IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 12.10.2017
Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.4989 of 2004
and
W.P.M.P.No.5822 of 2004

M/s. Susee Trades (P) Ltd.,
formerly known as Susee Trades,
rep. by its Managing Director
N. Jayabalan. ...Petitioner

Vs.

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

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records from the file of the respondent herein, in his B-6 notice in TNGST No.5163214/03-04, dated 23.02.2004, issued to the petitioner's Bankers, viz., the Canara Bank, Grand Central, Madurai for the recovery of tax arrears of Rs.14,92,867/- and to quash the same and to direct the respondent to raise the bank attachment.

For Petitioner : Mrs. R. Hemalatha

For Respondent : Mrs. Narmadha Sampath
Special Government Pleader

O R D E R

Heard Mrs. R. Hemalatha, the learned counsel appearing for the petitioner and Mrs. Narmadha Sampath, the learned Special Government Pleader for the respondents.

2. The petitioner has filed this Writ Petition, challenging a notice of attachment of their Bank Account, on the ground that they have unilaterlly adjusted the claim of refund of entry tax, without a specific order, being passed by the Assessing Officer. In fact, to the said effect, a show cause notice was issued to the petitioner on 06.02.2004, calling upon

the petitioner to pay the Entry Tax of Rs.5,50,307/- with interest. The petitioner submitted their objections on 11.02.2004, referring to certain orders passed by this Court, and stating that, they have enclosed sample copies of Form No.VI- Order of Assessment of Tax, under Section 8/9 of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Ordinance, 1990, where, the excess amount paid by them has been clearly mentioned by the respondent himself. Therefore, the petitioner requested the respondent to pass appropriate orders for grant of refund. Once again, another objections/reply was given on 13.02.2004. However, without passing any orders on the objections filed by the petitioner, the bank account of the petitioner has been attached by the impugned notice in Form B-6. This notice has been challenged in this Writ Petition.

3. This Court, while admitting the Writ Petition on 29.03.2004, granted an order of interim stay, subject to the condition that the petitioner deposits 50% of the entry tax, as demanded by the respondent along with the interest in accordance with the provisions of the Act within a time frame. The petitioner has complied with the conditional order, and the order of stay is in force, as on date.

4. The learned counsel appearing for the petitioner submitted that, an identical issue was considered by this Court, in the case of M/s. ABT Ltd Coimbatore Vs. Commercial Tax Officer, Coimbatore, in W.P.Nos.17641 and 17642 of 2005, dated 10.08.2016, and said Writ Petition was allowed, taking note of the judgment of the Hon'ble Division Bench, in the case of Khivraj Motors Ltd., Vs. Assistant Commissioner (CT) and another, in Writ Appeal Nos.3201 to 3204 of 2014, dated 04.02.2010. The operative portion of the order, in the case of M/s. ABT Ltd Coimbatore (supra) is as follows:-

> " 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 Ltd., Vs. Assistant Commissioner (CT) and another, (Writ Appeal Nos.3201 to 3204 of 2014 , dated 04.02.2010) and based on the said decision, the petitioner is entitled to refund of the excess amount of entry tax collected. The said judgmnet of the Hon'nble Division Bench was followed by a learned Single Judge in M/s. Susee Auto Sales and Services (Pvt.) Ltd. Vs. CTO (FAC) (W.P.No.4927 of 2004, dated 10.02.2016).

> Following the same, the Writ Petitions are allowed with a direction to the respondents to enquire into the matter with regard to the petitioner's eligiblity and entitlement for refund, and if it is found that the excess amount 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 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. "

5. Based on the above submission, the learned counsel for the petitioner prays for appropriate direction, as granted in the case of M/s. ABT Ltd Coimbatore (supra).

6. The learned Special Government Pleader, by referring to the written instructions given by the respondent, vide proceedings, dated 17.04.2006, submitted that, no notice in Form VII has been issued and served on the petitioner/dealer, hence, the question of refund of entry tax, paid in excess, does not arise under Section 11 of the Tamil Nadu on Entry of Vehicles into Local Areas Act, 1990. Further, the petitioner has not paid any entry tax dues for the month of January, 2003, as per the returns submitted in the Office, and there is no execess of entry tax paid and no notice in Form VII has been issued and served on them.

7. I find that the above instructions have been given by the respondent/Assessing Officer, on 17.04.2006. This is earlier to the judgment of the Hon'ble Division Bench, in re Khivraj Motors Ltd., (supra), which was passed on 04.02.2010. Therefore, the respondent has to necessarily consider the objections filed by the petitioner, more particularly, in the light of the judgment of the Hon'ble Division Bench rendered in Khivraj Motors Ltd's case (supra). That apart, without passing orders on the objections raised by the petitioner, the respondent could not have straightaway attached the petitioner's bank account. In any event, the said attachment has remain stayed.

8. For all the above reasons, this Writ Petition is disposed of, by directing the respondent to consider the petitioner's objections, dated 11.02.2004 and 13.02.2004; afford an opportunity of personal hearing; take note of the decisions of the Hon'ble Division Bench judgment in the case of Khivraj Motors Ltd., Vs. Assistant Commissioner (CT) and another, in Writ Appeal Nos.3201 to 3204 of 2014, dated 04.02.2010 as well

as M/s. ABT Ltd Coimbatore Vs. Commercial Tax Officer, Coimbatore, in W.P.Nos.17641 and 17642 of 2005, dated 10.08.2016, which have been followed by this Court, in the case of M/s. Susee Auto Sales and Services (P) Ltd., Vs. The Commercial Tax Officer, Madurai, in W.P.No.15068 of 2004, dated 06.07.2017; and pass a reasoned order on merits and in accordance with law. The respondent is directed to cause proper verification in terms of the direction issued in the earlier Writ Petition. Till the above direction is complied with, order of stay granted by this Court on 29.03.2004 shall continue. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sd/kas

To

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

+1 cc to M/s.Hemalatha Advocate sr 73668
+1 cc to Spl Govt Pleader sr73883

Writ Petition No.4989 of 2004

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