IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.11362 OF 2011

M/s.Nagappa Mobikes,
Rep. By its Partner, M.Palaniappan,
No.127-B, Brick Kiln Road,
Purasawalkkam,
Chennai - 600 007. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Ayanavaram Assessment Circle,
Kuralagam Annexe III Floor,
Chennai - 600 108. ... Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Mandamus, directing the respondent herein to grant refund the excess entry tax paid amounting to Rs.1,17,533/- relating to the assessment year 2005-2006 under the TNGST Act, 1959 to the petitioner herein as per the petitioner's representation dated 25.03.2011.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.V.Veluchamy
Government Advocate

O R D E R

Heard Mr.S.Rajasekar, learned counsel appearing for the petitioner and Mr.V.Veluchamy, learned Government Advocate appearing for the respondent.

2. The petitioner is a dealer in Automobiles and Spares at Chennai. The petitioner is an assessee on the files of the Assistant Commissioner (CT), Ayanavaram Assessment Cirlce, Chennai - the Respondent under the erstwhile TNGST Act, 1959 in TNGST No.1001535. The respondent has completed the assessment proceeding for the year 2005 - 2006 by his proceedings dated 27.03.2009.

3. This Court had an occasion to consider a similar case as to how refund claims have to be processed in M/s.Ganesh Cars (P) Ltd., rep. by its Chairman N.Gajendran vs Commercial Tax Officer, Vellore, (W.P.No.31252 of 2003). The said writ petition was for a writ of certiorari, where the rejection of refund was put to challenge. The operative portion of the order dated 15.06.2016, in the said writ petition 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 4.2.2010 and based on the said decision, the petitioner is entitled to refund of the excess amount 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 respondent to enquire into the matters and if it is found that 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. In the light of the above legal position, the writ petition is allowed with a direction to the respondent to enquire into the matters and if it is found that 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pns

To

The Assistant Commissioner (CT),
Ayanavaram Assessment Circle,
Kuralagam Annexe III Floor,
Chennai - 600 108.

+1cc to the Special Government Pleader(T), S.R.No.32681

W.P.No.11362 of 2011

GSM(CO)
CS/09/08/2021