the petitioner was informed that there is excess amount of cost collected from the customers and the details were recorded as hereunder:

	Figure Adopted	Actual
Value of Car inclusive of Entry Tax at 13%	265226/-	265226/-
LESS: Entry Tax Paid for the purpose of levying S.T.	-	31106/-
	265226/-	234120/-
Sales Tax at 12%	28094/-	28094/-
	293320/-	262214/-
LESS: S.T. for set off	28094/-	
	265226/-	

Value Adopted Rs.2,65,226/-

Actual amount to be recovered from the customer Rs.2,62,214/-

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Excess amount collected which is not included

in the taxable T.O. under TNGST Act Rs.3,012/-

6.The petitioner has accepted the excess amount and agreed that sales tax can be levied on the same by including the said amount in the total and taxable turnover. However, the petitioner's case is that there is no excess lying with him and the entry tax at the rate of 13% collected from the customer has been remitted to the Department and the liability of the sales tax dues at the rate of 12% has been "set off" as against 13% and the remaining 1% was retained by the Department and by referring to Section 4 of the Entry Tax Act, refund was declined. It is submitted that though in the light of the judgment of the Hon'ble Division Bench of this Court in the case of Khivraj Motors Limited vs. Assistant Commissioner, Fast Track Assessment Circle-III and Assistant Commissioner, North Zone, Chennai, in W.A.Nos.3201 to 3204 of 2004 dated 04.02.2010, the petitioner is entitled to claim refund, he has not done so. Thus, the only endeavour is to find out whether the entry tax was lying in the hands of the petitioner/dealer.

7.As mentioned above, the assessment under the TNGST Act, was completed by order dated 29.01.2004, by stating that the entry tax payable on purchase of value of Cars sold during the year is Rs.98,81,984.00/- and out of this "set off" was given on the tax due at 12% on the sale value of Rs.7,81,38,475.00/- i.e., Rs.93,76,617.00/-, only. The excess of entry tax paid for Rs.5,05,367.00 (i.e., 98,81,984.00 - 93,76,617 = 5,05,367) is not refundable as per Section 4 of the Entry Tax Act. Further, it has been stated that the balance of entry tax paid on 92 vehicles for Rs.31,33,498/- will be carried over to the assessment year 2002-03, for setting off as against the TNGST due. Thus, the presumption of the respondent that entry tax was lying in the hands of the dealer is factually incorrect. One more aspect which would fortify this question is the assessment order under the entry tax dated 30.01.2004. Under the said order, the total and taxable turnover of the dealer was determined as Rs.10,05,36,156.00/- for the assessment year 2001-02 and entry tax at the rate of 13% was calculated as Rs.1,30,69,700.00/- and the same has been paid by the petitioner. In fact, the tax due was Rs.1,30,69,700/- and the petitioner had paid Rs.1,31,00,420/- and the excess of Rs.30,720/- was ordered to be adjusted against the tax dues under the TNGST Act for the assessment year 2002-03. Thus, it is clear that amount of entry tax quantified at the rate of 13% has been remitted by the petitioner to the respondent. Thus, there is no excess available in the hands of the petitioner to state that he has collected excess tax from the customers and not remitted to the Department, but retained with him. Once we steer clear of this factual position, it has to be seen as to whether Section 15 of the Entry Tax Act, would stand attracted to the facts of the present case. Section 15 of the Entry Tax Act, deals with penalty. It would be beneficial to extract the said provision.

> "Section 15.Penalty-(1) :
>
> Where any person liable to pay tax under this Act fails to comply with any of the provisions of this Act, then the assessing authority may, after giving such person a reasonable opportunity of being heard, by order in writing impose on him in addition to any tax payable, a sum by way of penalty not exceeding twice the amount of tax.
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> Section 15(2) :
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> If the person does not, without reasonable cause pay the tax within the time he is required, by or under the provisions of this Act to pay it, the assessing authority may, after giving such person a reasonable

opportunity of being heard, by order in writing, impose upon him by way of penalty, in addition to te amount of tax and penalty under sub-section (1) a sum equal to, __

(a) one and one half per cent, of the amount of tax for each month for the first three months, after the last date by which the person should have paid that tax, and

(b) two per cent, of the amount of tax for each month thereafter during the time the person continues to make default in the payment of tax.

8.The petitioner though has not mentioned under which sub-section of Section 15 of the Entry Tax Act, he proposes to trace his power. On facts appears that sub-section 2 of Section 15 of the Entry Tax Act, would stand attracted. However, it has to be seen as to whether the impugned order could be brought under Section 15(1) of the Entry Tax Act. This provision could be invoked only when a person, who is liable to pay tax under the Entry Tax Act, failed to comply with any of the provisions of the Entry Tax Act, and if he fails to do so, he is liable to pay penalty not exceeding finalised amount of tax. On a reading of the impugned assessment order, it is not clear as to how the respondent imposed penalty under Section 15(1) of the Entry Tax Act, and as to how the petitioner, who is liable to pay tax under the Entry Tax Act, failed to comply with the provisions of the Act. Admittedly, the entry tax has been paid, assessment has been completed and there is no tax liability pending. Therefore, to invoke Section 15(1) of the Entry Tax Act, the respondent should bring out as to how there is failure to comply with the provisions of the Act. As could be seen from the impugned order, the only observation is that the petitioner had collected entry tax at the rate of 13% from his customer for each invoice and after giving "set off" to the extent of sales tax due, the respondent has retained the balance with them. The finding rendered by the respondent in the impugned order is not supported by any material. However, from the assessment order passed under the Entry Tax Act dated 30.01.2004, it is seen that the petitioner had paid the entire 13% tax collected from his customer. While completing the assessment under the TNGST Act, vide order dated 29.01.2004, after giving set off to the dues payable under the TNGST Act, the assessing officer has specifically stated that the balance amount of Rs.5,05,367/- will not be refunded under Section 4 of the Entry Tax Act. Thus, the records show that nothing was retained by the petitioner and therefore, the question of invoking Section 15(1) of the Entry Tax Act, does not arise, as there is no contravention of the provisions of the Act as has been pointed out in the impugned order. Thus, the impugned order is held to be unsustainable.

Accordingly, these writ petitions are allowed and the impugned orders are quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

abr

To

The Commercial Tax Officer,
T.Nagar (East) Assessment Circle,
46, Greenways Road, Chennai-600 028.

+1cc to Mr.T.Pramodkumar Chopda Advocate, S.R.No. 80267

+1cc to the Spl Government Pleader, S.R.No. 80030

W.P.Nos.10713 & 10714 of 2006

TR(06/12/2017)