

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.Nos.36839 to 36841 of 2015

& MP.Nos.1, 1, 1, 2, 2 & 2 of 2015

& WMP.Nos.27737 to 27739 of 2016

M/s. C.A.Motors
Rep. By its Managing Partner
C.Balamurugan
No.1-A/10-D/1, Bye Pass Road,
Tiruvavarur, Tiruvavarur District ...Petitioner in all W.Ps.

Vs.

The Commercial Tax Officer,
Tiruvavarur,
Tiruvavarur District ...Respondent in all W.Ps

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in its impugned proceedings made in R.c.1497/2015/B1 (TIN: 33083922194/ 2013-14) (TIN: 33083922194 /2014-15) and (TIN: 33083922194/2015-16) dated 29.10.2015 and quash the same.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.Mohd.Shafiq
Special Government Pleader

O R D E R

The petitioner challenges proceedings for the periods 2013-14, 2014-15 and 2015-16 passed in terms of the Tamil Nadu Tax on Entry of Goods into Local Areas Act, 1990 (in short 'Entry Tax Act').

2. Mr.Rajasekar, appearing for the petitioner states that the petitioner is a dealer in two wheelers. Monthly returns have been filed in terms of the Tamil Nadu Value Added Tax Act, 2006 (in short 'VAT Act') offering to tax the turnover from sale

of vehicles. However, admittedly, the petitioner has not filed any returns in terms of the provisions of the Entry Tax Act. A common pre-assessment Notice was issued for the periods 2013-14 to 2015-16 (upto August, 2015) on 30.09.2015. The notice alleges that statutory returns in terms of the Entry Tax Act had not been filed and called upon the petitioner to do so disclosing the purchase turnover of the vehicles and pay entry tax at 12.5% as required.

3. The petitioner filed a reply dated 15.10.2015 stating that it was unaware of the provisions of the Entry Tax Act and had come to be informed of the same only in the course of an investigation conducted by the Enforcement Wing on 18.09.2015. The inspection had been uneventful otherwise and no difference of stock or purchase/sales omission had been noticed by the Officer. The petitioner stated that it had filed returns under the VAT Act offering sale turnover to tax at 14.5% and thus had paid sales tax in excess. It relied on the provisions of Section 4 of the Entry Tax Act that provided for a set off of excess entry tax against the sales tax liability.

4. Placing reliance on a decision of the learned single Judge in the case of Tvl. Kasi and Sethu V. Deputy Commercial Tax Officer ((2003) 131 STC 73), the petitioner prayed that the sales tax paid by it be reckoned and adjusted towards the liability for entry tax as well. The details of transactions year wise were set out as follows:

2013-14

Purchases of two wheelers from
other States including freight
CST paid and insurance

Rs.8,18,72,675/-

Entry Tax at 12.5 % on the above

Rs.1,02,34,084/-

Sale Value of two wheelers
Value Added Tax paid on two

Rs.7,22,09,636/-

wheelers at 14.5%

Rs.1,04,70,397/-

We have paid VAT of Rs.1,04,70,397/- as against the entry tax due of Rs.1,02,34,084/-. There is excess vat of Rs.2,36,313/-. Hence, there is no entry tax is payable for this year.

2014-15

Purchase of two wheelers from other States including CST paid, freight and insurance Rs.20,92,97,265/-

Entry tax due at 12.5% on the above Rs.2,61,62,158/-

Sale Value of two wheelers Rs.20,99,90,169/-

Value Added tax paid on the above at 14.5% Rs.3,04,48,574/-

We have paid a VAT of Rs.3,04,48,574/- as against the entry tax due of Rs.2,61,62,158/-. There is an excess vat of Rs.45,22,729/-.

2015-16:

Purchase of two wheelers from other States including CST paid, freight and insurance paid upto August, 2015 Rs.9,33,36,733/-

Entry Tax due at 12.5% on the above Rs.1,16,67,091/-

Sales of Two wheelers upto August, 2015 Rs.9,55,71,253/-

VAT paid at 14.5% on the above Rs.1,38,57,831/-

EXCESS VAT AVAILABLE UPTO AUG. Rs.67,13,469/-

Entry tax paid on the stock of vehicles held during the time of inspection Rs.27,45,042/-

5. Admittedly, no personal hearing was granted in the matter, though specifically requested for by the dealer/petitioner prior to finalisation of assessment. The Assessing Authority confirms the assessment proposals mainly on the ground that the petitioner is not a petty dealer and thus ignorance of the entry tax provisions are not a valid justification for non-compliance with statutory liability.

