

(2010) 01 MAD CK 0149

Madras High Court

Case No: W. A. No's. 546 to 548 of 2006

Commercial Tax Officer,
Peelamedu South Assessment
Circle Coimbatore

APPELLANT

Vs

Coimbatore Auto Carage (P) Ltd.

RESPONDENT

Date of Decision: Jan. 20, 2010

Acts Referred:

- Entry Tax Act, 1976 - Section 3
- Tamil Nadu General Sales Tax Act, 1959 - Section 10(4), 11, 55
- Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 - Section 4

Citation: (2011) 45 VST 69

Hon'ble Judges: P.P.S. Janarthana Raja, J; D. Murugesan, J

Bench: Division Bench

Advocate: Haja Naziruddin, Special Government Pleader T, for the Appellant; R. Hemalatha, for the Respondent

Final Decision: Dismissed

Judgement

D. Murugesan, J.

In all these appeals, a common question is involved as to whether an assessee would be entitled to the adjustment of tax while they pay the sales tax under the provisions of the Tamil Nadu General Sales Tax Act, 1959, to the extent of tax paid under the provisions of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 or not ?

2. The respondent-assessee is a dealer in automobiles and spare parts and is an assessee on the file of the Commercial Tax Officer, Peelamedu South Assessment Circle, Coimbatore. According to the assessee, they used to import automobiles from other States and when the automobiles were brought into the State for the assessment years 1998-99, 1999-2000 and 2000-01 they had paid entry tax at the

rate of 13 per cent under the provisions of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 (for short, "the Entry Tax Act"). As they are also liable to pay sales tax, accordingly, they had paid sales tax at the rate of 11 per cent and 12 per cent, respectively, for the assessment years in question under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (for short, "the TNGST Act"). In terms of section 4 of the Entry Tax Act, they are entitled to the adjustment of tax while they pay the sales tax and further entitled to the refund of the excess amount of tax paid by way of entry tax in terms of section 11 of that Act. As the said claim of the assessee was not considered, the assessee approached this court by way of the writ petitions seeking for a direction to the Revenue to refund a sum of Rs. 2,70,332, Rs. 4,83,880 and Rs. 8,08,811, respectively, which were paid in excess by way of entry tax for the assessment years 1998-99, 1999-2000 and 2000-01. Those writ petitions came to be allowed following the judgment of a Division Bench of this court in [State of Tamil Nadu and Another Vs. Ganesh Automobiles, .](#) Aggrieved by the above order, the present appeals have been preferred by the Revenue.

3. Mr. Haja Naziruddin, learned Special Government Pleader (Taxes), appearing for the appellant-revenue would submit that the Division Bench had rendered the judgment on the facts and circumstances of that case, where it was admitted by the assessing officer as to the availability of the excess amount of entry tax and that the only challenge was that there was no provision for refund of the excess tax paid. The said Division Bench judgment was considered by a learned single judge of this court in [Khivraj Motors Limited Vs. Assistant Commissioner \(CT\) and Another](#), and had observed that the Division Bench judgment cannot be made applicable to all cases generally, as it was decided on the facts and circumstances of that case. As far as the issue in the present appeals are concerned, the learned Special Government Pleader would submit that the judgment of the Division Bench is not applicable.

4. We have heard Mrs. R. Hemalatha, learned counsel for the respondent-assessee also.

5. We have carefully considered the submissions. In our opinion, the submission made by the learned Special Government Pleader deserves to be rejected. The [State of Tamil Nadu and Another Vs. Ganesh Automobiles](#), considered the scope of section 4 as well as section 11 of the Entry Tax Act and found that whenever excess tax was paid by way of entry tax, it could be adjusted by the assessee while paying the sales tax to the extent of excess amount paid. If any excess amount is paid, the assessee is entitled to refund in terms of section 11 of the Entry Tax Act. In this context, the relevant sections of the Entry Tax Act can be usefully extracted hereunder :

3. Levy of tax.--(1) Subject to the provisions of this Act, there shall be levied and collected a tax on the entry of any motor vehicles into any local area for use or sale therein which is liable for registration, or for the assignment of a new registration

mark, in the State under the Motor Vehicles Act, 1988 (Central Act 59 of 1988). The rate of tax shall be at such rate or rates, not exceeding twenty per cent, as may be fixed by the Government, by notification, on the purchase value of the motor vehicles :

Provided that in respect of any motor vehicle which was registered in any Union Territory or any other State under the law relating to motor vehicle :

(a) before the September 10, 1996, no tax shall be levied and collected, if the owner of such vehicle applies for the assignment of a new registration mark in this State after a period of fifteen months from the date of its registration;

(b) on or after September 10, 1996, no tax shall be levied and collected, if the owner of such vehicle applies for the assignment of a new registration mark in this State after a period of eighteen months from the date of its registration.

