IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2024

CORAM

THE HON'BLE **MR JUSTICE C. SARAVANAN**

W.P.Nos.9755, 9264, 9655, 9783 and 9844 of 2022
and
W.M.P.Nos.9026, 9398, 9471, 9503 and 9550 of 2022

W.P.No.9755 of 2022
Mahindra & Mahindra Limited,
Rep.by Shri R K Sairam, Manager Finance & Accounts (AD),
Mahindra Towers, 1st Floor,
No.17/18, Patullos Road,
Chennai – 600 002. ...Petitioner

Vs.

The Deputy Commissioner (ST)-II,
Large Tax Payers Unit,
Integrated Commercial Taxes and Registration Building,
No.571, Anna Salai, Nandanam,
Chennai- 600 035. ...Respondent

Prayer in WP.No.9755 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records relating to the Revision Order **TIN:33510640011/2009-10 dated 01.03.2022** passed by the Respondent, quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.V.Prashanth Kiran
Government Advocate

W.P.No. 9264 of 2022

Mahindra & Mahindra Limited,
Rep.by Shri R K Sairam, Manager Finance & Accounts (AD),
Mahindra Towers, 1st Floor,
No.17/18, Patullos Road,
Chennai – 600 002. ...Petitioner

Vs.

The Deputy Commissioner (ST)-II,
Large Tax Payers Unit,
Integrated Commercial Taxes and Registration Building,
No.571, Anna Salai, Nandanam,
Chennai- 600 035. ...Respondent

Prayer in WP.No.9264 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling to call for the records relating to the Revision Order **TIN:33510640011/2007-08 dated 25.02.2022** passed by the Respondent, quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.V.Prashanth Kiran
Government Advocate

W.P.No. 9655 of 2022

Mahindra & Mahindra Limited,
Rep.by Shri R K Sairam, Manager Finance & Accounts (AD),
Mahindra Towers, 1st Floor,
No.17/18, Patullos Road,
Chennai – 600 002. ...Petitioner

Vs.

The Deputy Commissioner (ST)-II,
Large Tax Payers Unit,
Integrated Commercial Taxes and Registration Building,
No.571, Anna Salai, Nandanam,
Chennai- 600 035. ...Respondent

Prayer in WP.No.9655 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records relating to the Revision Order **TIN:33510640011/2010-11 dated 25.02.2022** passed by the Respondent, quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.V.Prashanth Kiran
Government Advocate

W.P.No.9783 of 2022
Mahindra & Mahindra Limited,
Rep.by Shri R K Sairam, Manager Finance & Accounts (AD),
Mahindra Towers, 1st Floor,
No.17/18, Patullos Road,
Chennai – 600 002. ...Petitioner

Vs.

The Deputy Commissioner (ST)-II,
Large Tax Payers Unit,
Integrated Commercial Taxes and Registration Building,
No.571, Anna Salai, Nandanam,
Chennai- 600 035. ...Respondent

<u>Prayer in WP.No.9783 of 2022:</u>Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records relating to the Revision Order **TIN:33510640011/2006-07 dated 25.02.2022** passed by the Respondent, quash the same as arbitrary and illegal.

For Petitioner	:	Mr.Joseph Prabakar
For Respondent	:	Mr.V.Prashanth Kiran Government Advocate

<u>W.P.No.9844 of 2022</u>

Mahindra & Mahindra Limited,
Rep.by Shri R K Sairam, Manager Finance & Accounts (AD),
Mahindra Towers, 1st Floor,
No.17/18, Patullos Road,
Chennai – 600 002. ...Petitioner

Vs.

The Deputy Commissioner (ST)-II,
Large Tax Payers Unit,
Integrated Commercial Taxes and Registration Building,
No.571, Anna Salai, Nandanam,
Chennai- 600 035. ...Respondent

<u>Prayer in WP.No.9844 of 2022:</u>Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records relating to the Revision Order **TIN:33510640011/2008-09 dated 25.02.2022** passed by the Respondent, quash the same as arbitrary and illegal.

For Petitioner	:	Mr.Joseph Prabakar
For Respondent	:	Mr.V.Prashanth Kiran Government Advocate

COMMON ORDER

In these writ petitions, the petitioner is challenging the impugned revision order passed by the respondent for the assessment years as detailed below:-

Sl.No	WP.No.	Assessment year ends	For the year ends on	Last date for filing Return	Limitation under Sec. 8(5) ends on
1.	9783/2022	2006-07	31.03.2007	20.04.2007	20.04.2010
2.	9264/2022	2007-08	31.03.2008	20.04.2008	20.04.2011
3.	9844/2022	2008-09	31.03.2009	20.04.2009	20.04.2012
4.	9755/2022	2009-10	31.03.2010	20.04.2010	20.04.2013
5.	9655/2022	2010-11	31.03.2011	20.04.2011	20.04.2014

