

IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 18.08.2020

PRONOUNCED ON : 02.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.11574 of 2006
and WPMP.No.13190 of 2006

M/s.National Asphalt Products and
Construction Company,
'Khivraj Complex II',
480 Anna Salai,
Chennai - 600 035.Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by the
Secretary to Government,
Department of Commercial Taxes
and Religious Endowments,
Fort St. George,
Chennai - 600 009.

2.Office of The Commercial Tax Officer,
Nandanam Assessment Circle,
Greenways Road,
Chennai - 600 031.Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the second respondent pursuant to the Notice Ref.492/2006 dated 23.03.2006 and to quash the impugned notice as the levy of entry tax on imported goods is outside the purview of Entry Tax Act, 1990 in view of the judgment of this Hon'ble Court in W.P.No.8738 of 1999 and the judgment of the Division Bench of the Hon'ble Kerala High Court reported in 115 STC 591 and therefore the levy of entry tax is without jurisdiction.

For Petitioner : Mrs.Radhika Chandrasekar

For Respondents: Mr.A.N.R.Jayaprathap, SGP (T)

ORDER

With the consent of both the parties, the present Writ Petition is heard through Video Conferencing on 18.08.2020.

2. The brief facts of the case are as follows:-

The petitioner herein is a company involved in the business of road laying and construction. Through three Bills of Entries dated 20.04.2004, 07.12.2004, 11.03.2005, the petitioner had imported three heavy road laying vehicles. Owing to the then prevailing law laid down by the Hon'ble Division Bench of the Kerala High Court in the case of Fr. William Fernandez V. State of Kerala reported in 115 STC 591 (Ker), the petitioner had not paid the entry tax. However, the Hon'ble Supreme Court in the case of State of Kerala and others Vs. Fr. William Fernandez and others reported in [2018] 57 GSTR 6 (SC), had subsequently upheld levy of entry tax on imported vehicles.

3. On 26.10.2005, the Enforcement Wing conducted a verification, pursuant to which, the petitioner had admitted omission to pay Entry Tax and accordingly, an amount of Rs.22,59,619/- was paid by the petitioner on the same day itself. However the present impugned notice has been issued, proposing to levy penalty at twice the amount of tax as per Sec 15(1) of the Entry Tax Act, 1990.

4. Mrs.Radhika Chandrasekar, learned counsel for the petitioner submitted that as on the date of their import, the prevailing laws exempted the petitioner from payment of Entry Tax, and hence they were under the bonafide belief that they were not required to pay the Entry Tax. However, when the second respondent herein had pointed out that there was omission to pay Entry Tax on these three vehicles., they have paid the Entry Tax on 26.05.2010 itself. In view of the bona-fide belief, she would submit that proposal to levy penalty should be waived. In support of her contention, the learned counsel relied upon two decisions of the Hon'ble Apex Court in E.I.D. Parry (India) Ltd., Vs. Assistant Commissioner of Commercial Taxes & another reported in 2000 (117) STC 457 (SC) and M/s.Hindustan Steel Ltd., Vs. State of Orissa reported in 1969 (2) SCC 627.

5. The Additional Government Pleader placed reliance on the decision of the Hon'ble Division Bench of this Court in V.Krishnamurthy Vs. State of Tamil Nadu, rep. by its Secretary to Government, Fort St. George, Chennai in a batch of Writ Petitions in W.P.No.32710 of 2005 & W.P.Nos.10982, 19035, 1993, 19934 of 2001 etc., and submit that the petitioners are liable to pay the Entry Tax on imported vehicles brought into the State of Tamil Nadu.