Explanation.--For the purpose of this proviso, the expression "law relating to motor vehicle" means the Motor Vehicles Act, 1939 or the Motor Vehicles Act, 1988, as the case may be.

(2) The tax shall be payable by an importer in such manner and within such time as may be prescribed.

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.

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.

6. Section 3 of the Entry Tax Act relates to the levy of tax. There is no dispute that the rate of entry tax is 13 per cent on the purchase value whenever the automobiles

enter into the State from other States after the same are brought by the assessee for sale. Section 4 relates to the reduction in tax liability. Sub-section (1) provides that where an importer of a motor vehicle liable to pay tax under the Act, being a dealer in motor vehicles, becomes liable to pay tax under the TNGST Act by virtue of the sale of such motor vehicle, then his liability under the TNGST Act shall be reduced to the extent of tax paid under the Entry Tax Act. This provision is applicable to an importer of motor vehicle being a dealer in motor vehicles, who is liable to pay sales tax under the TNGST Act. There is no dispute that the respondent-assessee is a dealer in automobiles and they had imported automobiles from other States and also paid the entry tax in terms of section 3 of the Entry Tax Act. If that be the position, in view of section 4 of the said Act, their liability under the TNGST Act is reduced to the extent of tax paid under the Entry Tax Act. This is what exactly held by the Division Bench in [State of Tamil Nadu and Another Vs. Ganesh Automobiles,](#)).

7. In view of the above, we will have to consider as to whether the assessee has paid higher amount of entry tax so as to claim the benefit of section 4(1) while they pay the sales tax. In W. A. No. 546 of 2006 relating to the assessment year 1998-99, the assessee had paid a sum of Rs. 26,10,494 by way of entry tax at the rate of 13 per cent on the purchase value of the automobiles. Correspondingly, they have paid sales tax in a sum of Rs. 23,40,162 at the rate of 11 per cent. The excess collection of entry tax comes to Rs. 2,70,332 and to this extent, the assessee is entitled to the refund of Rs. 2,70,332 as prayed for in the writ petition. In W. A. No. 547 of 2006 relating to the assessment year 1999-2000, the assessee had paid a sum of Rs. 81,80,269 by way of entry tax at the rate of 13 per cent on the purchase value of the automobiles. Correspondingly, they have paid sales tax in a sum of Rs. 51,61,667 and Rs. 25,34,722 at the rate of 11 per cent and 12 per cent totalling Rs. 76,96,389. The excess collection of entry tax comes to Rs. 4,83,880 and to this extent, the assessee is entitled to the refund of Rs. 4,83,880 as prayed for in the writ petition. In W. A. No. 548 of 2006 relating to the assessment year 2000-01, the assessee had paid a sum of Rs. 1,31,13,532 by way of entry tax at the rate of 13 per cent on the purchase value of the automobiles. Correspondingly, they have paid sales tax in a sum of Rs. 1,23,04,721 at the rate of 12 per cent. The excess collection of entry tax comes to Rs. 8,08,811 and to this extent, the assessee is entitled to the refund of Rs. 8,08,811 as prayed for in the writ petition.

8. From the above, it is seen that for the three assessment years in question, the respondent-assessee had paid the excess amount of entry tax and hence they are entitled to the refund in terms of section 11 read with section 4 of the Entry Tax Act. To this extent, we are entirely in agreement with the judgment of the Division Bench in [State of Tamil Nadu and Another Vs. Ganesh Automobiles,](#) . As regards the submission of the learned Special Government Pleader as to the order of the learned single judge in [Khivraj Motors Limited Vs. Assistant Commissioner \(CT\) and Another,](#) we may observe that the said judgment was rendered in a different

context while the learned judge was dealing with a case that arose u/s 55 of the TNGST Act relating to the rejection of the rectification application, the learned judge found that the judgment in [State of Tamil Nadu and Another Vs. Ganesh Automobiles](#) cannot be uniformly applied to all cases and he did not apply the said judgment to a case where the rectification application was rejected. Moreover, our attention is also drawn to the fact that the said judgment of the learned single judge is also questioned in W. A. Nos. 3201 to 3204 of 2004, which are also listed before this court. Therefore, we are not expressing any opinion on the said judgment except to observe that the said judgment was rendered while considering an application filed u/s 55 of the TNGST Act for rectification was rejected and in that context the refund of tax is permissible or not. For all the above reasons, we do not find any merit in the appeals and accordingly, the writ appeals are dismissed. Consequently, interim stay stands vacated and the W. A. M. P. Nos. 1130 to 1132 of 2006 are also dismissed. No costs.