IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.14222 of 2004
and
M.P.No.16810 of 2004

A.Barisha Gani ... Petitioner

Vs.

1. The Deputy Commercial Tax Officer,
   Commercial Taxes Office,
   Lalgudi-621 601.

2. The Assistant Commissioner(CT),
   Trichy(Town),
   Trichy. ... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records on the files of the second respondent in R.C.No.1139/2003/B3 dated 07.04.2004 and connected proceedings of the first respondent in Entry Tax Assessment No.1134/1999-2000 dated 26.11.2001 and quash the same as being illegal, invalid, unjustified on facts and law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.J.Ramesh, AGP for R2.
Mr.V.Haribabu, AGP for R1

O R D E R

This petition has been filed by the petitioner for issuance of a writ of Certiorari, to call for the records on the files of the second respondent in R.C.No.1139/2003/B3 dated 07.04.2004 and connected proceedings of the first respondent in Entry Tax Assessment No.1134/1999-2000 dated 26.11.2001 and quash the same as being illegal, invalid, unjustified on facts and law and contrary to the principles of natural justice.

2.The case of the petitioner is that he had purchased one

TATA Estate car on 31.07.1996 at Pondicherry from VST Motors and used the same at Pondicherry till 08.08.1998. Thereafter the petitioner applied for and obtained No Objection Certificate from the Government of Pondicherry in Form XXVII on 16.06.1998 and then the car was brought into Tamil Nadu. The petitioner stated in the affidavit that the first respondent levied entry tax of Rs.53,862.00 and penalty of Rs.80,733.00 in the assessment order in Entry Tax Assessment No.1134/99-2000 dated 26.11.2001. However, the State Government in enacting the tax law regarding motor vehicles being from other states has introduced "The Entry Tax Act", 1990 (Act 13 of 1990). The said Act has no reference to the vehicles that are brought from abroad. However as this law is known as "The Entry Tax Act", the 1st respondent has grossly misunderstood the purport of that act and sought to impose Entry Tax on the actual value of the vehicle including the customs duty and Value added tax on the actual value of the vehicle as accepted by the customs authorities. The entry tax demanded by the respondents herein is against the above said Act. Hence, the petitioner is before this court seeking appropriate relief.

3.The learned Additional Government Pleader, appearing for the respondents has brought to the notice of this Court that the said issue had already been dealt by the Division Bench of this Court in W.P.Nos.32710 of 2005, 10982, 19035, 19933, 19934 of 2001, 125, 31822, 41040 of 2002, 10631, 29244, 30341, 31322 of 2003 ..., ..., ..., dated 29.01.2019. Wherein, the Division Bench had spoken whether the respondents are entitled to impose "The Entry Tax Act" to the imported vehicle brought from the outside country. The relevant portion of the order is extracted hereunder:

> "67.Thus, in our considered view, the judgment in the case of Fr.William Fernandez applied 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.
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> 70.Therefore, in our considered view, there would be no necessity for a separate order to answer the reference and the decision of the Hon'ble Supreme Court in Fr.William Fernanez (supra) covers the issue referred for consideration of the Division Bench.
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> 71.Coming back to the arguments of

Mr.R.L.Ramani, learned Senior Counsel, it is submitted that the above orders will clearly show that there was ambiguity and different views were taken by different Benches and under similar circumstances when the provisions of Tamil Nadu General Sales Tax Act, 1959 were put to challenge, wherein as per Entry 150 in the Schedule to the Act, articles of food and drink sold to customer in 3 star, 4 star and 5 star hotels were taxable at 10% this was challenged as being discriminatory.

72.A Division Bench of this Court in Sangu Chakra Hotels (P) Ltd., Vs. State of Tamil Nadu (1985) 60 STC 125 allowed the writ petitions on the ground that the demand of higher rate of tax for star category hotels were discriminatory. The State Government filed appeal before the Hon'ble Supreme Court, which was tagged along with other connected matters and the Supreme Court in Kerala Hotel and Restaurant Association and others v. State of Kerala and others [1990 Vol. 77 STC 253], allowed the appeals filed by the State holding that there is a rational nexus exists for such classification and the classification is founded on intelligible differentia. Subsequently, one of the petitioners had filed separate appeals before the Supreme Court in Civil Appeal Nos.101 and 102 of 1995, wherein, it was pointed out that after the Division bench judgment in Sangu Chakra Hotels (P) Ltd., entry was struck down and subsequently after the decision of the Supreme Curt in Kerala Hotel and Restaurant Association (supra), entry was revived and in the interregnum, tax was not collected and therefore, administrative waiver was granted.

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 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 are 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 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.

4.In view of the above decision cited supra passed by this Court, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

ssb

To

1. The Deputy Commercial Tax Officer,
   Commercial Taxes Office,
   Lalgudi-621 601.

2. The Assistant Commissioner(CT),
   Trichy(Town),
   Trichy.

+1cc to Mr.R.Senniappan, Advocate, S.R.No. 57687
+1cc to the Government Pleader, S.R.No. 58029
+1cc to the Special Government Pleader (Taxes), S.R.No. 58221

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RV(CO)
GN(22/08/2019)