IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NOS.276, 277, 278, 280, 281 & 282 OF 2019

(Through Video Conferencing)

M/s. Stanes Motors (South India) Ltd.,
rep. by the Director
1596, Trichy Road,
Coimbatore - 641 018 ...Petitioner in all WPs

Vs

The Assistant Commissioner (CT)
Trichy Road Assessment Circle
Coimbatore. ...Respondent in all WPs

Common Prayer : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in his proceedings in ENTRY TAX 1/1992-1993, 1993-94, 1994-95, 1995-96, 1996-97, 1997-98 respectively, quash the order dated 07.11.2018 passed therein and further direct the respondent to refund the excess entry tax paid together with interest thereon.

For Petitioner : Mr. R.L. Ramani
Sr. Counsel for
Mr.B.Raveendran, Counsel
in all Cases

For Respondents : Ms. Amirta Dinakaran
Government Advocate
in all Cases

COMMON ORDER

The issue appears to be covered by the decisions referred in order dated 05.01.2021 in W.P.Nos.30246 and 30247 of 2003. This Court had considered three decisions of this Court in the following cases and held as under:

(i) State of Tamil Nadu Vs. Ganesh Automobiles, (2004) 134 STC 272,

(ii) Khivraj Motors Limited Vs. Assisstant Commissioner (CT), Fast Track Assessment Circle III, Chennai and another, 139 STC 233

(iii) M/s Coimbatore Auto Garage (p) Ltd., Vs Commercial Tax Officer, Coimbatore, (2011) 45 VST 69 (Mad) order dated 20.03.2003 in W.P.Nos.9017 and 9018 of 2003.

2. The learned counsel for the respondent submits that the abetment if any as is contemplated under Section 4 of the Tamil Nadu Tax on Entry of Motor Vehicles Act, 1990 will apply only against tax liability under the TNGST Act and that there is no provision for refund of Entry Tax either by referring to Section 4 of the said Act or by referring to Section 11 of the said Act, and therefore, submits that the above decision rendered by this Court in W.P.Nos.30246 and 30247 of 2003, dated 05.012.2021 referring to the three other decisions of this High Court have to be distinguished.

3. The learned counsel for the respondent has also referred the a decision of the Hon'ble Supreme Court in the case of Municipal Corporation of Delhi vs. Gurnam Kaur reported in (1989) 1 SCC 101. In this connection a special reference is made in paragraph No.11 of the judgment wherein it has been held as that ''Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative'' and therefore, the writ petition is liable to be dismissed.

4. Alternatively, the learned counsel for the respondent submitted that the petitioner has an alternate remedy by way of appeal before the Appellate Authority under the provisions of the erstwhile TNGST Act, 1959, and therefore, on this account also the writ petition is liable to be dismissed.

5. Learned counsel for the respondent has placed reliance on the following 8 decisions some of which were referred in paragraph No.1 of this order:

(i). R.Gandhi Vs. State of Tamil Nadu and Ors, (2008) VST 390

(ii). Khivraj Motors Limited Vs. Assistant Commissioner (CT), W.A.Nos.3201 to 3204 of 2004 datd 04.02.2010

(iii). State of Tami Nadu and Another Vs. Ganesh Automobiles, 134 STC 272.

(iv). Coimbatore Auto Garage (P) Ltd., Vs. Commercial Tax Officer, 2010 SCC online Mad 497.

(v). M/s.C.A.Motors Vs. The Commercial Tax Officer,W.P.Nos.36839 to 36841 of 2015.

(vi). Municipal Corporation of Delhi Vs. Gurnam Kaur, (1989) Supreme Court Cases 101.

(vii). TVS Motor Company Ltd Vs. State of Tamil

Nadu and Ors, (2019) 13 Supreme Court Cases 403.

(viii). Kunhayammed Vs. State of Kerala (2000) 6 Supreme Court Cses 359.

6. Learned counsel for the respondent has specifically drawn the attention to the following passages from Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edition explains the concept of sub silentio:

> A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronouncements upon. It may be shown, however that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

Therefore, it is submitted that the previous decisions which were rendered in the other cases were not binding support, therefore, submits that the order of this Court in W.P.Nos. 30246 and 30247 of 2003 need not be followed.

6(A). In this case I have considered the arguments advanced by the Learned counsel for the respondent and learned senior counsel for the petitioner. I have also perused the orders passed by the Division Bench observed as under in W.P.Nos. 30246 and 30247 of 2003.

Relevant portion for the order in W.P.No.30246 and 30247 of 2003 reads as under:

> It is therefore, submitted that the Hon'ble Supreme Court has dismissed the appeals against the decision rendered in State of Tamil Nadu Vs. Ganesh Automobiles, (2004) 134 STC 272 and M/s Coimbatore Auto Garage (p) Ltd., Vs. Commercial Tax Officer, Coimbatore, (2011) 45 VST 69 (Mad) in W.P.Nos.9017 & 9018 of 2003 vide order dated 06.08.2004 and 09.12.2016 in SPL (Civil) No.4612 of 2004 in SPL (Civil) No. 9028 to 9030 of 2011 respectively.
>
> 6. Per Contra, the learned counsel for the respondent submitted that the issue is still pending before the Hon'ble Division Bench and that a learned Single Judge of this High Court has referred the matter to the Division Bench in few cases and therefore the final outcome in the pending cases before the Hon'ble Division Bench will have bearing

on the decision to be taken in the present writ petition. It is further submitted by the learned counsel for the respondent that both Sections 4 and 11 of the TN Entry Tax, 1990 are stand alone provisions and operate in a different field. It is submitted that while under Section 4 of TN Entry Tax Act, there is statutory mechanism for adjustment of the Entry Tax paid under Section 3 of the Entry Tax Act, against tax liability under the TNGST Act, 1959 and the Tamil Nadu Additional Sales Tax Act, 1970, there is no corresponding provisions for refund of the amount lying in excess after such adjustments. It is further submitted that Section 11 of the said Act deals with a case where there is excess amount of tax or penalty is paid under the provisions of the TN Entry Tax Act, 1990.

7. It is submitted that the entry tax that was paid by the petitioner had not paid excess tax under Section 3 of the TN Entry Tax Act, 1990 and therefore the machinery for refund under Section 11 of the said Act cannot be pressed into service. It is submitted that merely because there is an excess remaining unadjusted due to the differences in the rate of tax under TNGST Act,1959, at 8% Entry Tax and at 8% ipso-facto will not mean that the petitioner has paid tax excess under Section 3 of the Entry Tax, 1990 so as to warrant a refund under Section 11 of the Entry Tax Act, 1990.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent and I have perused the impugned order and the case laws cited by the petitioner and the respondent.

Though the arguments advanced, learned counsel appeals on merits, I am unable to over look the decision of the Division Bench of this Court which have been referred to supra. Therefore, this Court has no other option but to allow this writ petition. Thus, the writ petition stands allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

nst

To

The Assistant Commissioner (CT)
Trichy Road Assessment Circle
Coimbatore.

+1cc to Mr.B.Raveendran, Advocate SR.No.60173

+1cc to the Government Pleader SR.No.60196

W.P.Nos.276, 277, 278, 280, 281 & 282 of 2019

RSV(CO)
RVM(07/12/2021)