IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.02.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.9968, 10543 & 11312 of 2023
and
W.M.P.Nos.10016, 10485 & 11195 of 2023

Lanson Motors Private Limited,
Rep by Associate General Manager, Shri.M.Sivavadivel,
No.34, Poonamallee High Road,
Koyambedu, Chennai 600 107.

... Petitioner in all petitions

Vs.

The Deputy Commissioner (CT)-III,
Large Tax Payers Units,
Room No.407, IV Floor,
Integrated Commercial Taxes and Registration Building,
No.571, Anna Salai, Nandanam,
Chennai 600 035.

... Respondent in all petitions

Common Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the Assessment Order TIN/33101342565/2013-14, TIN/33010342565/2012-13 and TIN/33010342565/2011-12 respectively, all dated 17.02.2023, passed by the respondent and quash the same.

For Petitioner in all petitions	:	Mr.Joseph Prabakar
For Respondent in all petitions	:	Mr.Haja Nazirudeen, Additional Advocate General-I, Assisted by Mr.M.Venkateshwaran, Special Government Pleader

COMMON ORDER

These writ have been filed challenging the three impugned assessment orders in TIN/33101342565/2013-14, TIN/33010342565/2012-13 and TIN/33010342565/2011-12, all dated 17.02.2023, passed by the respondent.

2. Mr.Joseph Prabakar, learned counsel for the petitioner would submit that the present subject matter is pertaining to the entitlement of the petitioner either for adjustment of entry tax against the sale tax liabilities or for refund of said entry tax, which was paid at the time of importation of vehicles in the State of Tamil Nadu in terms of provisions of Tamil Nadu Tax on Entry of Motor Vehicles Act, 1990, (hereinafter

called as “the Act”).

3. Further, he would submit that in terms of Section 4 of the Act, the petitioners are entitled for reduction in tax liability to the extent of excess tax, which was already paid by them for entry of vehicle from other States to the State of Tamil Nadu. On the other hand, if the petitioner is not intend to adjust the entry tax against the sale tax liabilities, they are entitled for refund in terms of Section 11 of the Act.

4. He would also contend that in this case, the vehicles were sold to the Military Canteen Stores Department, in such case, the entry tax paid on such vehicles cannot be adjusted towards any other liabilities. Under these circumstances, the petitioner preferred for refund as provided under Section 11 of the Act. The total tax liabilities in the present subject matter are as follows:

Assessment Years	*Short Payment of tax due to excess availment of entry tax with respect to sales made by the Company to Government*	*Exempted sales turn over in respect of sales made to Military Canteen Stores Department*	*Tax Due*
2011-2012	Nil	Rs.9,24,154/-	Rs.3,40,000/-
2012-2013	Rs.77,33,920/-	Rs.40,31,593/-	Rs.79,913/-
2013-2014	Rs.42,68,636/-	Rs.32,82,987/-	Nil

5. By referring the above, he would submit that the petitioner is entitled either for reduction in tax liability to the extent of excess tax already paid for entry of vehicle under Section 4 of the Act or for refund of said amount under Section 11 of the Act. However, without considering the said aspect, the respondent had refused to entertain the request made by the petitioner for refund of entry tax.

6. Further, he would submit that the present issue has already been settled by the Hon'ble Full Bench of this Court vide the judgement rendered in ***Tamil Nadu vs. Ganesh Automobiles*** reported in ***(2004) 134 STC 272 (Mad)***, whereby it was held that the Assessees are entitled

either for adjustment of entry tax against the sale tax liabilities as per Section 4 of the Act or for refund of entry tax paid by them as per Section 11 of the Act. Hence, he requests this Court to pass appropriate orders.

7. Per contra, Mr.Haja Nazirudeen, learned Additional Advocate General-I, appearing for the respondent would submit that in this case, the respondent had refused to grant refund by referring the provisions of Section 4(1) of the Act, wherein it has been stated that the entry tax liability of the vehicle, which was paid by the petitioner, shall be adjusted/reduced only at the time of sale of the vehicle. Hence, he would requests this Court to consider this aspect.

8. Heard the learned counsel for the petitioner and the learned Additional Advocate General-I for the respondent and also perused the materials available on record.