6. A counter has been filed wherein, while supporting the stand taken by the Assessing Officer in the impugned orders of assessment, the respondents distinguish the case of Kasi and Sethu (supra) on facts.

7. Mr.Mohammed Shaffiq, learned Special Government Pleader for the Revenue advances two arguments in addition to and in support of the impugned order of assessment. Firstly, he states that the provisions of Section 4 of the Entry tax Act offer a

concession or benefit to the assessee by way of set off of the entry tax paid against VAT liability. Such a concession cannot be claimed as a vested right by the petitioner, that too, in the converse. Moreover, being a concession, the provisions would have to be construed strictly and hence cannot be expanded to beyond what is offered therein. He relies, in this regard, upon two judgments in the case of Jayam and Company V. Assistant Commissioner and another ((2016) 15 SCC 125) and TVS Motor Company Ltd. V. State of Tamil Nadu and others ((2018) 59 GSTR 1).

8. He urges that the Court notice a correlation called for by Section 4 of the Entry tax Act, between the vehicle in respect of which the Entry tax is remitted and the vehicle in respect of which credit for payment of VAT is sought. According to him, there has to be a one-to-one correlation established in this regard for the dealer to avail the benefit of set-off under Section 4. As far as the case law in Kasi and Sethu (supra) is concerned, he distinguishes the case on facts, confirming however that the decision has attained finality and has not been carried in appeal.

9. Reliance is placed on the judgment of the Supreme Court in Punjab Tractors Limited V. Commissioner of Central Excise, Chandigarh ((2005) 11 SCC 210), wherein the Bench makes it clear that even if that the exercise of set-off would result in a revenue neutral position, violations, if any, committed by an assessee will necessarily expose it to the levy of penalty.

10. Heard the rival contentions and perused the matter carefully.

11. Section 4 of the Entry Tax Act provides for a 'reduction in tax liability' by way of a set-off and reads thus:

Reduction in tax liability.- (1) Where an importer of any scheduled goods liable to pay tax under this Act, being a dealer in scheduled goods becomes liable to pay tax under the General Sales Tax Act and additional sales tax under the Tamil Nadu Additional Sales Tax Act, 1970 (Tamil Nadu Act No.14 of 1970), by virtue of the sale of such scheduled goods, then his liability under those Acts shall be reduced to the extent of tax paid under this Act.

(2) Where an importer who, not being a dealer in scheduled goods, had purchased the scheduled goods for his own use or consumption in any Union Territory, or any other State, then his liability under this Act, shall, subject to such conditions as

may be prescribed, be reduced to the extent of the amount of tax paid, if any, under the law relating to General Sales Tax as may be in force in that Union Territory or State.

12. Though the levy of entry tax and State sales tax are separate and distinct, the intention of section 4 appears to be that there should be a unified and integrated levy on the transaction of entry into and sale of a vehicle within a State. If an assessee is in a position to establish that it had defrayed the entry tax liability on a particular vehicle, credit to that extent would be available in computing sales tax liability on the sale of that vehicle.

13. There are three features that section 4 presents:

(i) Firstly, the petitioner should have computed and remitted entry tax liability in relation to an identified vehicle.

(ii) Secondly, credit against VAT liability is available to the extent of the entry tax remitted, upon correlation of the vehicle on which entry tax has been paid and the vehicle on which VAT liability is due.

(iii) Thirdly, if the provisions of section 4 are given effect to in the above manner, the exercise will be revenue neutral, since entry tax liability would have been cleared at the point of entry of the goods into the State and credit available for set-off.

14. In the present case, there is, admittedly, a violation of statutory provisions insofar as the petitioner has not filed returns under the Entry tax Act. I am of the view that the excuse offered, of ignorance of law, does not constitute valid justification for non-compliance of statutory duties. That is one aspect of the matter. The other aspect is, that VAT liability of a higher percentage than entry tax, has admittedly been remitted by the petitioner.

15. The crucial aspect, in my view, is the timing of the two remittances. A return of entry tax is due on or before the 20th of a month immediately succeeding such taxable event accompanied by proof of payment of entry tax in terms of section 7 of the Entry Tax Act read with Rule 3(2) of the Tamil Nadu Tax on Entry of Motor Vehicles Rules, 1990 (in short 'Rules').

16. The return of turnover in terms of VAT Act shall be filed under section 21 read with Rule 7(1)(a) of the Tamil Nadu Value Added Tax Rules, 2007 on or before the 20th of the succeeding month. Since both entry tax as well as VAT returns are due on or before 20th of the succeeding month, a specific and

conscious design appears apparent, such that the determinations of liability to entry tax and VAT and set off in terms of section 4 of the Entry Tax Act should be a simultaneous event. It is in furtherance of this design that one should interpret section 4 of the Entry Tax Act.

