BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
( Special Original Jurisdiction )

Monday, the Fourth day of December Two Thousand Seventeen

PRESENT

**The Hon`ble Mr.Justice P.D.AUDIKESAVALU**

WMP(MD) No.15862 of 2017
IN
WP(MD) No.19590 of 2017

P.K.MOOKANAMBALAM & CO
REP.BY ITS PARTNER,
Mr.A.SHAMMI ... PETITIONER

Vs

1 THE STATE OF TAMIL NADU
REP. BY THE SECRETARY TO THE GOVERNMENT,
COMMERCIAL TAXES DEPARTMENT, FORT ST.GEORGE,
CHENNAI - 600009.

2 THE ASSISTANT COMMISSIONER(CT)
THALLAKULAM ASSESSMENT CIRCLE, C.T.BUILDINGS,
DR.THANGARAJ SALAI, MADURAI - 625 020.

3 THE REGISTERING AUTHORITY
REGIONAL TRANSPORT OFFICER,
MADURAI NORTH, MADURAI. ... RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to issue an Interim Direction directing the 3rd respondent herein to re register the petitioners Road Roller, Case New Holland make, bearing Chassis No.NKJ1107EPHKT00400 purchased from Maharashtra State and assigned temporary registration No. 4100046 dated on 15.05.2017 without insisting on the payment of 15% of the levy and without insisting on the payment of Entry Tax and Penalty or without insisting on the No Objection Certificate from the 2$^{nd}$ respondent.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.M.SRIDHARAN, Advocate for the petitioner and of Mr.R.KARTHIKEYAN, Additional Government Pleader on behalf of the Respondents, the court made the following order:-

It is submitted by the learned counsel appearing on both sides that the Constitution Bench of Seven Judges of the Hon'ble Supreme Court of India by ***Judgment dated 11.11.2016 in Civil Appeal No.3453 of 2012 (Jindal Stainless Ltd., & Another -vs- State of Haryana & Others)*** has answered questions of law regarding the levy of entry tax in favour of the Revenue and the following questions of law framed now remain to be decided by the regular Benches of the

Hon'ble Supreme Court of India:-

" *A. Whether providing different rate of tax for the goods manufactured within the State, with that of the goods brought from outside the State amounts to hostile discrimination and thereby, violative of Article 304 of the Constitution of India?*

*B. Whether the entire State can be a Local Area or not?"*

2. It has been brought to the notice of this Court that when the aforesaid reference before the Constitution Bench of Seven Judges of the Hon'ble Supreme Court of India was pending, this Court had been granting orders for registration of vehicles from the other states on condition of payment of 15% of the amount of entry tax claimed by the respondent. In that backdrop, the petitioner who seeks to re-register a Road Roller that has been purchased by him, before the third respondent, has filed the present Writ Petition.

3.Having regard to the fact that main issues have already been decided by the Hon'ble Supreme Court of India in favour of the revenue, the learned Additional Government Pleader (taxes) submits that if the petitioner is not willing to remit the entire amount of entry tax due as a pre-condition for re-registering his road roller in the state of Tamil Nadu, he should be directed to remit atleast 50% of that amount of entry tax due and hand over the custody of the original copy of the registration certificate of that vehicle to the second respondent till the matter is finally decided by the Hon'ble Supreme Court of India, as security to ensure recovery of the balance amount due from him, in addition to execution of an undertaking that he shall not alienate or create any encumbrance on that vehicle. There is substantial force in that contention of the learned Additional Government Pleader (taxes).

4.In the circumstances, if the petitioner remits 50% of the entry tax and agrees to hand over the custody or the Original copy of the Registration Certificate of the vehicle to the second respondent and undertakes that he shall not alienate or create any encumbrance on that vehicle as security to ensure recovery of the balance amount due from him, the third respondent shall register the vehicle of the petitioner subject to the result of the decision awaited from the Hon'ble Supreme Court of India in the matter.

Post the Writ Petition for final hearing after the matter referred supra in the Hon'ble Supreme Court of India is disposed.

sd/-
04/12/2017

/ TRUE COPY /



Sub-Assistant Registrar (C.S.)

TO

1 THE SECRETARY TO THE GOVERNMENT,
COMMERCIAL TAXES DEPARTMENT, FORT ST.GEORGE,
CHENNAI - 600009.

2 THE ASSISTANT COMMISSIONER(CT)
THALLAKULAM ASSESSMENT CIRCLE, C.T.BUILDINGS,
DR.THANGARAJ SALAI, MADURAI - 625 020.

3 THE REGISTERING AUTHORITY
REGIONAL TRANSPORT OFFICER, MADURAI NORTH,
MADURAI.

+1. C.C. to M/S.M.SRIDHARAN Advocate SR.No.35489

ORDER
IN
WMP(MD) No.15862 of 2017
IN
WP(MD) No.19590 of 2017
Date :04/12/2017

sj
SH/CM/SAR-4:27.12.2017:2p/5c