



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.A. (MD)No.651 of 2007

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M/s.Trichy Steel Rolling Mills,
Rep. by its Director K.Padmarajan,
No.73/8, Annamalai Nagar,
Trichy - 620 008.

... Appellant/Petitioner

-vs-

The Commercial Tax Officer,
Woraiyur Assessment Circle,
Trichy.

... Respondent/Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order passed in W.P.(MD)No.8821 of 2007, dated 30.10.2007, and allow the writ appeal.

Prayer in WP(MD). 8821/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the respondents to grant refund of entry tax collected amounting to Rs. 2,50,00,000/- from 2001-2002 onwards forthwith to the petitioner in view of the decision reported in (2007) 7 VST 367 as per the petitioners representation dated 03/10/2007

For Appellant

: Mr.S.Rajasekar

For Respondent

: Mr.S.P.Maharajan

Special Government Pleader

JUDGMENT

S.VAIDYANATHAN, J.

and

G.JAYACHANDRAN, J.

The appellant herein is a manufacturer of CTD & TMT bars at Trichy. They used to purchase MS Ingots from outside the State for use as raw material for manufacturing of CTD Bars. Till the enactment of Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001 [hereinafter referred to as 'the Act'], the appellant were paying 4% tax against 'C' Form declaration for the inter-state sales. After the Act came into force, for the goods purchased from outside, entry tax has been levied and the said Act being in violation of Article 301 of the Constitution, the same was challenged before this Court in a batch of Writ Petitions, resulting in declaring the demand and collection of entry tax under the Act as illegal, unauthorized and violative of Article 301 of the Constitution.



2. In view of the decision of the Division Bench of this Court in **I.T.C. Ltd., Vs. State of Tamil Nadu and another** reported in **2007 (7) VST 367 (Mad)**, the appellant herein gave a representation dated 03.10.2007 to the respondent requesting them to refund a sum of Rs.2,50,00,000/- [Rupees Two Crores and Fifty Lakhs only] collected as entry tax hitherto under the Act. Since the request was not considered by the respondent, the appellant filed W.P.(MD)No.8821 of 2007, seeking a Mandamus, directing the respondent to grant refund of entry tax collected from the appellant for the period 2001-2002 in view of the decision rendered by the Division Bench of this Court in **I.T.C. Limited Vs. State of Tamil Nadu [2007 (7) VST 367 (Mad)]**.

3. When the said writ petition was taken up for consideration, it was brought to the notice of the learned Single Judge that the order of the Division Bench of this Court rendered in **I.T.C. Limited Vs. State of Tamil Nadu [2007 (7) VST 367 (Mad)]** and they are clubbed with the batch of writ petitions arising from few other States imposing entry on goods, similar to the Act and the same is pending. Therefore, the learned Single Judge observed that the validity of the Act is under challenge before the Hon'ble Supreme Court, therefore, the appellant has to necessarily wait till the verdict is passed by the Hon'ble Supreme Court in the S.L.P. preferred by the respondent. With the said observation, the Writ Petition was dismissed.

4. Aggrieved by the order of dismissal, the appeal is filed on the ground that this Court has held that levy of entry tax under the said Act is discriminatory and violative of Article 304(a) of the Constitution. The S.L.P. preferred by the State will not enure a right on the State to withhold the entry tax collected from the appellant under law, which is declared as unconstitutional subsequently. Hence, the respondent is liable to refund the tax collected without lawful authority.

5. The Writ Appeal was preferred in the year 2007, when the S.L.P. preferred by the State against the judgment of the Division Bench of this Court was pending before the Hon'ble Supreme Court. Now, after a lapse of 14 years, when the matter is taken up for final hearing, it is brought to the notice of this Court that the issue regarding imposition of entry tax by the States, *vis-a-vis*, the freedom of Trade and Commerce, was considered by the Constitutional Bench of the Hon'ble Supreme Court in the batch of Writ Petitions arising from various High Courts and the Hon'ble Supreme Court in **Jindal Stainless Limited and another vs. State of Haryana and others** reported in **2017 (12) SCC 1**, has answered the reference in the following terms:-



''1159.1. Taxes simpliciter are not within the contemplation of Part XIII of the Constitution of India. The word "free" used in Article 301 does not mean "free from taxation".

