BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)Nos.1309 to 1317 of 2024
and
W.M.P.(MD)Nos.1346, 1351 to 1355, 1357, 1359 & 1367 of 2024

M/s.Susee Automobiles P. Ltd.,
Represented by its Director,
J.Rajiv Subramanian,
No.25, Tamil Sangam Road,
Madurai - 625 001,
Madurai District. ... Petitioner in all the W.Ps.

Vs.

The Assistant Commissioner (ST),
Office of the Assistant Commissioner (ST),
Tirupparankundram Assessment Circle,
K.K.Nagar,
Madurai - 625 020,
Madurai District. ... Respondent in all the W.Ps.

Prayer in W.P.(MD)No.1309 of 2024: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the respondent in TIN 33143521454 / 2007-08 to 2015-16 dated 26.09.2022, quash the same as being contrary to the scheme of the Act insofar as Assessment Year 2007-08 is concerned and further direct the respondent herein to grant refund of Rs.4,04,755/- as per the representation made by the petitioner, dated 01.10.2020.

Prayer in W.P.(MD)No.1310 of 2024: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the respondent in TIN 33143521454 / 2007-08 to 2015-16 dated 26.09.2022, quash the same as being contrary to the scheme of the Act insofar as Assessment Year 2008-09 is concerned and further direct the respondent herein to grant refund of Rs.9,26,151/- as per the representation made by the petitioner, dated 01.10.2020.

Prayer in W.P.(MD)No.1311 of 2024: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the respondent in TIN 33143521454 / 2007-08 to 2015-16 dated 26.09.2022, quash the same as being contrary to the scheme of the Act insofar as Assessment Year 2009-10 is concerned and further direct the respondent herein to grant refund of Rs.13,95,290/- as per the representation made by the petitioner, dated 01.10.2020.

Prayer in W.P.(MD)No.1312 of 2024: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the respondent in TIN 33143521454 / 2007-08 to 2015-16 dated 26.09.2022, quash the same as being contrary to the scheme of the Act insofar as Assessment Year 2010-11 is concerned and further direct the respondent herein to grant refund of Rs.22,72,018/- as per the representation made by the petitioner, dated 01.10.2020.

Prayer in W.P.(MD)No.1313 of 2024: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the respondent in TIN 33143521454 / 2007-08 to 2015-16 dated 26.09.2022, quash the same as being contrary to the scheme of the Act insofar as Assessment Year 2011-12 is concerned and further direct the respondent herein to grant refund of Rs.35,65,012/- as per the representation made by the petitioner, dated 01.10.2020.

Prayer in W.P.(MD)No.1314 of 2024: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the respondent in TIN 33143521454 / 2007-08 to 2015-16 dated 26.09.2022, quash the same as being contrary to the scheme of the Act insofar as Assessment Year 2012-13 is concerned and further direct the respondent herein to grant refund of Rs.44,62,397/- as per the representation made by the petitioner, dated 01.10.2020.

Prayer in W.P.(MD)No.1315 of 2024: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the respondent in TIN 33143521454 / 2007-08 to 2015-16 dated 26.09.2022, quash the same as being contrary to the scheme of the Act insofar as Assessment Year 2013-14 is concerned and further direct the respondent herein to grant refund of Rs.26,81,620/- as per the representation made by the petitioner, dated 01.10.2020.

Prayer in W.P.(MD)No.1316 of 2024: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the respondent in TIN 33143521454 / 2007-08 to 2015-16 dated 26.09.2022, quash the same as being contrary to the scheme of the Act insofar as Assessment Year 2014-15 is concerned and further direct the respondent herein to grant refund of Rs.20,86,684/- as per the representation made by the petitioner, dated 01.10.2020.

Prayer in W.P.(MD)No.1317 of 2024: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the respondent in TIN 33143521454 / 2007-08 to 2015-16 dated 26.09.2022, quash the same as being contrary to the scheme of the Act insofar as Assessment Year 2015-16 is concerned and further direct the respondent herein to grant refund of Rs.19,89,995/- as per the representation made by the petitioner, dated 01.10.2020.

For Petitioner in all the W.Ps. : Mr.Shanmugam Rajasekar

For Respondent in all the W.Ps. : Mr.R.Sureshkumar
Additional Govt. Pleader

COMMON ORDER

In these Writ Petitions, the petitioner has challenged the impugned communication dated 26.09.2022. By the impugned communication, the respondent has rejected the request of the petitioner for refund of the excess tax allegedly paid by the petitioner on account of the discounts offered by the petitioner to its customers.

2. The petitioner had earlier filed a composite Petition on 01.10.2020 for refund of the tax allegedly paid by the petitioner to the Commercial Taxes Department. Since these refund claims were not entertained by the Commercial Taxes Department, the petitioner rushed to this Court in W.P.(MD)Nos.14479 to 14487 of 2022 and secured an order on 11.07.2022, whereby this Court directed the respondent to consider the petitioner's representation dated 01.10.2020, as expeditiously as possible, within a period of eight weeks from the date of receipt of a copy of that order.

3. Pursuant to the above said order, the impugned order titled as "Notice" has been passed. By the impugned communication, the request of the petitioner for refund of the tax allegedly paid by the petitioner in excess on account of the sale discounts offered to its customers has been rejected. The impugned communication also refers to corresponding assessment orders passed for the respective Assessment Years as detailed below:-

Sl. No.	Assessment Year	Date
1.	2007-2008	30.11.2020
2.	2008-2009	25.04.2022
3.	2009-2010	25.04.2022
4.	2010-2011	24.09.2021
5.	2011-2012	25.03.2022
6.	2012-2013	25.03.2022
7.	2013-2014	16.05.2022
8.	2014-2015	16.05.2022
9.	2015-2016	16.05.2022

4. The learned counsel for the petitioner has tried to explain the manner in which the excess tax was paid by the petitioner. He refers to the following passages from the petitioner's representation dated 01.10.2020.