6. The law, as on date, is to the effect that the imported vehicles brought into the State of Tamil Nadu for use or for sale would be subjected to payment of Entry Tax. Previously, the Hon'ble Division Bench of the Kerala High Court in the case of Fr. William Fernandez's case (supra) had held, in the year 1998, that entry of vehicles from abroad, is outside the scope of Entry Tax Act and therefore not liable for payment of Entry Tax. This position of law continued till the Hon'ble Apex Court in State of Kerala and others Vs. Fr. William Fernandez and others [2018 (57) GSTR 6 (SC)] decided on 09.10.2017 that the vehicles imported into a country would be subjected to Entry Tax. Admittedly, the petitioner had imported the three vehicles from Germany, in the year 2004/2005, at which point of time, the law was to the effect that Entry Tax is exempted for imported vehicles. While that being so, I do not find any fault with the petitioner when they had not paid the Entry Tax at the time of import. Furthermore, when the Enforcement Wing of the respondents had insisted for payment of the Entry Tax, the petitioner had immediately paid the Entry Tax of Rs.22,59,619/- on 26.10.2005 itself. However for such omission, the second respondent herein had now invoked Section 15(1) of the Entry Tax Act and proposed a penalty, at twice the amount of the Tax.

7. It is no doubt true that the second respondent is empowered to levy such a penalty. However, this is the case where the Entry Tax was not paid by the petitioner on the first instance, in view of the prevailing law at that point of time. In such circumstances, when there are bona-fides on the part of the importer in refraining from paying the tax, the Hon'ble Apex Court in E.I.D Parry's case (supra) had held that the levy of penalty was not justified. The relevant portion of the order reads as thus:-

"23. But so far as levy of penalty is concerned, we do not think that the sales tax authorities were justified in levying it. Till the judgment of the Madras High Court, on July 15, 1991, in Perambalur Sugar Mills Ltd Vs. State of Tamil Nadu [1992] 86 STC 17, the correct position of law within the State of Tamil Nadu was not free from doubt. Even thereafter, the Sales Tax Tribunal had in subsequent orders held that transport subsidy was not includible in the taxable turnover. Such a view was held by the Tribunal till March 19, 1993. It appears that on bona-fide belief that planting and transport subsidies were not includible in the taxable turnover, the appellants had not included those amounts in their turnover and for that reason non-inclusion of these two items in the turnover do not seem to be intentional. Though we have

now held that the appellants were not right in not including the amounts of planting subsidy and transport subsidy in the taxable turnover, considering the facts and circumstances of the case, it would not be correct to say that they had acted deliberately in defiance of law or that their conduct was dishonest or they had acted in conscious disregard of their obligation under the Sales Tax Act. The Sales Tax Authorities were, therefore, wrong in passing the orders of penalty and upholding the same. The High Court also, in our opinion, committed an error in upholding the orders of penalty. In the result, these appeals are partly allowed. The order of the High Court and the orders of the Sales Tax Authorities imposing and upholding levy of penalty are set aside. Only to that extent the appellants succeed and their appeals are allowed. The judgment of the High Court in respect to the planting subsidy and transport subsidy is upheld. In the facts and circumstances of the case, there shall be no order as to costs".

8. A similar view has been taken in Hindustan Steels Limited's case (supra) , in the following manner:-

"8. Under the Act penalty may be imposed for failure to register as a dealer - Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company

in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out".

9. For all the foregoing reasons, this Court is of the affirmed view that the proposed levy of penalty is unjustifiable and opposed to the proposition laid down by the Hon'ble Apex Court in the aforesaid decisions. Accordingly, the impugned notice in Notice Ref.492/2006 dated 23.03.2006, is set aside. Consequently, the Writ Petition stands allowed. Connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,
Department of Commercial Taxes
and Religious Endowments,
Fort St.George,
Chennai - 600 009.

2. The Commercial Tax Officer,
Nandanam Assessment Circle,
Greenways Road,
Chennai - 600 031.

+1 cc to Mr.Vaitheeswaran, Advocate Sr.No.28873

+1 cc to Special Government Pleader, Advocate Sr.No.28807

ORDER MADE IN

W.P.No.11574 of 2006

and

WPMP.No.13190 of 2006

MG(CO)
RV(23/9/2020)

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