IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.3430 of 2006
and
WPMP No.3649 of 2006

M/s.Susee Scooter Centre
Rep. by its Partner
S.Sargunam
No.219, Indra Nagar,
Kancheepuram - 631 502. ...Petitioner

Vs.

The Deputy Commercial Tax Officer,
Kancheepuram (North),
Kancheepuram. ...Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorarified mandamus, calling for the records on the file of the respondent in his proceedings in Rc.5225/2005/A4 dated 27.01.2006 and quash the same and direct the respondent herein to permit the petitioner to set off the excess entry tax paid by the petitioner for future payment of entry tax (from December 2005 payment onwards) as per the petitioner's representation dated 20.01.2006.

For Petitioner : Ms.R.Hemalatha

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

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

2. The petitioner seeks for issuance of a writ of certiorarified mandamus to quash the order of the respondent dated 27.01.2006 and direct the respondent herein to permit the petitioner to set off the excess entry tax paid by the

petitioner for future payment of entry tax (from December 2005 payment onwards) as per the representation dated 20.01.2006.

3. The grievance of the petitioner is that excess entry tax which is lying with the department has not been refunded. This issue was considered by this Court in the case of M/s.ABT Limited, Coimbatore Vs. the Commercial Tax officer, Ram Nagar Circle, Coimbatore (W.P.Nos.17641 and 17642 of 2005, dated 10.08.2016). Operative portion of the order 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 04.02.2010) and based on the said decision, the petitioner is entitled to refund of the excess amounts 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 10.02.2016).
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> 4. 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 eligibility and entitlement for refund and if it is found that the 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. Following the above order, the writ petition is allowed with a direction to the respondent to enquire into the matter with regard to the petitioner's eligibility and entitlement for refund and if it is found that the 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. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

sli

To

The Deputy Commercial Tax Officer,
Kancheepuram (North),
Kancheepuram.

+ 1 cc to Special Government Pleader SR.54988
+ 1 cc to Mr.R. Hemalatha, Advocate SR.54790

W.P.No.3430 of 2004

AR-J
EU 24.8.17