17. I also draw support for the above by comparison with the provisions of Rule 3(3) of the Rules which state that in the case of an importer of vehicles other than one who is liable to pay tax under the General Sales Tax Act, a return is required to be filed only quarterly and such return has to be furnished on or before the last date of the month immediately succeeding the quarter.

18. A clear distinction is thus drawn between those importers of vehicles, who are also assesseees under General Sales Tax Law and those who are not, granting the former the benefit of a unified and integrated levy of entry tax and VAT.

19. Thus, hypothetically, if a vehicle had entered Tamil Nadu in January, 2015 and been sold domestically before 20.1.2015, the monthly VAT return of the dealer would have reflected such sales turnover. In such a situation, there is some justification for the assessee to have sought and been granted adjustment of entry tax as against VAT liability as such an exercise would be revenue neutral.

20. Assume the vehicle had been sold only after three months, the turnover from such sale (of that specific vehicle) would be returned to VAT only in the monthly return for that month. It is as against such VAT payment that the petitioner seeks credit for unpaid entry tax. In such a circumstance, there is a delay in remittance of entry tax and the Revenue has been deprived of the tax from date of entry of the vehicle till date of its sale. The assessee has clearly deferred payment of the entry tax liability in the intervening period. This is not in tandom with the object, intention or Scheme of Section 4 of the Entry Tax Act.

21. Section 4 envisages a set-off as between State Commercial Taxes and Entry Tax only in respect of an identified vehicle. This appears evident by use of the qualifying word 'such' to precede the words 'scheduled goods' in section 4(1), meaning thereby that where an importer pays entry tax, credit of such amount may be availed as set off in regard to the VAT paid on the sale of 'such scheduled goods'. Thus if the vehicle had entered the State but had been sold interstate, the turnover from such inter-state sale would not be available for grant of credit for payment of Entry tax. Thus, a correlation qua vehicle has to be furnished by the assessee to establish that entry tax

paid and VAT credit sought, are in respect of the same vehicle. This exercise is required for acceptance of the claim under Section 4.

22. In this case, neither the objections filed by the petitioner before the officer nor the Writ affidavit provide details of such correlation. In the absence of the factual particulars as to (i) when a particular/identified vehicle entered the State of Tamil Nadu (ii) when such vehicle was sold and (iii) whether such sale was intra or inter-state, the claim of the assessee for set-off under section 4 cannot be granted merely for the asking.

23. The transactions in this case cannot be said to be automatically revenue neutral, since, as I have noted in the paragraphs above, if there is an elapse of time between the entry and sale of the vehicle, non-payment of entry tax will result deferment/postponement of the liability, till such time the vehicle is ultimately sold. Even then, if the sale was not domestic, local sales tax would not be remitted at all, leading to complete escapement of entry tax liability qua that vehicle.

24. In the case of Kasi and Sethu (supra), this Court has recorded the following finding of fact in paragraph 22:

22. In the present case, it is admitted that the petitioner has filed a return under The Sales Tax Act in respect of the very same vehicle transaction and sales tax has been paid.....

25. Thus, a clear correlation had been drawn in that case between the vehicles in respect of which VAT had been paid and those in respect of which entry tax liability had yet to be discharged. It was only after this exercise that the Court had accepted the plea of the petitioner to grant the relief sought for, conversely applying the provisions of Section 4. This confirmation of fact, essential for consideration of the benefit of set-off under Section 4, is not present in the case before me.

26. On the reverse application of section 4 itself, the learned single Judge states as follows:

26. It may be that Section 4 of the Act provides for a converse case, but there is no rule or statutory provision, which bars the respondent from adjusting the amount already remitted towards general sales tax when import or the sales of vehicles in question are not liable to be assessed under The Tamil Nadu General Sales Tax and setting it off towards levy of entry

tax. The levy, which is not authorised by law cannot be enforced nor the respondents could contend that they will keep the collection of tax, though they are not authorised to levy and collect. In the present case, levy and collection towards General Sales Tax Act, it is admitted, is not authorised as nine vehicles concerned are not liable for levy of tax under The Tamil Nadu General Sales Tax Act, 1959. Therefore, the said amount could very well be set off with respect to the entry tax payable in respect of the very same nine vehicles. It is not as if the petitioner has concealed or suppressed material facts, but has included the sales turnover in the return filed by the petitioner.

