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W.P.No.19748 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2025

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.19748 of 2025

Greaves Electric Mobility Limited
Rep herein by its Director
Mr.Kunnakavil Vijaya Kumar
Plot No.72 Ranipet Industrial Park
SIPCOT, Ranipet, Tamil Nadu- 632403.

..Petitioner

Vs.

- 1 The Assistant Commissioner of Income Tax
Circle-1 Vellore 2 Barracks Cross Street
Officers Line, Vellore, Tamil Nadu- 632 001.
- 2 Principal Commissioner of Income tax, Coimbatore -1
No. 67 A Race Course Road, Race Course, Gopalpuram
Coimbatore, Tamil Nadu-641018.
- 3 The Assistant Director of Income Tax
Centralised Processing Centre
Income Tax Department,
1st Floor Prestige Alpha No.48/1, 48/2
Beratenaagrahara Begur, Hosur Rd
Uttarahalli Hobli, Bengaluru- 560 100.
- 4 The Directorate General of Income Tax (Systems)
Central Board of Direct Taxes,
Ministry of Finance, New Delhi-110001.

...Respondents



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Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the Respondents to forthwith refund an amount of Rs. 3,74,70,364/- being the demand raised for the assessment year 2016-17 vide the order dated 26.03.2022 passed under Section 144 read with Section 263 read with section 144B of the Income Tax Act 1961 and vide the order dated 23.09.2022 passed under Section 271(1)(c) of the Income Tax Act 1961 including interest levied under Section 220(2) of the Income Tax Act, 1961 adjusted against the refund due for the assessment year 2024-25 and direct the Respondents not to recover any portion of the demand pending disposal of the appeals before the CIT (A) filed by the petitioner on 20.09.2022 and on 14.10.2022 bearing acknowledgment nos. 510752460200922 and 722265140141022 respectively and further, to direct the first respondent to dispose of the rectification application dated 20.06.2024.

For Petitioner : Ms.Tanmayee Rajkumar
for M/s.King and Patridge

For Respondents : Dr.B.Ramaswamy,
Senior Standing Counsel



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Order

Heard Ms.Tanmayee Rajkumar learned counsel appearing for the petitioner and Dr.B.Ramaswamy, learned Senior Standing Counsel for the respondents.

2. The case of the petitioner in gist and kernel is as follows:-

i) The petitioner is a Company, engaged in the business of manufacturing and selling of electric two wheelers. For the assessment year 2016-17, the petitioner had filed their return of income, declaring a loss of Rs.2,30,30,735/-, but the same was selected for scrutiny assessment and the Assessing Officer passed an order dated 20.12.2018, accepting the return of income filed by the petitioner. Thereafter, the Principal Commissioner of Income Tax (for short, PCIT) initiated proceedings under Section 263 of the Act and passed an order dated 20.01.2021 directing the Assessing Officer to redo the assessment afresh. Pursuant thereto, the Assessing Officer has passed an order i) under Section 144 read with Section 263 r/w 144B of the Act by making an addition under Section 56 (2) (viib) of the Act of



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Rs.5,36,61,096/-,raising a demand of Rs.1,34,57,582/- and ii) order under

Section 271 (1) (c) of the Act levying penalty of Rs.1,77,41,968/-; that against the said two orders, the petitioner filed Appeals before the Commissioner of Income Tax (Appeals) [CIT (A)] on 20.09.2022 and 14.10.2022. The petitioner was directed by the first respondent to discharge 20% of the demand raised vide order dated 26.03.2022, subject to which, the balance demand raised vide the said order dated 26.03.2022 and 23.09.2022 would be stayed. Since more than 20% of the demand came to be discharged by the petitioner by way of adjustment of refunds for the assessment years 2021-22 to 2023-24, the petitioner sent a letter dated 14.03.2024, intimating the first respondent about the same and prayed for an order of stay till the disposal of the Appeals.

ii) The petitioner also filed a Rectification Petition before the Assessing Officer for not granting set off of the eligible unabsorbed depreciation, but the first respondent has not yet disposed of the said Rectification Petition. In the interregnum period, the petitioner received an e-mail from the third respondent intimating the petitioner that refund



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determined for the assessment year 2024-25 of Rs.3,74,70,364/- was adjusted towards the demand raised for the AY 2016-17.

