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In the Madras High Court

Case No : Writ Appeal No. 1228 of 1995

State of Tamil Nadu and Another — APPELLANT

Vs

Ganesh Automobiles — RESPONDENT

Date of Decision : 26-09-2001

Acts Referred:

Tamil Nadu Tax on Entry of Motor Vehicles Into Local Areas Act, 1990 — Section 10, 10(4), 11, 3, 3(1)

Citation : (2004) 134 STC 272

Hon'ble Judges : C. Nagappan, J;A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : S.V. Radhakrishnan, for the Appellant; N. Muralikumaran, for the Respondent

Final Decision : Dismissed

Judgement

S.M. Ali Mohammed, J.—By consent of both parties, the main writ petition itself is taken up for final disposal. The petitioner, which is a registered partnership-firm is a dealer in automobiles and is an authorised dealer for Hero Majestic Moped, Hero Puch Bike, API three wheelers and two wheelers. The petitioner-firm is an assessee under the Tamil Nadu General Sales Tax Act, 1959.

2. The partner of the petitioner-firm in his affidavit filed in support of the writ petition has stated that the petitioner has paid entry tax to the tune of Rs. 1,15,000 for the assessment year 1992-93, to the second respondent under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990. He has further submitted that the said firm was assessed by the second respondent by the assessment order dated September 15, 1993 in T.N.G.S.T. No. 554783/92-93 and a demand of Rs. 2,89,274 towards tax and Rs. 3,425 towards surcharge and Rs. 3,616 towards additional surcharge was raised. The amount paid by the petitioner-concern by way of entry tax was not adjusted by the second respondent, while passing the assessment order.

It is contended that the petitioner is entitled for a sum of Rs. 57,525 as refund.

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The petitioner therefore, prays for a direction to the respondents to adjust the amount under Sections 4 and 11 of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act by way of refund out of the entry tax paid by the petitioner. In the additional affidavit filed by the petitioner, it is stated that the petitioner has paid Rs. 1,15,150 as entry tax and the sales tax due to be paid is Rs. 65,487, surcharge Rs. 9,823 additional sales tax Rs. 20,203 totalling to Rs. 95,515. Therefore, the petitioner submits that he is entitled for the refund of Rs. 16,635. It is further stated that the petitioner made representation on February 6, 1994 for the refund of the said sum to the respondents. The respondents have not replied to his request. Aggrieved by the same, the petitioner has filed the writ petition.

3. A counter-affidavit has been filed on behalf of the respondents and in paragraph 3 it is stated as follows :

"The petitioners are dealers in Hero Majestic Mopeds and Hero Puch Mopeds and their spare parts. They are registered dealers and assessees under the Tamil Nadu General Sales Tax Act, 1959, on the file of the Commercial Tax Officer, Vellore (South). They effected purchase of two wheelers from outside the State. They were liable to pay tax at eight per cent u/s 3(1) of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 in their capacity as an importer of two wheelers. They were also liable to pay tax under the Tamil Nadu General Sales Tax Act, 1959 on their sales of motor cycles within the State at four per cent up to March 11, 1993 and at five per cent with effect from March 12, 1993 to March 31, 1993. u/s 4(1) of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 where an importer of a Motor Vehicles liable to pay tax under the Act, being a dealer in motor vehicles becomes liable to pay tax under the Tamil Nadu General Sales Tax Act, additional sales tax under Tamil Nadu Additional Sales Tax Act, surcharge and additional surcharge under Tamil Nadu Sales Tax (Surcharge) Act, by virtue of the sale of such motor vehicles, then his liability under the Tamil Nadu General Sales Tax Act, 1959 shall be reduced to the extent of tax paid under the Entry Tax Act. During the year 1992-93, the petitioners were found liable to tax under the Tamil Nadu General Sales Tax Act, 1959 to an extent of Rs. 95,513 comprising a tax of Rs. 20,203. The entry tax paid by them on the inter-State purchase value of 198 mopeds was Rs. 1,15,150. As provided u/s 4 of the Tamil Nadu Entry Tax Act, the liability of the petitioners under the Tamil Nadu General Sales Tax Act, 1959 was reduced to the extent of tax paid under the Entry Tax Act. The entry tax paid by them was adjusted towards the tax due for the year 1992-93 under the Tamil Nadu General Sales Tax Act, 1959 which worked out to Rs. 95,515. Consequently, no demand was raised for the tax due under the Tamil Nadu General Sales Tax Act, 1959 for the year 1992-93. The question of refund of entry tax does not arise, as it is not contemplated so under the Entry Tax Act."

