IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal Nos.1307, 1309, 1310, 1311 and 1245 of 2022
and
CMP.Nos.8265, 8272, 8275, 8276 and 7860 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.
.. Appellant in all Writ Appeals

Versus

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

Prayer in WA.No.1307 of 2022: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 21.04.2022 passed by the learned Judge in WMP.No.9398 of 2022 in W.P.No.9655 of 2022.

Prayer in WA.No.1309 of 2022: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 20.04.2022 passed by the learned Judge in WMP.No.9471 of 2022 in W.P.No.9755 of 2022.

Prayer in WA.No.1310 of 2022: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 22.04.2022 made in WMP.No.9503 of 2022 in W.P.No.9783 of 2022.

Prayer in WA.No.1311 of 2022: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 22.04.2022 passed by the learned Judge in WMP.No.9550 of 2022 in W.P.No.9844 of 2022.

Prayer in WA.No.1245 of 2022: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 18.04.2022 passed by the learned Judge in WMP.No.9026 of 2022 in W.P.No.9264 of 2022.

For Appellant	:	Mr.Joseph Prabakar in all cases
For Respondent	:	Mr.Haza Nazirrudeen, Additional Advocate General, assisted by Mr.M.Venkateswaran, Special Government Pleader, in all cases

COMMON JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN, J.)

The challenge made in these writ appeals is to the interim orders passed by the learned Judge in the respective writ petitions filed by the appellant herein, against the revision orders passed by the respondent relating to the assessment years 2010-11, 2009-10, 2006-07, 2008-09 and 2007-08 respectively.

2.According to the appellant / writ petitioner, they are dealer in Motor vehicles in the State of Tamil Nadu and having manufacturing facility for various Motor Vehicles in the State of Maharashtra. During the assessment years in question, they brought four wheelers, three wheelers and tractors into the State of Tamil Nadu from the factory of the appellant located in

Maharashtra and paid appropriate entry tax on these motor vehicles under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 (in short, "the Act"). They duly filed their returns disclosing the value of motor vehicles imported into the State and the Entry tax paid thereon. However, raising an issue relating to value of motor vehicles, on which entry tax is paid based on audit inspection conducted by the enforcement officials, the respondent passed the orders dated 14.05.2014 relating to the assessment years in question, demanding Entry Tax on freight and insurance charges calculated at 5% on the value of motor vehicles. Challenging the same, the appellant preferred writ petitions, which were disposed of by remanding the matter to the respondent for fresh consideration. Pursuant to the same, the respondent passed the orders of revision dated 25.02.2022/01.03.2022, reiterating the same stand as taken earlier and determining the entry tax under section 8 of the Act, by including freight and insurance charges. Aggrieved by the same, the appellant preferred writ petitions, wherein, the learned Judge, by way of separate interim orders, directed the appellant to pay 15% of the amount demanded by the respondent, in respect of the assessment years 2010-11, 2009-10, 2006-07 and 2008-09 and pay 50% of the demand raised, in respect of the assessment year 2007-08, within a period of four weeks. Challenging the same, the appellant is before this court with the present appeals.

3.The main contention of the learned counsel for the appellant is that the respondent in the orders impugned in the writ petitions, has categorically admitted that sale price of the vehicle was higher than the stock transfer price, which would go to show that the amount of VAT paid on the vehicle was higher than the amount of Entry Tax paid, while so, they ought not to have demanded entry tax on freight and insurance charges calculated at 5% on the value of motor vehicles. It is also submitted that as per section 8(5) of the Act, there is a limitation of three years, within which assessment orders under section 8(3) or 8(4) should be passed, whereas in the present case, the orders of assessment have been passed after the limitation period and on this ground alone, the orders impugned in the writ petitions are liable to be set aside. Without taking note of the same, the learned Judge erred in directing the appellant to pay 15% of the demand raised by the respondent, in respect of the assessment years 2010-11, 2009-10, 2006-07 and 2008-09 and pay 50% of the demand raised, in respect of the assessment year 2007-08, by way of interim orders, which will have to be set aside. It is also submitted that the appellant is facing financial constrains and is unable to pay such a huge tax liability to the respondent within the time stipulated by the learned Judge and that, the respondent is initiating recovery proceedings by attaching the bank accounts of the appellant.

4.On the other hand, the learned Additional Advocate General appearing for the respondent made his submissions reiterating the findings of the respondent rendered in the orders impugned in the writ petitions and submitted that the orders of the learned Judge need not be interfered with.

5.Upon considering the submissions made by the learned counsel on either side and perusal of the documents enclosed in the typed set of papers, this court is of the opinion that the orders impugned herein, have been passed by the learned Judge as an interim measure, in order to protect the interest of the appellant. The main issue relating to the demand of entry tax by the respondent by including freight and insurance charges on the value of the motor vehicles purchased by the appellant, is yet to be determined by the learned Judge and is pending consideration in the writ petitions. Hence, there is no requirement to interfere with the orders of the learned Judge.

6.However, considering the financial constrains expressed by the learned counsel for the appellant and the quantum of tax demanded in respect of the assessment years in question, this court is inclined to modify the orders of the learned Judge by reducing the quantum of amount directed to be paid by the appellant, in the following terms:

(i) There shall be an order of interim stay on condition that the appellant pays 10% of the demand raised by the respondent, in each of the assessment years 2010-11, 2009-10, 2006-07, 2008-09 and 2007-08, within a period of one week from the date of receipt of a copy of this order, failing which, it is open to the authorities to proceed further for recovery of entire arrears without further reference to this court.

(ii) On such payment, the attachment on the bank accounts of the appellant, if any, shall be lifted forthwith.

7.With the aforesaid modifications, all the appeals stand disposed of. No costs. Consequently, the connected Miscellaneous petitions are closed.

[R.M.D., J.] **[M.S.Q., J.]**

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Index : Yes / No
Internet : Yes / No
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