27. There is one more vital distinction on facts between the above case and the one before me. In Kasi and Sethu (supra), returns were filed both under the Entry Tax Act as well as under VAT Act for the bulk of the periods involved, except in regard to nine identified vehicles. There was thus, substantial compliance with the mandate of both statutes in that case - Entry tax as well as the VAT Acts. The petitioner before me is in rank violation of the Entry Tax Act and has not filed entry tax returns at all.

28. Thus, a claim for converse credit can certainly be accepted, seeing as the intention is for a unified levy and Section 4 is intended to 'reduce' tax liability by integration of the liabilities under both the entry tax and VAT Statutes. However, such benefit is not absolute but conditional and only upon satisfaction of the circumstances as noted and discussed above. For the aforesaid reasons, I am unable to accept the prayer of the petitioner for an automatic and absolute application of Section 4 of the Entry Tax Act in the facts of this case.

29. The respondent has finalised the assessments without granting an opportunity of personal hearing and has also imposed penalty under section 15(1) of the Entry Tax Act that statutorily requires an opportunity of personal hearing.

30. In the aforesaid circumstances, I set aside the assessments for being re-done by the Assessing Authority bearing in mind the above discussion and directions, as culled from my appreciation of the provisions of section 4 of the Entry Tax Act and the principles laid down by this Court in Kasi and Sethu (supra), which decision I am told, has attained finality.

31. The petitioner will file returns of entry tax in terms of Section 7 of the Entry tax Act for the periods 2013-14, 2014-

15 and 2015-16 on or before 23.09.2019. The respondent shall pass orders of assessment de novo on or before 31.10.2019 after hearing the petitioner, taking into account the returns to be filed, a proper application of Section 4 of the Entry tax Act as above and in accordance with law. The levy of penalty shall also be considered de novo.

32. These Writ Petitions are disposed in the aforesaid terms. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

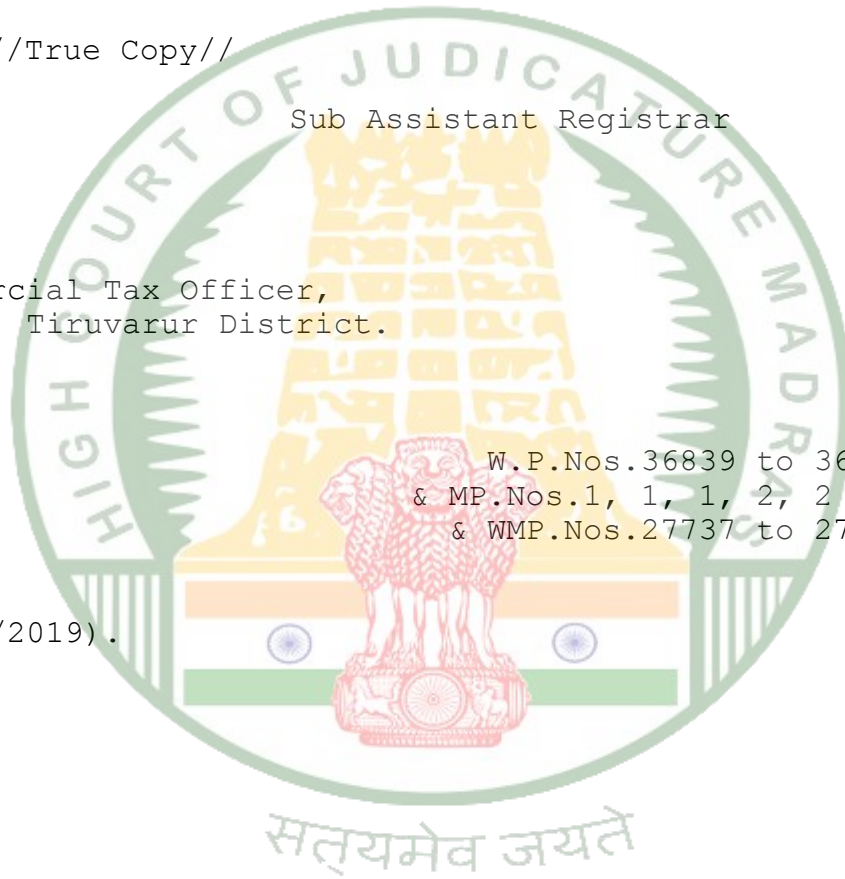
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To

The Commercial Tax Officer,
Tiruvavarur, Tiruvavarur District.

W.P.Nos.36839 to 36841 of 2015
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& WMP.Nos.27737 to 27739 of 2016

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