4. It is contended by the learned counsel for the petitioner that by virtue of Section 4(1) of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas

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Act, the petitioner is entitled for reduction of his liability in the payment of tax due under the Tamil Nadu General, Sales Tax Act. On the other hand, the learned Government Advocate submits that out of the entry tax paid by the petitioner-firm, i.e., Rs. 1,15,150, a sum of Rs. 95,513 was adjusted towards the tax payable under the Tamil Nadu General Sales Tax Act for the year 1992-93 and for subsequent tax due by the petitioner-assessee firm.

5. I have considered the contentions of the learned counsel for the parties. It is the admitted fact that the petitioner-firm had paid a sum of Rs. 1,15,150 towards the entry tax under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990. The point for consideration is whether the petitioner is entitled to reduction of his liability for the tax due under Tamil Nadu General Sales Tax Act and for refund of the same? Section 3 of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 reads as follows:

"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 in the State under the Motor Vehicles Act, 1988. The rate of tax shall be at such rate or rates as may be fixed by the Government by notification on the purchase value of the motor vehicle but not exceeding the rates prescribed for motor vehicles in the First Schedule to the General Sales Tax Act :

Provided that no tax shall be levied and collected in respect of any motor vehicle which was registered in any Union Territory or any other State under the law relating to motor vehicle prior to a period of fifteen months or more from the date on which it is registered in the State.

Explanation.--For the purpose of this proviso the expression ''law relating to a 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."

Section 4 of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 reads as follows :

"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 by virtue of the sale of such motor vehicle, then his liability under the General Sales Tax Act 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."

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A combined reading of Sections 3 and 4 of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 it is clear that tax collected by way of entry tax paid by an assessee, the said assessee, by virtue of Section 4 of the said Act, is entitled to the reduction in tax liability payable under Tamil Nadu General Sales Tax Act, additional sales tax under Tamil Nadu Additional Sales Tax Act and surcharge and additional surcharge under Tamil Nadu Sales Tax (Surcharge) Act, by virtue of sales of motor vehicles and as such the assessee the petitioner-firm is entitled to reduce its liability to the extent of the tax paid under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act 1990. In view of the clear provisions of the said Act, the petitioner-firm is entitled to reduce its liability of tax payable under the enactment enumerated in Section 4 of the Act to the extent of entry tax paid u/s 3 of the Act. In view of the above, the petitioner-firm is entitled to a reduction of a sum of Rs. 1,15,150 from the tax as enumerated u/s 4 of the Act. I am unable to accept the contention of the learned counsel for the respondents that the petitioner is not entitled to refund of the tax payable under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 after adjustment. In this connection, Section 11 of the Act specifically provides for such refund. Section 11 of the Act reads as follows :

"Section 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."

In view of the clear provisions of Section 11 of the Act, the petitioner-firm is entitled for refund of entry tax paid after adjusting the tax payable by the petitioner under the Tamil Nadu General Sales Tax Act. Therefore, I am of the view that the respondents are bound to refund the tax collected by way of entry tax after deducting the tax payable by the petitioner under the Tamil Nadu General Sales Tax Act. In the instant case there is some dispute with regard to the amount of tax payable by the petitioner-firm under the Tamil Nadu General Sales Tax Act. In view of the above, the writ petition is allowed with the direction to the second respondent to hold an enquiry with regard to the sales tax payable by the petitioner-firm during material time. The petitioner is entitled to adjust a sum of Rs. 1,15,150 from the amount of sales tax due and the balance shall be refunded to the petitioner. The second respondent shall give adequate opportunity to the petitioner before passing any order. Ordered accordingly. No order as to costs.

JUDGMENT

C. Nagappan, J.—This writ appeal has been preferred against the order of the

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learned single Judge, dated February 8, 1995, in Writ Petition No. 10954 of 1994 on the file of this Court.

2. The respondents are the appellants herein.

3. The petitioner, a registered partnership firm, is an authorised dealer for Hero Moped, Hero Puch Bike, API three wheelers and two wheelers and it is an assessee under the Tamil Nadu General Sales Tax Act, 1959. The petitioner has paid entry tax to the tune of Rs. 1,15,150 for the assessment year 1992-93 to the second respondent under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990. The firm was assessed by the second respondent in assessment order dated September 15, 1993, and a demand of Rs. 2,89,274 towards tax and Rs. 3,425 towards surcharge and Rs. 3,616 towards additional surcharge was raised. The amount paid by the petitioner as entry tax was not adjusted by the second respondent while passing the above assessment order. The petitioner is entitled for a sum of Rs. 57,525 as refund.

