IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.A.No.1033 of 2020
and
C.M.P.No.12755 of 2020

1.Union of India,
Rep. by the Chief Secretary to
Government of Puducherry,
Chief Secretariat, Goubert Avenue,
Pondicherry - 605 001.

2.The Secretary to Government (Finance),
Office of the Chief Secretariat,
Goubert Avenue,
Pondicherry - 605 001.

3.The Commissioner of State Tax,
Commercial Taxes Department,
Puducherry. .. Appellants

-vs-

K.Devamani .. Respondent

Appeal under Clause 15 of the Letters Patent Act to set aside the order dated 27.08.2020 made in W.P.No.8054 of 2020.

W.P.No.8054 of 2020:- Petition filed under article 226 of the Constitution of India praying writ of certiorari to call for the records pertaining to the G.O.Ms.No.24, dated 27/05/2020 issued by the second respondent.

For Appellants : Mr.T.P.Manoharan
Senior Counsel
for M/s.N.Mala
Government Pleader (Puducherry)

For Respondent : No appearance

JUDGMENT

T.S.SIVAGNANAM, J.

This appeal filed by the Government of Puducherry and two others is directed against the order passed in W.P.No.8054 of 2020 dated 27.08.2020 filed by the respondent herein, whereby the writ petition was allowed and the notification impugned therein was quashed.

2.We have heard Mr.T.P.Manoharan, learned senior counsel appearing for M/s.N.Mala, learned Government Pleader (Puducherry). Though the respondent has been served and his name is printed in the cause list, none appears for the respondent.

3.While admitting the appeal, the Hon'ble Division Bench had granted an order of interim stay. The operative portion of the order reads as follows:

> "2.In the facts and circumstances of the case, for the reasons and submissions, as recorded in our order passed today, for admission of Writ Appeal, the operation ;of the order of the learned Single Judge dated 27 August 2020 shall remain stayed during the pendency of the Appeal."

4.Firstly, we need to point out that the petitioner had filed the writ petition challenging G.O.Ms.No.24 dated 27.05.2020, by which the Government of Puducherry in exercise of the power conferred by Section 31 of the Puducherry Value Added Tax Act, 2007 [hereinafter referred to as "PVAT Act"] and all other powers enabling in this behalf and in super session of the notification issued vide G.O.Ms.No.17 dated 07.04.2020, the Lieutenant-Governor, Puducherry being satisfied that it is necessary so to do in the public interest, was pleased to levy the rate of tax payable in respect of petrol and diesel under the said Act as mentioned below:

Regions	Petrol	Diesel
Puducherry and Karaikala	28.00%	21.80%
Mahe	23.90%	18.15%
Yanam	25.70%	20.00%

The above notification came into force with effect from 29.05.2020 and to be valid for a period of three months.

5.The petitioner has not stated as to how he is aggrieved by the said Government Order. There is no averment as to the locus standi of the writ petitioner to approach the Court seeking to quash the notification except for a bald averment in paragraph 10 of the affidavit filed in support of the writ petition stating that the petitioner is suffering from all sorts of financial crisis during the National Lock down and the Government of Puduchery has increased the rate of tax payable on petrol and diesel and it is unacceptable. Thus, the writ petition has been styled as a public interest litigation without complying with the requirements under the Rules framed by the High Court. The essential elements which have been made mandatory under the Rules do not stand fulfilled and those requirements do not find place in the affidavit filed in support of the writ petition. Furthermore, the notification has worked itself out since it was valid only for a period of three months and came to end on 28.08.2020.

6.The writ petition was allowed one day before the date on which the Government Order lost its efficacy. The learned Writ Court was of the opinion that unless the provisions of the Act are amended, the rate of tax cannot be increased. In our considered view, such a finding would be incorrect because of the distinct provisions contained in the PVAT Act. The notification issued by the Government of Puducherry has increased the rate of tax for petrol and diesel at 18.15% to 21.80% with maximum rate of tax at 35% prescribed in Entries 2 and 3 of the Sixth Schedule. Therefore, the appellants trace their power for revision or reduction from the said maximum rate by referring to Section 31 of the PVAT Act and there would be no necessity to bring out an amendment in the Act by invoking Section 75 of the PVAT Act.

7.The learned senior counsel has also pointed out that the Government of Tamil Nadu had proposed to revise and increase the rate of tax for petrol and diesel more than the maximum rate prescribed in the Second Schedule to the Tamil Nadu Value Added Tax Act [TNVAT Act]. Hence, necessity arose for the Government of Tamil Nadu to invoke Section 86 of the TNVAT Act and amend the Second Schedule. Similar was in the case by the Government of Delhi which had to invoke the power under Section 103 of the Delhi Value Added Tax Act. Similarly in the case of Gujarat, Assam, Rajasthan, Maharashtra and Punjab.

8.As pointed out earlier, the prayer sought for by the writ petitioner is definitely in the nature of public interest litigation and was not maintainable before the Single Bench of this Court. Apart from that, the mandatory requirements prescribed under the Rules framed by the High Court for filing public interest litigations have not been complied with. There is absolute failure on the part of the respondent to disclose as to how is aggrieved by the Government Order and the subtle but major distinction in the exercise of power by the Government of Puducherry when compared to exercise of power by other States including the Government of Tamil Nadu is a very vital factor which needs to be taken note of.

9.For all the above reasons, we are of the clear view that the order passed in the writ petition calls for interference. Accordingly, the writ appeal is allowed and the impugned order is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1.Union of India,
Rep.by the Chief Secretary to Government of Puducherry,
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2.The Secretary to Government (Finance),
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3.The Commissioner of State Tax,
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Puducherry.

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GP(CO)
RMP(24/03/2021)