IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.09.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

Writ Petition No.11834 of 2008
and M.P.No.1 of 2008

L.G.Balakrishnan and Brothers Ltd.,
rep. by its Manager,
P.O. Box No.2003, Krishnarayapuram Road,
Ganapathy, Coimbatore – 641 006.

... Petitioner

Vs

1. The State of Tamil Nadu
represented by The Secretary
Commercial Taxes Department,
Chepauk, Chennai – 600 006.

2. Assistant Commissioner (CT),
Fast Track Assessment cricle,
Commercial Taxes Complex,
Dr.Balasundaram Road,
Coimbatore – 641 018.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying for issuance of writ of Certiorarified Mandamus calling for the records of the case on the file of the second respondent herein in TIN 33501880016/07-08 (Entry Tax Act 90) issued under Section 10(2) of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 dated 28.4.2008, quash the same and direct the second respondent not to proceed further under the provisions of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 held unconstitutional by reason of this Hon'ble Courts decision in R.Gandhi V. State of Tamil Nadu and others reported in 2008 13 VST 390.

For Petitioner : Ms.Lakshmi Sriram

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

O R D E R

(Order of the Court was made by Dr.ANITA SUMANTH,J.)

The petitioner, a dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act') challenges demand notice dated 28.04.2008 issued by the Assistant Commissioner, Fast Track assessment circle/R2.

2. The petitioner claims to be an authorised dealer in motor vehicles. Interstate sales of vehicles had been made from Tata Motors in Pune and Uttaranchal to Tamil Nadu between the months of September, 2007 and February, 2008. The vehicles are stated to have been sold thereafter domestically and tax paid at the rate of 12.5%. According to the petitioner, it has remitted Value Added Tax (VAT) to the tune of Rs.4,05,82,548/- (Rs.4.05 crores approx.) as against the sales effected domestically.

3. The petitioner is also liable to tax under the provisions of the Tamil Nadu Tax on Entry of Goods into Local Areas Act, 1990 (in short 'Entry Tax Act'). Admittedly, the petitioner has not filed monthly returns within the timelines under Rule 7 of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Rules, 1990 (in short 'Entry Tax Rules') and has filed returns for the months of September, 2007 to February, 2008 only on 16.04.2008. No tax has been paid as against the liability set out in those returns.

4. To the impugned demand notice dated 28.04.2008 calling upon the petitioner to remit entry tax, the petitioner has filed a response on 12.04.2008 enclosing two statements relating to the entry tax payable as well as VAT paid. According to the petitioner, excess VAT of a sum of Rs.21,91,677/- has been remitted and hence there would be no liability to entry tax in view of the provisions of Section 4 of the Entry Tax Act, which provide a for set-off of excess entry tax as against VAT payment.

5. To be noted, that the claim made in the present case is in the converse. Section 4 of the Entry Tax Act provides for reduction in tax liability and states that where the importer of a motor vehicle remits entry tax, and becomes liable to pay sales tax under the General Sales Tax Act and additional sales tax under the Tamil Nadu Additional Sales Tax Act, 1970 as well, then liability under the General Sales Tax Act shall be reduced to the extent of entry tax paid.

6. In the present case, the petitioner seeks set-off of VAT payment as against entry tax liability. However, we find nothing untoward in this claim, as it has been considered by one of us (Dr.Anita Sumanth,J) in the case of *C.A.Motors V. The Commercial Tax Officer* (W.P.Nos.36839 to 36841 of 2015 dated 10.09.2019) and accepted. The relevant portion of the discussion is at paragraph 28, reading thus:

> *'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..........'*

7. The claim has been specifically accepted in the additional counter dated

04.09.2024 filed by R2 (see paragraph 13). However, R2 has raised an objection with regard to whether at all the petitioner has discharged the onus on it to establish a one to one match between the imported vehicles and those sold domestically.

8. We find merit in this submission, since, for the availment of benefit under Section 4 of the Act, the assessee is required to establish a one-to-one nexus between the entry tax and VAT payment and prove that the payments relate to the same motor vehicles. It is only upon such onus being discharged, then the benefit of Section 4 would be available to the assessee.