The petitioner in his additional affidavit has contended that it has paid a sum of Rs. 1,15,150 as entry tax and the sales tax due to be paid is Rs. 65,487 surcharge Rs. 9,825 and additional sales tax Rs. 20,203 totalling to Rs. 95,515. The petitioner is entitled for the refund of Rs. 16,635. The petitioner gave representation on February 6, 1994 for the refund of the said sum to the respondents. But, there was no reply. The petitioner prayed for issue of a writ of mandamus directing the respondents to refund the excess amount of entry tax paid after adjustment as provided for under the Act.

4. The respondents in their counter-affidavit denied the claim of the petitioner and contended as follows. The petitioners are registered dealers and assessees under the Tamil Nadu General Sales Tax Act, 1959 and they effected purchase of two wheelers from outside the State and they were liable to pay tax at eight per cent u/s 3(1) of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 in their capacity as an importer. They are also liable to pay tax under the Tamil Nadu General Sales Tax Act, 1959 on their sales of motor cycles within the State at four per cent up to March 11, 1993 and at five per cent with effect from March 12, 1993 to March 31, 1993. u/s 4(1) of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990, where an importer of motor vehicles liable to pay tax under the Act, being a dealer, liable to pay tax under Tamil Nadu General Sales Tax Act, surcharge and additional surcharge under the Tamil Nadu Sales Tax (Surcharge) Act, by virtue of the sale of each motor vehicle, his liability under the Central Sales Tax Act shall be reduced to the extent of tax paid under the Entry Tax Act. During the year 1992-93, the petitioners were found liable to tax under the TNGST Act to an amount of Rs. 95,513 comprising a tax of Rs. 20,203. The entry tax paid by them on the inter-State purchase value of 198 mopeds, was Rs. 1,15,150. As provided u/s 4 of the Tamil Nadu Entry Tax Act. The liability of the petitioners under the TNGST Act was reduced to the extent of tax paid under the Entry Tax Act. The entry tax paid by the petitioner was adjusted towards the tax due for the year 1992-93 under this Act, which worked

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out to Rs. 95,515. Consequently, no demand was raised for the tax due under the TNGST Act for the year 1992-93. The question of refund of entry tax does not arise as it is not contemplated under the Entry Tax Act.

5. The learned single Judge, on a consideration of the matter came to the conclusion that the respondents are bound to refund the tax collected by way of entry tax after deducting the tax payable by the petitioner under the Tamil Nadu General Sales Tax Act and in view of some dispute with regard to the amount of tax payable by the petitioner-firm, there is a need for an enquiry with regard to the sales tax payable by the petitioner-firm and accordingly allowed the writ petition with a direction to the second respondent to hold an enquiry and if there is any balance remaining the same has to be refunded to the petitioner. Aggrieved by the same, the respondents have preferred the present appeal.

6. Admittedly, the petitioner-firm had paid a sum of Rs. 1,15,150 towards entry tax under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 and according to the petitioner, by virtue of Section 4(1) of the Act, it is entitled for reduction of its liability in the payment of tax due under the Tamil Nadu General Sales Tax Act and the entry tax paid in excess of the sales tax due has to be refunded to the petitioner. According to the respondents, the, petitioner paid entry tax of Rs. 1,15,150 and the sales tax due by them for the relevant year worked out to Rs. 95,513 and it was adjusted from the entry tax paid and there is no provision under the Entry Tax Act to refund the excess entry tax paid by the petitioner.

7. The respondents admit that there is availability of excess amount, but, they contend that there is no provision for refund under the Act. The above contention of the respondents is not correct, since Section 11 of the Act provides for refund of tax under the Act in question. The learned single Judge has also pointed out the above section and relied on it. As per Section 11, the assessing authority shall refund to the person the amount of tax and penalty if any paid by such person in excess of the amount due from him. Section 10 of the Act provides for payment of entry tax and Section 11 of the Act provides for refund of excess tax paid. In the present case, after adjusting the tax payable by the petitioner under the Tamil Nadu General Sales Tax Act in the entry tax paid, there is availability of excess amount of tax paid by the petitioner and as such, the petitioner is entitled for refund of such excess amount. In view of some dispute with regard to the amount of tax payable by the petitioner under the Tamil Nadu General Sales Tax Act, the learned single Judge has directed the second respondent to hold an enquiry in this regard and refund the balance if any. We agree with the reasonings of the learned single Judge and there are no merits in the appeal.

8. In the result, the writ appeal is dismissed.

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