2. Under the provisions of the **Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990**, earlier, the petitioner had suffered adverse orders all dated **14.05.2014** under **Section 9** of the aforesaid **Act**. The said order was subject matter of a challenge before this Court in WP.Nos.15535 to 15539 of 2014. By an order dated **06.08.2021**, this Court had quashed the order and remanded the case back to the respondent-Assessing Officer to pass a fresh order with a direction to decide the issue on merits and in accordance with law by affording an opportunity to the petitioner for a personal hearing. It is pursuant to the same, the impugned orders have been passed as detailed above. The reasoning in the impugned orders are identical. Relevant portion of the

impugned order passed for the assessment year 2009-2010 is produced below for the sake of clarity:-

"8) In the light of above decisions rendered by the Hon'ble High Court of Madras and Hon'ble Apex Court, the dealer's contentions submitted by them during personal hearing on 11.01.2022 and 21.02.2022 has been examined very carefully. The dealer also furnished some copies of stock transfer invoices and corresponding invoices raised in the state to substantiate their contention that the value of stock transfer includes freight and insurance charges. Verification of the documents revealed that the sale price of vehicles was more than the stock transfer invoice and thus it was proved that the value of stock transfer did not include the value of freight and insurance charges. If the freight and insurance charges been included in the stock transfer value, there was no need to sell the vehicles at price higher than the stock transfer value.

9) Therefore, the contentions put forth by the dealer cannot be accepted. Hence the assessment for the year 2006-07 which was deemed to have been finalised under Section 8 of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 is revised as well as reconfirmed under Section 9 as below:

Details		***Four and Three Wheelers***	***Tractors***	***Total***
Value of vehicles	Rs.	4,87,22,60,201	2,02,62,32,511	6,89,84,92,717
Add: 5% towards freight and insurance charges	Rs.	24,36,13,010	10,13,11,626	34,49,24,636
Turnover re-determined	Rs.	5,11,58,73,211	2,12,75,44,137	7,24,34,17,348
Rate of tax		12.5%	4%	
Tax due	Rs.	63,94,84,151	8,51,01,766	72,45,85,917
Tax paid	Rs.	60,90,32,525	8,10,49,300	69,00,81,825
Balance	Rs.	**3,04,51,626**	**40,52,466**	**3,45,04,092**

3. The learned counsel for the petitioner would submit that the first assessment order passed on **14.05.2014** itself was time barred and without jurisdiction in view of the specific restrictions in **Section 8(5)** of the said **Act** and through the case placing reliance from the decision on the Division Bench of this Court in WA.No.1030 of 2024 dated **17.05.2024**, wherein the Hon'ble Division Bench of this Court, after extracting **Section 8 (5)** of the **Act** has observed as under:-

"*8.1. From a reading of the above provision, it would be clear that any assessment ought to be made within 3 years from the last date prescribed for filing of returns of the particular period. Rule 3(2) of the Tamil Nadu Tax on Entry of Goods into Local Areas Rules, 2001, provides that if the importer is a* *dealer in motor vehicles, the importer ought to file its return on a monthly basis on or before 20th of the succeeding month while an importer other than a dealer in motor vehicles, shall file quarterly returns on or before last day of the month immediately succeeding the quarter. The impugned assessment relates to the Assessment Year 2010-11. Thus, the assessment ought to have been made within 3 years from the last date prescribed for filing of returns i.e., 30.06.2014 inasmuch as the respondent is not a dealer in motor vehicles. However, the notice for assessment was issued only on 29.09.2015 and the impugned order of assessment was made on 07.07.2016 which is beyond the period prescribed for original assessment in terms of Section 8(5) of the Entry Tax Act and thus, beyond the limitation stipulated under Section 8(5) of the Entry Tax Act and hence, barred by limitation. The impuged order of assessment being without jurisdiction, is liable to be set aside*. Accordingly, the learned Judge rightly set aside the order of assessment and allowed the writ petition filed by the respondent."*

4. The learned counsel for the petitioner would further submit that the petitioner had imported vehicles from his factory in Maharashtra and thus, liable to pay entry tax under the provisions of the **Tamil Nadu Tax on Entry of**

Motor Vehicles into Local Areas Act, 1990. It is submitted that the petitioner has also discharged the tax liability on the consequential sale under the provisions of **TNVAT Act, 2006** by including freight and insurance charges borne by the petitioner from the Depot manufacturing to place of removal viz., Depot/Showrooms in Chennai. It is submitted that the value adopted in the excise invoice, raised at the factory for removal to the petitioner's depot/stockyard in Tamil Nadu and therefore, in terms of **Rule 8** of **The Central Excise Valuation Rules, 2001**, the value prevailing at the Depot was adopted for determination of the transaction value under **Section 4** of **The Central Excise Act**. It is therefore submitted that the value of freight and insurance get inbuilt to the value determined at the time of stock transport between Maharashtra to Tamil Nadu. That apart, it is submitted that in view of the decision of the Hon'ble Division Bench of this Court in ***Assistant Commissioner [CT], Perundurai Assessment Circle, Perundurai Vs. Tvl.Rason Earth Movers rep. by its Partner [WA.No.1030 of 2024]***, the demand has been dropped on time barred.