9. The only issue involved in this case is as to whether the

petitioners/dealers are entitled to get any adjustment of entry tax, which was paid by them at the time of importation of vehicles from other States to the State of Tamil Nadu, against the sales tax liabilities, which has to be paid at the time of sale of said vehicles. On the other hand, if the dealers are not intend for any such adjustment, whether they are entitled for refund of said entry tax.

10. The law is very well settled with regard to the aforesaid issue by the Hon'ble Full Bench of this Court vide the judgement renderred in ***Tamil Nadu vs. Ganesh Automobiles*** reported in ***(2004) 134 STC 272 (Mad)***, whereby it was held that as per Section 4 of the Act, the Dealers are entitled to get benefit of adjusting the entry tax, which was already paid by the petitioner, against the sale tax liabilities and on the other hand, if the Dealers are not inclined for any such adjustment of entry tax, as per Section 11 of the Act, the Dealers are entitled for refund of entry tax, which was paid by them.

11. At this juncture, it would be apposite to extract Section 4 and 11 of the Act, which read as follows:

Section 4 of the Act:

4. Reduction in tax liability

(1) Where an importer of a motor vehicle liable to pay tax under this Act, being a dealer in Motor vehicles, becomes liable to pay tax under the General Sales Tax Act and additional sales tax under the Tamil Nadu Additional Sales Tax Act, 1970 (Tamil Nadu. Act XIV of 1970) by virtue of the sale of such motor vehicle, then his liability under those Acts shall be reduced to the extent of tax paid under this Act.

(2) Where an importer who, not being a dealer in motor vehicles, had purchased the motor vehicle for his own use in any Union Territory, or any other State then his liability under this Act shall, subject to such conditions as may be prescribed, be reduced to the extent of the amount of tax paid, if any, under the law relating to general sales tax as may be in force in that Union Territory or State.

Section 11 of the Act:

11. Refund of tax: *The assessing authority shall refund to a person the amount of tax and penalty, if any, paid by such person in excess of the amount due from him. The refund may be either by cash payment or, at the option of the person, by deduction of such excess from the amount of tax and penalty, if any, due from that person in* *respect of any other period:*

Provided that, the assessing authority shall first apply such excess towards the recovery of any amount due in respect of which a notice under sub-section (4) of Section 10 has been issued, and shall then refund the balance, if any.

12. A reading of the provisions of Section 4 of the Act makes it clear that if a dealer paid any entry tax at the time of importation of a vehicle, they are certainly entitled to get adjustment of the said amount against the sale tax liability, which has to be paid at the time of sale of said vehicle. However, in this case, the petitioner had sold their vehicles to the Military Canteen Stores Department, in which case, the entry tax paid on such vehicles cannot be adjusted towards any tax liabilities, since such sale is an exempted sales.

13. On the other hand, a reading of Section 11 of the Act makes it clear that if the Dealer is intend to obtain any such adjustment of excess entry tax, which was already paid, against the sale tax liabilities, they are

certainly entitled for refund of the said entry tax in terms of Section 11 of the Act.

14. Therefore, in terms of the above provisions of Section 4 and 11 of the Act and as per the law laid down by the Hon'ble Full Bench of this Court in ***Tamil Nadu vs. Ganesh Automobiles*** (referred supra), it is clear that the petitioner herein is entitled for benefit of adjusting the excess entry tax, which was paid at the time of importation, against the other tax liabilities. However, in this case, the vehicles were sold to Military Canteen Stores Department, which are exempted from payment of sale taxes, and hence, the entry tax paid on such vehicles cannot be adjusted towards any tax liabilities. When such being the case, the petitioner is certainly entitled for refund of excess entry tax.

15. As far as the demo cars are concerned, the impugned orders passed by the respondent, demanding the tax liability of a sum of Rs.1,36,000/- pertaining to the assessment year 2011-12 and a sum of Rs.79,913/- pertaining to the assessment year 2012-13, stands confirmed.

With regard to all other aspects, this Court is inclined to quash the impugned orders.

16. Accordingly, as stated above, the impugned orders dated 17.02.2023 are quashed on all the other aspects except the tax liability demanded by the respondent for demo cars.

17. In the result, these writ petitions are partly allowed. No costs. Consequently, the connected miscellaneous petitions are also closed.

10.02.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To

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