BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.12578 of 2022
and
W.M.P.(MD)No.8915 of 2022

M/s.Susee Auto Ltd.,
Rep.by its Managing Director
R.Vadivel Rajan,
109/6-A, Ettayapuram Road,
Tuticorin-628 002. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Tuticorin-1 Assessment Circle,
Tuticorin,
Tuticorin District. ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the Respondent in its proceedings in TNGST 844032/5820022/92-93, 93-94 & 94-95 to 2001-02 dated 02.05.2022 quash the same and further direct the Respondent either refund the excess entry tax paid or permit the petitioner to set off the excess entry tax paid by the petitioner for future payment of tax.

For Petitioner :Mr.S.Rajasekar
For Respondent :Mr.M.Siddharthan
Additional Government Pleader

O R D E R

This writ petition is filed challenging the impugned order passed by the 2nd Respondent, rejecting the petitioner's claim for refund of the excess payment of entry tax on the premise that the impugned order is contrary to the direction of this Court in W.P.(MD).No.4912 of 2006, dated 08.09.2021, wherein after examining the issues raised, it was held as under:

> "*however, in this context, it is to be noted that the entry tax was 12% during the relevant point of time and the sales tax was either 9% or 11% during the relevant point of time, and therefore, against the same, to be made in this regard by the dealer for which entry tax had already been paid, certainly, there would be a difference of either 3% or atleast 1% and that kind of excess tax paid in the name of entry tax even after setting off is made, would be made available as excess amount in the hands of the Government, therefore, in this regard, after verifying the total entry tax paid by the petitioner, for each of the assessment years referred to above, and the sales tax paid or set off, can be taken into account with the aid of the books of account of the petitioner, which can be submitted by him, the assessing*

officer can very well arrive at a figure as to what was the excess entry tax paid and it is available with the Government, and after finding out the same, the excess entry tax can very well be refunded to the petitioner.

25.In that view of the matter, based on the afore-stated discussions, this Court is inclined to dispose of this writ petition with the following orders:

> *"that the impugned order, for the reasons stated above, since would not stand in the legal scrutiny, is liable to be quashed, accordingly, it is quashed.*
>
> *As a sequel, it is open to the petitioner to produce the books of account to the respondent assessing officer to establish that during the relevant point of time, the petitioner has paid entry tax, which is admittedly 12% and also the corresponding sales tax paid or set off, which is admittedly, either 9% or 11%, therefore, what shall be a difference of the entry tax paid by the petitioner as excess, can be easily calculated by the assessing officer with the help of the petitioner-assessee, and based on which, the ultimate excess entry tax amount available with the hands of the respondent can be refunded to the petitioner. The needful as indicated above shall be undertaken by the respondent within a period of three months from the date of receipt of a copy of this order, for which the petitioner is expected*

to give utmost cooperation to complete the task as indicated.

2.Pursuant thereto, the impugned order has been passed. However, the impugned order is passed rejecting the claim for refund on the basis of the following reasons:

In response to the directions contained in the order of the Hon'ble High Court the accounts books were examined carefully with reference to the assessment record, assessment order passed. At the very first outset. The department would like to state that the entire assessments were settled very much earlier and they had already attained the finality and thereby the matter of assessment made under the Entry Tax Act had been laid to rest. The dealers have never challenged the assessment orders before any appropriate forums. Moreover the careful and close scrutiny of assessment order revealed that the then assessing officer have elaborately discussed about the levy of tax and paid details and then allowed set-off as contemplated under Section 4 of the Entry Tax Act. In all the assessment orders, the department has made categorical declaration with the following wording:-

"A sum of excess payment of entry tax not refundable and thereby retained by the Department,

as per the provisions of the Entry Tax Act".

Further the section 11 of the Entry Tax Act is only for the excess of the Entry Tax if any paid more than the amount of Entry tax due under the Tamil Nadu Entry Tax Act on Motor Vehicles to Local Areas Act 1990 only. As directed by the Hon'ble Madurai Bench of Madras High Court, the accounts of the dealers were checked and found that there is no such excess amount paid by the dealers under the Entry Tax Act."

3.It appears that the impugned order proceeds on a misconception on the exercise which the Assessing Officer was required to undertake. It appears that the exercise was purely arithmetic to find out the extent of the excess entry tax paid by the petitioner, available with the respondent and to refund the same. It does not seem that there was any room for the respondent to re-visit the question of eligibility of refund of the excess amount, except to challenge the order of this Court in W.P.(MD).No.4912 of 2006. However, this Court is not informed of any such challenge having been made by the Respondent.

4.In view of the same, the impugned order is set aside and the respondent is directed to re-do the above exercise, keeping in mind the order of this Court in W.P.(MD).No.4912 of 2006 dated 08.09.2021 and the observation made above and after providing the petitioner an opportunity. The above exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

5.With the above direction, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

18.11.2022

Index : Yes / No
Speaking Order : Yes / No
sbn

To

The Assistant Commissioner (ST),
Tuticorin-1 Assessment Circle,
Tuticorin,
Tuticorin District.

MOHAMMED SHAFFIQ, J.

sbn

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