IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.06.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.19726 of 2008
and
WPMP.No.1 of 2008

C.Surendran ..Petitioner

vs

1. The State of Tamil Nadu, rep.by the Secretary to Government, Commercial Taxes & Religious Endowments Department, Fort St.George, Chennai.

2. The Administrative Assistant Commissioner (CT) Chennai(Central) Division, Greams Road, Chennai-600 006.

3. The Commercial Tax Officer, Kilpauk Assessment Circle, Chennai.

4. The Registering Authority, Regional Transport Officer, Chennai(Central), Chennai-600 023. .. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus, to direct the 4th respondent to register under the Motor Vehicles Act the vehicle (Motor Car) bearing Engine No.BPP 122428 and Chassis NO.WAUZC84F98Y000195 without insisting upon production of "No Objection Certificate" from the 1st respondent department in relation to payment of entry tax.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.J.Ramesh, AGP

O R D E R

The petitioner has filed the present Writ Petition for issuance of a Writ of Mandamus, to direct the 4th respondent to register the vehicle bearing Engine No.BPP 122428 and Chassis No.WAUZC84F98Y000195 under the Motor Vehicles Act the vehicle (Motor Car) without insisting upon production of “No Objection Certificate” from the 1st respondent department in relation to payment of entry tax.

2. The case of the petitioner is that the he has purchased a motor car from Bangalore with Engine No.BPP 122428 and its Chassis No.WAUZC84F98Y000195. The petitioner states that he is aware that the Office of the 4th respondent would normally decline to accept a motor car for registration unless the petitioner shows the proof of payment of entry tax or obtain no objection certificate from the office of the 1st respondent.

3. The learned Counsel for the petitioner submitted that the Entry Tax Act is necessitated only against individual buyers who intend to purchase motor vehicles in other States and Union Territories where the rates of Sales Tax was less, compared to the State of Tamil Nadu and brought into the State of Tamil Nadu for use and not intended for importers (dealers) who do not purchase the motor vehicles in other States or Union Territories, but receive the motor vehicles upon stock transfer without any sufferance of sales tax much less lower rate of sales tax. The object of the impugned enactment is to compensate the loss of revenue, due to purchase of motor vehicles in other states and brought to this State for use or sale. The impugned enactment being compensatory in nature must indicate the special benefits or special advantage to trade, commerce and intercourse capable of being quantified which are necessary ingredients for levy of compensatory tax in the context of Article 301 of the Constitution of India as laid down by the Supreme Court in 145 STC 544 which is apparently absent.

4. The learned counsel further submitted that the Hon’ble First Bench by an order dated 10.07.2007 rendered a finding in the case of Mr.R.Gandhi and others in W.P.Nos.15960 of 1996 and batch cases that the Tamil Nadu Tax on Entry of Vehicles into Local Areas Act, 1990 is not compensatory in nature. The notification by levying higher rate of tax under the Entry Tax Act than sales tax under TNGST Act has resulted in restriction in movement of trade of motor vehicles from another State to Tamil Nadu. The Entry Tax Act clearly states that the objects and intention of enacting Entry Tax Act is to curb the evasion of sales tax due to purchase of vehicles from outside Tamil Nadu. The reduction of liability as contemplated under Section 4

(1) has no nexus to the object of the Entry Tax Act which provides for adjustment of sales tax from the amount of entry tax paid. There is no provision in the Entry Tax for forfeiture of excess amount available. The levy of higher rate of entry tax than the sales tax under TNGST is beyond the objects and reasons of the Entry Tax Act. Aggrieved by the same, the present writ petition is filed.

5. The learned Additional Government Pleader refuted the allegations raised by the petitioner and justified the impugned order.

6. Heard both sides and perused the materials on record.

7. The issue involved in this writ petition is whether a vehicle imported from other states into the State of Tamil Nadu for use or for sale is liable for entry tax. The learned counsel for the respondent has brought to the notice of this Court, the judgment rendered by a Division Bench of this Court in W.P.Nos.32710 of 2005 and etc., batch dated 29.01.2019. The Division Bench has discussed this issue in extenso and held that the entry tax is leviable on imported vehicles. The relevant paragraphs No.75 and 76 are extracted hereunder:

> 75. At the first instance, we need to point out that no Court can compel the Government to exercise its power to examine or for that matter to grant administrative waiver. It is a policy decision to be taken by the Government and it is not for the Court to dictate as to whether or not the Government should exercise such power. That apart, facts of the case in which Government granted administrative waiver subject to conditions vide G.O.Ms.No.157, dated 22.04.1996 was entirely different and cannot be applied to the present cases, which arise out of a different enactment, the purport and intent being totally different. First of the decision was in the year 1999 holding that entry tax is leviable on import of vehicles. Another learned Single Bench took a different view but did not distinguish the earlier decision, but chose to follow the decision of the Division Bench of the Kerala High Court in Fr.William Fernandez. In the third decision, there has been a reference because in the third decision, the first decision was noted. However, we need not labour much to make a further probe on this issue because the decision of the Division Bench of the Kerala High Court in Fr.William Fernandez has been reversed by the Hon'ble Supreme Court and the matters have attained finality. It is not in dispute that the

petitioner in W.P.No.33525 of 2007 is still in possession and ownership of the vehicle imported by them. The law on the subject as decided by this Court as early as on 01.09.1999 holds that the entry tax is leviable on imported vehicles. Therefore, we do not find any merits in the submissions that the matter should be relegated to the Government for grant of administrative waiver.

76. For all the above reasons, the writ petitions were dismissed and it is held that the petitioners are liable to pay entry tax on imported vehicles brought into the State of Tamil Nadu for use or for sale. Insofar as the miscellaneous petitions filed by the writ petitioners raising additional grounds are concerned, the learned Senior Counsel has not advanced any arguments, but their argument was only on the ground of administrative waiver in the light of the decision taken by us in the preceding paragraphs. Hence, there is no necessity to consider the additional grounds raised in the miscellaneous petitions. Accordingly, the same stands closed. No costs.

8. In view of the above lines, this Court is of the opinion that the petitioner is liable to pay entry tax on imported vehicles brought into the State of Tamil Nadu for use or for sale. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssb

To

1. The State of Tamil Nadu, rep.by the Secretary to Government, Commercial Taxes & Religious Endowments Department, Fort St.George, Chennai.

2. The Administrative Assistant Commissioner (CT) Chennai(Central) Division, Greams Road, Chennai-600 006.

3. The Commercial Tax Officer,
Kilpauk Assessment Circle,
Chennai.

4. The Registering Authority,
Regional Transport Officer,
Chennai(Central),
Chennai-600 023.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.47811
+1cc to the Government Pleader, S.R.No.48660

W.P.No.19726 of 2009
and
WPMP.No.1 of 2008

SPD(CO)
CS/13/08/2019