Our modus operandi during the year 2007-2008 was that once vehicle had been selected by customer for purchase from our showroom, then we will raise the bill for the cost of the vehicle along with the appropriate VAT Tax (12.50% during that period on the vehicles purchased from other state and 1% on the locally purchased vehicles) and the taxes so mentioned in the Invoice will be paid to the department through our monthly returns filed every month. This bill will be credit Invoice initially to the customer. The said vehicle will be sent to the registration department for allotting the vehicle no and the issue of RC Book. In the meantime the customer may arrange the funds through Banks or other Financial Institutions and the same will be paid to us for the Invoice raised. During such times, the customer will negotiate with us to reduce the price of the car because of their prompt payment citing other manufacturer offers and offers being promoted through media etc while refusing our other gifts/offers in vogue at that point in time, instead claiming money reduction from the bill etc. Considering the request of the customer and to conclude our business with such customers, we had allowed some discounts to such customers and the said discount along with the relevant taxes will be paid to the customer or it will be credited in the customer's account as the case may be.

Attached herewith is a sample Ledger Account of one Customer Thiru Periya Samy T.K. that shows the facts behind our allowance of discount to the said customer during the year 2007-2008.

Periya samy T.K.

Ledger Account

Date	Particulars		Voucher Type	Voucher No	Debit	Credit
28.05.2007	By cash		Cash Receipt	343	0	25000
06.06.2007	(as per details)		Journal	1298	475900	
	Ford Flair Sales	423022				
	Out purt Tax 12.50% Collected	52878				
	On account	475900 Dr				
	Invoice No.Ti061/07-08					
	By ICICI Bank Ltd Vehicle A/c.		Journal	1299		400000
	By Cash		Cash Receipt	426		50900
	To Cash		Cash Payment	1063	1060	
07.06.2007	To Canara Bank A/c 1437		Cash Payment	1076	15892	
	By Discount to Sales		Journal	1340		16952
	On account	16952 Cr				
	Total				492852	492852

From the above ledger account, one can already understand that we have allowed the discount to the Customer on the cost and tax which was raised in the relevant sale bill to the customer. Our practice is to enter the cost and tax together in the ledger and in the similar manner the discount is also mentioned with the tax included. This was basis the insistense of the department at that point in time. In this transaction , the tax is included on the discount of Rs. 16952/- . The tax component on the amount is Rs.1883/-(16952/112.5*100%), We paid the full tax (Rs.52878/-) on the relevant invoice. (Inv No.T1061/2007-08), however we had not claimed the refund of the taxes paid on our discount allowed to the customers due to the insistence of the officials from the department at that time.

We have enclosed the copy of this ledger account along with the copy of the sale invoice.

In the similar manner we allowed the discount to the customers on the sales of parts of vehicles during service of such vehicles, but not claimed the refund as discussed.

We have also enclosed the complete abstract of the discount allowed to the customers to the value of Rs.36,42,799 and details of taxes already paid to the department during the year 2007-2008 on the discount allowed, which we are entitled for refund.

Since our assessment for the year is yet to be completed, we request the Assistant Commissioner / Assessing Officer to consider our discount allowed to the customer to the value of Rs.36,42,799/- and the corresponding tax of Rs. 4,04,755/- be refunded to us along with upto date interest as applicable.

We are prepared to file all the details before the assessing officer, as and when called for , relating to this discount and claim of our refund during the year 2007-2008.

5. On the other hand, the learned Additional Government Pleader for the respondent would submit that the present Writ Petitions are devoid of merits and are liable to be dismissed. It is submitted that there is no provision under the Act or the Rules for issuing refund with respect to discount given to the customers towards the sale of vehicles and no excess amount of tax was paid by the petitioner. Hence, the notice issued to the petitioner on 26.09.2022 is proper and does not warrant any interference.

6. It is further submitted that even the specimen pre-invoice number cited in the above said representation, dated 01.10.2020, in respect of one of the customers namely, T.K.Periasamy shows that there is no discount. The learned Additional Government Pleader further submitted that even otherwise, the Writ Petitions are without any merit and therefore, the same are liable to be dismissed.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

8. The refund of excess tax paid by an assessee/dealer under the Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as "the TNVAT Act"] goes hand in hand with the assessment. The alleged excess tax has been paid by the petitioner during 2007-2008 to 2015-2016. The impugned communication itself reveals that the assessment orders have been passed only in the year 2022. It is therefore, always open for the petitioner either to file a statutory appeal against the above said order canvassing the right of refund or in the alternative, the petitioner is not without any remedy for rectifying the order by invoking the machinery under Section 84 of the TNVAT Act. Although the power under Section 84 of the TNVAT Act is confined only to an error apparent on the face of the record, I am of the view that the petitioner's claim for refund cannot be rejected straightaway without giving proper opportunity to the petitioner to explain the same in the appropriate forum. In case, the petitioner has already filed an appeal, the petitioner may file supplementary grounds of appeal before the Appellate Deputy Commissioner under Section 51 of the TNVAT Act or in the alternative, file suitable application for modification of the order by giving the particulars of the refund, which the petitioner may be entitled to based on the facts and the evidence that are available with the petitioner.

9. With the above liberty, these Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

12.06.2024

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
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To

The Assistant Commissioner (ST),
Office of the Assistant Commissioner (ST),
Tirupparankundram Assessment Circle,
K.K.Nagar,
Madurai - 625 020,
Madurai District.

C.SARAVANAN, J.

smn2

Common order in
W.P.(MD) Nos.1309 to 1317 of 2024

12.06.2024