IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.10376 of 2002

Hyundai Motor India Limited
rep. by its Senior Manager (Finance)
(Power of Attorney Holder)
Plot No.H-1, SIPCOT Industrial Park
Irungattukottai, Sriperumbudur Taluk
Kancheepuram District. .. Petitioner

Vs

The Commercial Tax Officer
Mylapore Assessment Circle
Chennai - 600 028. .. Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records on the file of the respondent herein in Entry Tax No.3/98-99, dated 1.4.1999 and quash the same and consequently direct the respondent to restore to the petitioner herein the sum of Rs.61,10,233/-.

For Petitioner : Mr.K.Narayanan
for Mr.N.Prasad

For Respondent : Mr.Mohammed Shaffiq
Special Government Pleader

ORDER
(Order of the Court was made by The Hon'ble Acting Chief Justice)

The learned counsel for parties at bar submit that the controversy involved in the present case regarding imposition of Entry Tax on vehicles, which were imported from outside India, is covered by the decision of the Hon'ble Supreme Court in State of Kerala and others v. Fr.William Fernandez Etc., reported in 2017 SCC OnLine SC 1291, which has been later on followed by a

Co-ordinate Bench of this Court in V.Krishnamurthy v. State of Tamil Nadu, rep. by its Secretary to Government and others, reported in 2019 SCC OnLine Mad 8523. The relevant portions of the decisions are quoted below for ready reference.

(i) In State of Kerala (Supra), the Hon'ble Supreme Court held as follows:

> "146. In view of foregoing discussion, we arrive at the following CONCLUSIONS:
>
> (i) Orissa Entry Tax Act, 1999, Kerala Tax Act, 1994 and Bihar Tax on Entry of Goods in Local Area for Consumption, Use or Sale, 1993 (before its amendment by Bihar Act, 2003 and 2006) do not exclude levy of entry tax on the goods imported from any place outside territories of India into a local area for consumption, use or sale.
>
> (ii) All the Entry Tax Legislations questioned in these appeals are legislations which are within the legislative competence of the State legislatures and do not intrude the legislative domain of Parliament as reserved in Entry 41 & Entry 83 of List I.
>
> (iii) The import of goods from any territory outside India comes to an end when the goods enter into the custom frontiers of India and are released for home consumption.
>
> (iv) After import of goods comes to an end the State legislature has full legislative competence to levy entry tax under Entry 52 List II.
>
> (v) The Original Package Theory as developed by the American Supreme Court in case of Brown v. State of Maryland(supra) is not applicable in this country and the imported goods are not exempted from entry tax till it reaches to the factory premises/destination of its consumption, use or sale.
>
> (vi) Non inclusion of custom duty in the definition of purchase value in the statute of entry tax is not an indicator of the fact that legislature never intended to levy entry tax on imported goods.

(vii) Entry tax legislation are fully covered by Entry 52 List II and the submission that essence of Entry 52 is octroi which can be levied only by local authorities and State has no legislative competence to impose entry tax under Entry 52 List II is fallacious.

(viii) A plant imported in knocked out condition is fully covered with the definition of machinery and equipment under Part II of Schedule of the Orissa Act, 1999.

147. In view of our foregoing discussion and conclusion, we decide all the appeals in this batch of appeals in following manner:

(i) All the appeals filed against the judgments of Orissa High Court are dismissed. The Transfer case is also dismissed.

(ii) All the appeals filed against the judgment of Patna High Court are dismissed.

(iii) The civil appeal filed against the judgment of Jharkhand High Court stands allowed.

(iv) The appeals filed by the State of Kerala are allowed. The judgment of the Division Bench holding that no entry tax was leviable on the vehicle imported from territories outside the country is set aside, restoring the judgment of the learned Single Judge.

(v) Writ Petition 574 of 2003, Parisons Agrotech Pvt. Ltd v. State of Kerala & Ors. is dismissed.

(vi) In Civil Appeals filed against judgment of Orissa High Court, appellants who were writ petitioners before the High Court are given liberty to file an application within 30 days from today to revive their writ petitions and urge ground of discrimination under Article 304(a) as per law laid down by Nine Judges Bench in Jindal Stainless Ltd.(supra)."

(ii) In V.Krishnamurthy (supra), the Co-ordinate Bench of this Court held as under:

"67. Thus, in our considered view, the judgment in the case of Fr. William Fernandez applies with full force to the cases on hand which arise under the provisions of the Tamil Nadu Act which is pari materia to the Kerala enactment, which was considered by the Hon'ble Supreme Court and levy of entry tax on imported vehicles was upheld. Thus, we are of the clear view that the prayer sought for by the writ petitioners in these cases are not tenable and the writ petitions are liable to be dismissed."

2. In view of the above, the present writ petition is also disposed of in the same terms. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bbr
To:

The Commercial Tax Officer
Mylapore Assessment Circle
Chennai - 600 028.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.90018

+1cc to the Special Government Pleader(Taxes), S.R.No.90200

W.P.No.10376 of 2002

VBA(CO)
NR(15/11/2019)