5. The learned counsel for the respondent would submit that the decision of this Court will not apply to the case on hand as the Assessment under

Section 8(5) of the **Act** itself makes it clear that if no assessment is made within the period of 3 years, specified from the last date prescribed for filing of the returns of a particular period, the return shall be deemed to have been accepted as correct and complete for assessing the tax due from such person. It is further submitted that in this case, the petitioner was issued with notice under **Section 9** of the **Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990** and therefore, it is the case of reassessment and not the case of the first assessment that was contemplated before the Hon'ble Division Bench in the above said decision. It is therefore, submitted that the impugned order does not merit any interference in the hands of this Court under **Article 226** of **The Constitution of India**.

6.It is further submitted that the petitioner has an alternate remedy before the Appellate Authority and therefore, on this ground also this writ petition is liable to be dismissed. That apart, learned counsel for the respondent would further submit that the value adopted for the purpose of stock transfer should be the value adopted for sale from the State and admittedly in this case the petitioner had not included the expenses incurred towards freight and insurance for discharging the Entry Tax Liability and therefore, there is an escape turnover warranting invocation of the machineries prescribed under the **Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1960**.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the counsel for the respondent and perused all the available merits available on record.

8. For a fair disposal of the writ petition would be **Section 8(5)**, **Section 9** of the **Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990**, **Section 4** of the **Central Excise Act, 1944**, **Rule 8** of the **Central Excise Valuation Rules, 2001**, definition of purchase value in **Section 2(k)** of the **Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990**. That apart, as per **Section 4(2)** of the **Act**, the entry tax paid under the provisions of the aforesaid **Act** is available for being set off towards the tax liability under the provisions of **TNVAT Act, 2004**.

9. The petitioner is a manufacturer of Motor Vehicles and therefore, at the time of clearance of Motor Vehicles on Stock Transfer Basis, the petitioner would have adopted the normal transaction value prevailing on the date of clearance from the factory at the time of removal of similar goods from its branch. It is evident from a reading of **Rules 7 and 9** of the **Central Excise**

Valuation (Determination of Price of Excisable Goods) Rules, 2000. They are reproduced below:-

The Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000	
Rule 7	*Rule 9*
Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place" from where the excisable goods are to be sold after their clearance from the place of removal and where the assesseee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment.	When the assessee so arranges that the excisable goods are not sold by an assessee except to or through a person who is related in the manner specified in either of sub-clauses (ii), (iii) or (iv) of clause (b) of sub-Section (3) of Section 4 of the Act, the value of the goods shall be the normal transaction value at which these are sold by the related person at the time of removal, to buyers (not being related person); or where such goods are not sold to such buyers, to buyers (being related person), who sells such goods in retail:

10. As per **Rule 9** when an assessee arranges that the excisable goods are not sold by an assessee except to or through a person who is related in the manner specified in either of sub-clauses (ii), (iii) or (iv) of clause (b) of sub-**Section (3)** of **Section 4** of the **Act**, the value of the goods shall be the normal transaction value at which these are sold by the related person at the time of removal, to buyers or where such goods are not sold to such buyers, to buyers,

who sells such goods in retail.

11. As per **Rule 7** of the aforesaid Rules, Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place" from where the excisable goods are to be sold after their clearance from the place of removal and where the assesseee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment.

12. Thus it is the price that is prevailing, the expression "normal transaction value" has been defined in Rule 2 (b) of the Rules as defined under:-

"2.In these rules, unless the context otherwise, requires,-

(a).......

(b) "normal transaction value" means the transaction value at which the greatest aggregate quantity of goods are sold;"

13. Thus it is the normal transaction value prevailing at the depot which is relevant for the purpose of determination of value at the time of the removal from the factory. The "normal transaction value" would include the freight and insurance already paid on the vehicles cleared from the factory. Therefore, there is no merit in the impugned orders passed by the respondents sustaining the differential tax as entry tax under the provisions of the aforesaid Act on the freight and insurance charges on the petitioner. Therefore, this writ petition stands allowed along with consequential relief. No costs. Connected writ miscellaneous petitions are closed.

05.12.2024

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case: Yes/No
nst

To:
The Deputy Commissioner (ST)-II,
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No.571, Anna Salai, Nandanam,
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C.SARAVANAN, J.

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