3. The learned counsel appearing for the petitioner would submit that the respondent is not empowered to adjust the entire amount of refund towards the assessment year 2024-25 in respect of the demand raised for the assessment year 2016-17, inasmuch as, the petitioner has filed Appeals in respect of the demand raised by the first respondent for the AY 2016-17 by virtue of orders dated 26.03.2022 and 23.09.2022; that during the pendency of the Appeals, there was adjustment of refunds for the assessment years 2021-22 to 2023-24 against the demand raised vide orders dated 26.03.2022 and 23.09.2022, therefore, when the petitioner has already discharged Rs.20,00,000/- of the tax demand, the petitioner is entitled for stay and if stay is in force, no recovery can be initiated against the petitioner in respect of demand for the assessment year 2016-17.

3.1 Further, it is the contention of the learned counsel that the Assessing Officer has passed orders dated 26.03.2022 and 29.03.2022 solely



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on the ground that the Assessing Officer in the computation sheet had failed to grant set off of the brought forward unabsorbed depreciation and according to the petitioner, they are eligible to set off of the unabsorbed depreciation of Rs.3,44,30,837/-, and if the said amount is set off, then, there would be no demand payable by the petitioner, and therefore, setting out the said facts, the petitioner has filed a Rectification Petition before the Assessing Officer dated 20.06.2024.

3.2 The learned counsel appearing for the petitioner would further submit that the petitioner also filed an application for refund for the assessment year 2024-25, but the same was rejected and hence, the petitioner made a representation seeking appropriate relief, but the same is not yet disposed of, but, in the interregnum, the petitioner, to their shock and surprise, received an e-mail from the third respondent intimating the petitioner that the refund determined for the assessment year 2024-25 of Rs.3,74,70,364/- was adjusted towards the demand raised for the AY 2016-17.

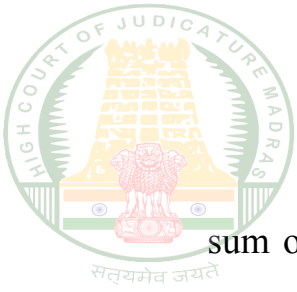


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3.3 Therefore, the learned counsel submits that, once the petitioner

has discharged 20% of the tax demand by way of adjustment made towards refund for the AY 2021-22 to 2023-24, the balance demand for the AY 2016-17 ought to have been stayed, therefore, sought for stay of the orders dated 26.03.2022 and 23.09.2022 pending disposal of the Appeals and also to direct the first respondent to dispose of the Rectification Petition dated 20.06.2024 and to issue appropriate directions on the respondent-Department to forthwith refund a sum of Rs.3,74,70,364/- for the AY 2024-24 which has been adjusted by the respondent-Department in respect of the tax demand for the AY 2016-17.

4. The learned Senior Standing Counsel for the respondents would submit that the petitioner has sought for very many prayers, and that, if the petitioner's grievance is with regard to the non-disposal of the Rectification Petition, the same would be disposed by the respondent No.1 on merits in a time bound manner, if a direction is issued by this Court. Further, it is contended that 20% of the tax demand out of the total demand of Rs.3,11,99,550/- in respect of the AY 2016-17 would comes around to a



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sum of Rs.63,00,000/- and not Rs.20,00,000/- as alleged by the petitioner,

however, since it is the contention of the petitioner that in respect of the said demand only, the petitioner has preferred Appeals, till the disposals of the Appeals, the first respondent/Assessing Officer may be directed to defer the recovery proceedings. So far as the petitioner's claim towards refund for the AY 2024-25 is concerned, the same would be considered and appropriate orders would be passed.

5. I have given due consideration to the submission made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent and perused the materials placed on record.

