IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.15068 of 2004

M/s.Susee Auto Sales & Services (P) Ltd.,
Formerly known as Susee Auto,
Rep. By its Managing Director
N.Jayabalan,
No.69/70, Theni Main Road,
Madurai. ... Petitioner

Vs.

The Commercial Tax Officer,
Madurai Rural South,
Madurai. ... Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorarified mandamus to call for the records on the file of the respondent in his B-6 Notice in TNGST No.5163213/04-05, dated 24.05.2004, issued to the petitioner's Bankers namely the Canara Bank, Grand Central, Madurai, for the recovery tax arrears of Rs.6,45,431/- and quash the same and direct the respondent to raise the Bank attachment.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.S.Kanmani Annamalai, AGP

ORDER

Heard Mr.S.Rajasekar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent.

2. The petitioner seeks for issuance of a writ of certiorarified mandamus to quash the recovery notice issued by the respondent dated 24.05.2004. Notice came to be issued on

account of the fact that the petitioner adjusted the excess entry tax paid by them after giving credit to the sale tax payable while remitting the tax along with their returns. This adjustment having been made by the petitioner unilaterally without the approval of the department, resulted in issuance of the impugned recovery notice.

3. However, the grievance of the petitioner is that excess entry tax which is lying with the department after adjusting the sales tax dues 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 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.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

The Commercial Tax Officer,
Madurai Rural South,
Madurai - 625 020.

+1 CC to Ms. R.Hemalatha, Advocate sr 47080
+1 CC to Govt. Pleader sr 47612

W.P.No.15068 of 2004

CP(CO)
sp(18/07/2017)