9. We had, under our order dated 29.08.2024, directed as follows:

> *It is the petitioner's case that a sum of Rs.4,08,36,048/- has been paid as entry tax for the months of September, 2007 to February, 2008 and a set-off has been sought as against the value added tax payable for those months.*
>
> *2. However, as, admittedly, returns have not been filed under the provisions of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990, it becomes incumbent on the respondent to confirm from the available records as to whether the payments of entry tax have, in fact, been made as aforesaid.*
>
> *3. Final opportunity is granted to the respondent to file counter prior to the next date of hearing with a copy served in advance upon the petitioner.*
>
> *4. List on 09.09.2024.*

10. In the additional counter filed, the respondents have denied that there is any excess VAT paid. The confusion arises from the two conflicting statements that had accompanied the petitioner's reply dated 12.04.2008 (pages 16 and 17 of typed set dated 02.05.2008). The two statements are as follows:

<u>Statement I (page 16)</u>

L.G.BALAKRISHNAN & BROS LTD.
COIMBATORE
ENTRY TAX DETAILS FOR THE MONTH FROM SEPT-2007 TO FEB-2008

MONTH	VALUE	ENTRY TAX	VAT PAID	SHORT	EXCESS
Sept-07	67970593	8496324	9171951		675627
Oct-07	52211110	6526389	5997092	529297	
Nov-07	47986288	5998286	5839795	158491	
Dec-07	55579953	6947494	6111438	836056	
Jan-08	51961144	6495143	8022691		1527548
Feb-08	50971295	6372412	7884758		1512346
TOTAL	**326680383**	**40836048**	**43027725**	**1523844**	**3715521**

EXCESS PAID 2191677

Statement II (page 17)

L.G.BALAKRISHNAN & BROS LTD.
COIMBATORE
ENTRY TAX DETAILS FOR THE MONTH FROM SEPT-2007 TO FEB-2008

MONTH	No. of Vehicles purchased	VALUE	ENTRY TAX	No. of Vehicles sold	VAT PAID	SHORT	EXCESS
Sept-07	*326*	67970593	8496324	*254*	6726774	1769550	
Oct-07	*242*	52211110	6526389	*213*	5997092	529297	
Nov-07	*224*	47986288	5998286	*235*	5839795	158491	
Dec-07	*260*	55579953	6947494	*213*	6111438	836056	
Jan-08	*242*	51961144	6495143	*287*	8022691		1527548
Feb-08	*237*	50971295	6372412	*284*	7884758		1512346
TOTAL	***1531***	**326680383**	**40836048**	***1486***	**40582548**	**3293394**	**3039894**

NET SHORT 252500

11. While according to statement I, the excess VAT paid is a sum of Rs.21,91,677/-, statement II reveals deficit of a sum of Rs.2,52,500/-. The respondents have only taken note of the shortfall under statement II. The conflict can only be resolved if the liability under both enactments is crystallized. The admitted position as on date is that while returns filed under the TNVAT Act have been processed and assessments completed, the returns of entry tax filed on 16.04.2008 are pending.

12. Thus, to balance the interests of the parties and aid in a proper resolution of the matter, the Court condones the delay in filing the entry tax returns and

directs R2 to assess the entry tax returns forthwith. The Assessing Authority is at full liberty to frame assessments, though in accordance with law. Upon crystallization of the entry tax liability, let the plea of the petitioner for set-off be considered, having regard to the observations of this Court in the case of *C.A. Motors* (supra).

13. To facilitate this process, the petitioner will appear before the Assessing Authority on Friday, the 20th of September, 2024 at 12.00 noon without awaiting any further notice in this regard. The petitioner shall be granted audience and the exercise as aforesaid, shall be completed within a period of eight (8) weeks, i.e., on or before 20.11.2024, in accordance with law.

14. This Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous Petition is closed.

(A.S.M.,J) (G.A.M.,J)
09.09.2024

Index:Yes/No
Speaking order
Neutral Citation: Yes
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To

1. The State of Tamil Nadu
   represented by The Secretary
   Commercial Taxes Department,
   Chepauk, Chennai – 600 006.

2. Assistant Commissioner (CT),
   Fast Track Assessment cricle,

Commercial Taxes Complex,
Dr.Balasundaram Road,
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<u>Dr.ANITA SUMANTH,J.</u>
<u>AND</u>
<u>MR.G.ARUL MURUGAN,J.</u>

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