6. The petitioner has filed this Petition seeking for an issuance of a writ, in the nature of mandamus, firstly, to direct the respondents to forthwith refund an amount of Rs.3,74,70,364/- being the demand raised for the assessment year 2016-17 vide the orders dated 26.03.2022 and 23.09.2022, including interest levied under Section 220(2) of the Income Tax Act, 1961 adjusted against the refund due for the assessment year 2024-

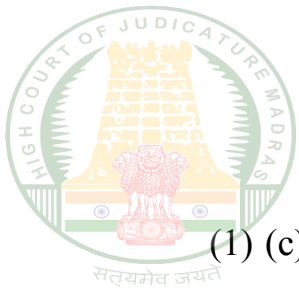


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25. Secondly, to direct the respondents not to recover any portion of the demand pertaining to the AY 2016-17 pending disposal of the Appeals before the CIT (A) filed by the petitioner on 20.09.2022 and on 14.10.2022 and further, iii) to direct the first respondent to dispose of the Rectification Application dated 20.06.2024 filed before the Assessing Officer in a time bound manner.

7. Though the reliefs, which petitioner seeks vide this single Writ Petition is manifold in nature, considering the fact that such reliefs are interlinked with one another, this Court is inclined to dispose of this Writ Petition granting such reliefs.

8. For the assessment years 2016-17, the Assessing Officer has passed an i) order under Section 144 read with Section 263 r/w 144B of the Income Tax Act, 1961 (hereinafter, referred to as 'I.T. Act') dated 26.03.2022 by making an addition under Section 56 (2) (viib) of the Act of Rs.5,36,61,096/- and raising a demand of demand of Rs.1,34,57,582/-. The Assessing Officer also passed an order dated 23.09.2022 under Section 271



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(1) (c) of the Act and levied a penalty of Rs.1,77,41,968/-. Thus, the total tax demand made for the AY 2016-17 comes to a sum of Rs.3,11,99,550/-

8.1 It is the contention of the learned counsel for the petitioner that the petitioner is eligible to set off of the unabsorbed depreciation of Rs.3,44,30,837/-, and if the said amount is set off, then, there would be no demand payable from the hands of the petitioner. However, the Assessing Officer, while passing the orders dated 26.03.2022 and 23.09.2022, in the computation sheet, had failed to grant such set off of the brought forward unabsorbed depreciation, and therefore, the petitioner has filed a Rectification Petition before the Assessing Officer dated 20.06.2024 setting out the said facts, apart from filing Appeals before the Commissioner of Income Tax (Appeals) [CIT (A)] on 20.09.2022 and 14.10.2022.

8.2 In the Appeals preferred against the orders dated 26.03.2022 and 23.09.2022, the first respondent has directed the petitioner to discharge 20% of the tax demand pertaining to the AY 2016-17, subject to which, Stay would be granted. However, since more than 20% of the demand stood



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discharged by the petitioner by way of adjustment of refunds for the assessment years 2021-22 to 2023-24, the petitioner sent a letter dated 14.03.2024, intimating the first respondent about the same and prayed for an order of stay till the disposal of the Appeals. However, the first respondent, for the reasons best known to him, has not granted stay.

8.3 Further, for the AY 2024-25, the petitioner also filed an Application for refund, however, such Application came to be rejected by the respondent-Department, and therefore, the petitioner has made a representation seeking refund, but, the same is not yet disposed of. However, in the interregnum, the petitioner to their shock and surprise received an e-mail from the third respondent intimating that the refund determined towards the AY 2024-25 has been adjusted towards the demand raised for the AY 2016-17.

8.4 It is the main contention of the learned counsel for the petitioner that the respondent-Department is not empowered to adjust entire amount of refund towards the assessment year 2024-25 for the demand raised towards



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the assessment year 2016-17, inasmuch as, in respect of the very tax demand raised by the first respondent vide orders dated 26.03.2022 and 23.09.2022 for the AY 2016-17 only, the petitioner has preferred Appeals and seeking rectification of such orders only, the petitioner has filed a Petition dated 20.06.2024 before the first respondent and as on date, both the Appeals as well as the Rectification Petition are pending. Further, in view of the first respondent having directed the petitioner to deposit 20% of the demand in pursuance of such orders dated 26.03.2022 and 23.09.2022, failing which, Stay would not be granted, the petitioner has complied with such direction and deposited a sum of Rs.20,00,000/- of the tax demand and balance by way of adjustment towards refund for the AY 2021-22 and 2023-24

