IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.29547 of 2008
and
M.P.Nos.1 & 2 of 2008

M/s.Emerald Gratings Private Ltd.,
Old No.20, New No.13, Anderson Road
Nungambakkam, Chennai 600 34
Rep. by its Managing Director
Manoj K.Lulla ...Petitioner

Vs.

1.The State of Tamil Nadu
represented . by its Secretary
Home (Transport) Department)
Fort St. George, Chennai 600 009

2.The State of TamilNadu
rep. by its Secretary
Commercial Taxes Department
Fort St. George, Chennai-9

3.the Assistant Commissioner
Administration
Commercial Tax Officer
Greams Road, Chennai

4.The Commercial Tax Officer
Egmore, Assessment Circle
Egmore, Chennai-6

5.The Registering Authority-cum
Regional Transport Officer
Chennai-Central, Chennai-23 ... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the 3rd and 4th respondents to assess the Entry tax after deduction of tax paid in other State on the petitioner's AUDI A6 3.0 TDI Automatic Transmission Vehicle bearing Enginer No.ASB 081884 and Chassis No.WAUZD74F07N152521 to be registered and assigned with a new registration mark by the 5th respondent.

For Petitioner : Mr.S.Govindraman

For Respondents : Mrs.K.Bhuvaneswari, AGP for R1 & 5
Mr.M.Hariharan, AGP for R2, 3, 4

O R D E R

This petition has been filed by the petitioner for issuance of a writ of Mandamus, directing the 3rd and 4th respondents to assess the Entry tax after deduction of tax paid in other State on the petitioner's AUDI A6 3.0 TDI Automatic Transmission Vehicle bearing Enginer No.ASB 081884 and Chassis No.WAUZD74F07N152521 to be registered and assigned with a new registration mark by the 5th respondent.

2.The case of the petitioner is that the petitioner purchased one car of AUDI A6 3.0 TDI Automatic Transmission Vehicle bearing Enginer No.ASB 081884 and Chassis No.WAUZD74F07N152521 from M/s.Shreyans Automobiles Private Limited, Mumbai, the dealer of the Vehicle. The petitioner paid the necessary tax i.e. value added tax at 12.5% along with the cost of the vehicle to the dealer. Therefore, he presented the vehicle for registration before the 3rd & 4th respondent herein to that effect the dealer had also issued the invoice and a certificate to the concerned and the same has to be registered by the Authority cum the Regional Transport Officer, Chennai, the 5th respondent herein. The 3rd respondent informed the petitioner to pay the entire tax at the rate of 12.5% and to get a certificate from them. As 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 3rd & 4th respondents have 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.

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 petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary
Home (Transport) Department)
Fort St. George, Chennai 600 009

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Commercial Taxes Department
Fort St. George, Chennai-9

3.the Assistant Commissioner
Administration
Commercial Tax Officer
Greams Road, Chennai

4.The Commercial Tax Officer
Egmore, Assessment Circle
Egmore, Chennai-6

5.The Registering Authority-cum
Regional Transport Officer
Chennai-Central, Chennai-23

+1cc to the Government Pleader, S.R.No.53498

W.P.No.29547 of 2008
and
M.P.Nos.1 & 2 of 2008

VD(CO)
GN(01/08/2019)