BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.11901 & 11902 of 2024
and
W.M.P.(MD).Nos.10603 to 10605 & 10607 to 10609 of 2024

<u>In W.P.(MD).No.11901 of 2024:</u>
M/s.Susee Automotive Private Limited,
Represented by its Director J.Rajiv Subramanian,
No.89/102, Theni main road,
P.P.Chavadi,
Madurai – 625 016. ... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Madurai Rural (South) Assessment Circle,
Madurai – 625 020.

2.The Branch Manager,
Karur Vysya Bank, KVBL0001655,
133, GST Road,
Thiru Nagar 1st stop, Thirunagar,
Madurai – 625 006.

3.The Branch Manager,
ICICI Bank,
14, Theni main road,

Arasaradi, Madurai 625 016. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in its impugned proceedings made in TIN No. 33665165027/2010-11 dated 07.02.2024, quash the same and direct the 1st respondent to re-consider the petition filed by the petitioner dated 25.10.2023 under Section 84 of the TNVAT Act, 2006.

For petitioner : Mr.Shanmugam Rajasekar

For respondent-1 : Mr.J.K.Jayaseelan
Government Advocate

In W.P.(MD).No.11902 of 2024:

M/s.Susee Automotive Private Limited,
Represented by its Director J.Rajiv Subramanian,
No.89/102, Theni main road,
P.P.Chavadi,
Madurai – 625 016. ... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Madurai Rural (South) Assessment Circle,
Madurai – 625 020.

2.The Branch Manager,
Karur Vysya Bank, KVBL0001655,
133, GST Road,
Thiru Nagar 1st stop, Thirunagar,

Madurai – 625 006.

3.The Branch Manager,
ICICI Bank,
14, Theni main road,
Arasaradi, Madurai 625 016. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in its impugned proceedings made in TIN No. 33665165027/2011-12 dated 07.02.2024, quash the same and direct the 1st respondent to re-consider the petition filed by the petitioner dated 14.11.2023 under Section 84 of the TNVAT Act, 2006.

For petitioner : Mr.Shanmugam Rajasekar
For respondent -1 : Mr.J.K.Jayaseelan
Government Advocate

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COMMON ORDER

This is the second round of litigation before this Court. The dispute pertains to the assessment years 2010-11 and 2011-12.

2. The petitioner premises was inspected by the Investigation Team and

proposals were made after obtaining sworn statement on 16.06.2017. The petitioner has given composite reply on 29.11.2017 for AY2010-11, AY2011-12, AY14-15 and AY16-17. These Writ Petitions are concerned with the assessment years 2010-11 and 2011-12. After the petitioner had given composite reply on 29.11.2017 in response of defects pointed out by the investigation team, for these two assessment years, the petitioner was issued with pre-revision notice dated 08.05.2018. The petitioner failed to file a reply in time and has, thus, suffered the impugned orders dated 29.10.2018 and 16.11.2018 for AY 2010-11 and for AY 2011-12, respectively.

3. Earlier, the petitioner had filed the Writ Petition in W.P.(MD).Nos. 21357 and 21359 of 2019. These two Writ Petitions were disposed of at the time of admission by giving a liberty to the petitioner to file statutory appeal within the period of two weeks, subject to depositing 25% of the disputed tax. However, the petitioner failed to pay the aforesaid 25% of the disputed tax amount, as directed by the Court vide order dated 16.03.2021. Under these circumstances, the petitioner's bank account was attached on 22.01.2022

4. The petitioner made an attempt to revive the proceedings by filing a grievance petition before the respondents almost in the fashion of a rectification proceedings under Section 84 of the TNVAT Act, 2006 on 21.02.2022. Meanwhile, a sum of Rs.7,18,498/- and Rs.11,47,792/- were debited from the petitioner's bank account for the respective assessment years on 23.02.2022 and 28.04.2022, respectively.

5. By a communication dated 10.05.2022, the first respondent declined to entertain the same stating that the petitioner had not complied with the orders of this Court dated 16.03.2021 and thus, amounts were recovered from the petitioner's account.

6. The petitioner has woken up for the second time after the recovery orders were made on 23.02.2022 and 28.04.2022, respectively, by filing petitions under Section 84 of TNVAT Act, 2006 on 25.10.2023 within the limitation prescribed to rectify the respective assessment orders dated 29.10.2018 and 16.11.2018, which have now culminated in the impugned orders both dated

07.02.2024 with the following observation, which reads identically in both cases:

> Without prejudice to the above the petition of the dealers gone through along with other connected records.
>
> The Assessing Officer issued pre Assessment Notice dated: 02.05.2018 in which the proposed had been clearly drafted. Since the dealers had not objected the proposal even after repeated opportunity of personal hearing were afforded. The Assessing Officer construed that the dealers had nothing to object and hence the Assessing Officer confirmed his proposal. The contention that the dealers had requested in person to consider their objection filed before the enforcement officer in factually not correct and it is only after thought and delaying tactics.,
>
> Without documentary evidence regarding their request they alleged the Assessing Officer that he was in the habit of regularly neglecting all their representation. It is absurd that while the dealer was having ample of time to represent orally they had no time to write a single word of objection/request letter.
>
> However thorough verification of the assessment order revealed that there is no error apparent on the take of the records. Further all the grounds put forth by the petitioner herein ought to have been place either in the reply to the pre Assessment Notice before passing the Assessment order or before the Appellate Authorities after passing the Assessment Order and as directed by the Hon'ble Madurai Bench of Madras High Court. But the petitioner followed neither the procedure laid down in the TNVAT Act 2006 nor the directions of Hon'ble Madurai Bench of Madras High Court. Thus the petition deserves no consideration.
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> In view of the above the petitioner filed u/s 84 of the TNVAT Act in the reference 3rd cited is rejected.

7. Reading of the impugned order and considering the aforesaid facts

and circumstances of the case and considering the fact that more than 25% of the amount of disputed tax has been recovered to be paid earlier, pursuant to the order dated 16.03.2021 in W.P.(MD).Nos.21357 and 21359 of 2019 and also considering the fact that this rectification applications ware filed in time, the Court is of the view to balance to interest on Commercial Tax Department and therefore, the petitioner can be given one opportunity to file statutory appeals before the Appellate Authority under Section 51 of the TNVAT Act, 2006 within a period of 30 days from the date of receipt of a copy of this order against the respective Assessment Order dated dated 29.10.2018 and 16.11.2018 for AY 2010-11 and for AY 2011-12, respectively. The amount that has been recovered from the petitioner's account on those days mentioned above, shall be treated as sufficient for the purpose of pre-deposit and for disposal of the appeal.

8. The petitioner's appeal shall be disposed of on merits and in accordance with law as expeditiously as possible preferably within a period of two months from the date of receipt of a copy of this order. In other words, the entire exercise shall be completed within a period of three months from today.

These Writ Petitions are disposed of, with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

10.06.2024

To

The Assistant Commissioner (ST),
Madurai Rural (South) Assessment Circle,
Madurai – 625 020.

C.SARAVANAN, J.

apd

W.P.(MD) Nos.11901 & 11902 of 2024

10.06.2024