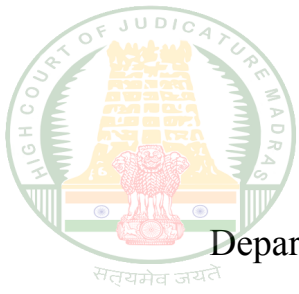
8.5 Therefore, when the petitioner has already discharged 20% of the tax demand, the petitioner is entitled for stay and if stay is in force, no recovery can be initiated against the petitioner in respect of demand for the assessment year 2016-17, pursuant to the orders passed by the Assessing Officer dated 26.03.2022 and 23.09.2022. When that being the case, it is not known, as to why, the respondent-Department had hurriedly rejected the



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petitioner's Application for refund for the AY 2024-25 and adjusted the refund for the said assessment year in respect of the tax demand for the assessment year 2016-17, when admittedly, the Rectification Petition and Appeals and Stay Petitions are pending. Thus, this Court finds clear arbitrariness on the part of the respondents in initiating recovery proceedings and recovering the demand by not considering the application for stay filed by the petitioner, despite compliance of the direction issued by the first respondent in depositing 20% of the tax demand for grant of stay by way of adjustment towards refund for the assessment years 2021-22 and 2022-23.

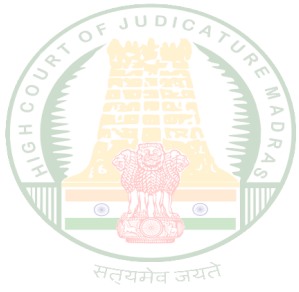
8.6 Therefore, as rightly pointed out by the learned counsel for the petitioner, even assuming for argument's sake that the petitioner has not discharged 20% of the tax demand for grant of stay in the Appeals, the total tax demand that is payable by the petitioner for the AY 2016-17 itself would come around only to a sum of Rs.3,11,99,550/-, of which, 20% of the discharge for grant of stay would come around only to a sum of Rs.63,00,000/-, and therefore, it is not fair on the part of the respondent-



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Department in retaining a sum of Rs.3,74,70,364/- and since substantial sum of amount is retained by the respondent-Department, the petitioner is finding difficult to run their business, as the petitioner is a Company engaged in the business of manufacturing and selling of electric two wheelers, and unless and until, refund for the AY 2024-25 is granted, the petitioner will not be in a position to disburse the salary to the employees, and if this situation prevails, they would be put to irreparable hardship and there is much possibility of their business coming to a standstill. However, the respondent-Department rejected the petitioner's refund application made for the AY 2024-25, to which, the petitioner is legally entitled to.

8.7. This Court find considerable force in the submission made by the learned counsel for the petitioner. However, taking into consideration of the submission now made by the learned counsel for the petitioner, who would aver that a sum of Rs.50,00,000/- may be retained over and above Rs.20,0,000/- already paid by the petitioner, which comes around to more than 20% of the total dispute tax demand, legally, the petitioner is entitled for stay.



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9. In the light of the above narrated facts and circumstances of the case, this Court is inclined to dispose of the present Writ Petition by issuing the following directions:-

i) The first respondent is directed to dispose of the Refund Application filed by the petitioner and grant refund of Rs.3,000,0000/- (Rupees Three Crores only) along with interest within a period of four weeks from the date of receipt of a copy of this order.

ii) The first respondent is also directed to dispose of the Rectification Petition filed by the petitioner's dated 20.06.2024 within a period of four weeks.

iii) Further, the first respondent is directed to defer the recovery proceedings in pursuance of the orders passed by the respondent-Department dated 26.03.2022 and 23.09.2022 till the disposal of the Appeals filed by the petitioner dated 20.09.2022 and 14.10.2022 pending on the file of the CIT (A).



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10. In fine, this Writ Petition is disposed of on the aforesaid terms.

No costs.

20.06.2025

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Index : yes/no

Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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