1159.2. Only such taxes as are discriminatory in nature are prohibited by Article 304(a). It follows that levy of a non-discriminatory tax would not constitute an infraction of Article 301.

1159.3. Clauses (a) and (b) of Article 304 have to be read disjunctively.

1159.4. A levy that violates Article 304(a) cannot be saved even if the procedure under Article 304(b) or the proviso thereunder is satisfied.

1159.5. The Compensatory Tax Theory evolved in Automobile Transport case [Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan, AIR 1962 SC 1406 : (1963) 1 SCR 491] and subsequently modified in Jindal case [Jindal Stainless Ltd. (2) v. State of Haryana, (2006) 7 SCC 241] has no juristic basis and is therefore rejected.

1159.6. The decisions of this Court in Atiabari [Atiabari Tea Co. Ltd. v. State of Assam, AIR 1961 SC 232 : (1961) 1 SCR 809] , Automobile Transport [Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan, AIR 1962 SC 1406 : (1963) 1 SCR 491] and Jindal [Jindal Stainless Ltd. (2) v. State of Haryana, (2006) 7 SCC 241] cases and all other judgments that follow these pronouncements are to the extent of such reliance overruled.

1159.7. A tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing State.

1159.8. Article 304(a) frowns upon discrimination (of a hostile nature in the protectionist sense) and not on mere differentiation. Therefore, incentives, set-offs, etc. granted to a specified class of dealers for a limited period of time in a non-hostile fashion with a view to developing economically backward areas would not violate Article 304(a). The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular Benches hearing the matters.

1160. States are well within their right to design their fiscal legislations to ensure that the tax burden on goods imported from other States and goods produced within the State fall equally. Such measures if taken would not contravene Article 304(a)



of the Constitution. The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular Benches hearing the matters.

1161. The questions whether the entire State can be notified as a local area and whether entry tax can be levied on goods entering the landmass of India from another country are left open to be determined in appropriate proceedings.''

6. Following the said judgment, the Hon'ble Supreme Court in **The State of Tamil Nadu and others vs. I.T.C. Limited and another [S.L.P. (C) Nos. 15082-15085 of 2007]**, reversed the judgment of the Division Bench of this Court rendered in **I.T.C. Limited Vs. State of Tamil Nadu [2007 (7) VST 367 (Mad)]**, vide order dated 23.08.2017 and has passed the following order:-

'In the light of the judgment of a Nine Judge Bench in the case of Jindal Stainless Steel vs. State of Haryana reported in 2016 (11) SCALE 1, the impugned judgment of the High Court is set aside and it is held that the Tamil Nadu Entry Tax Act is a valid enactment. However, it is made clear that insofar as period from 27.03.2002 to 01.04.2007 is concerned, the State of Tamil Nadu shall not realise the entry tax from the respondent(s) with regard to Tobacco product as for this period levy is found to be discriminatory in nature qua the aforesaid product.'

7. The learned counsel appearing for the appellant submitted that pursuant to the judgment of the Constitutional Bench of the Hon'ble Supreme Court, batch of writ petitions are pending before the Principal Bench challenging the entry tax in respect of various categories of goods and therefore, the matter may be listed after the disposal of batch of writ petitions pending since 2005.

8. This Court is of the view that the said request is untenable. As on date, the legal position is that the Hon'ble Supreme Court has upheld the validity of the Act. As pointed out by the learned Single Judge in the impugned order, if at all there is any right for the appellant herein to seek for refund of the tax already paid, such right will arise only after the disposal of the issue whether the Ingots purchased by the appellant from outside the State, is liable for entry tax and whether there is any discrimination in classification of the goods. Without a declaration regarding the legality of imposing entry tax for Ingots is held to be unconstitutional, refund of tax already collected will not arise. Writ Petition filed for a Mandamus, seeking refund of entry tax, is to be dismissed. Therefore, reserving the liberty to



the appellant to seek for refund, in case any favourable decision is rendered by the Division Bench in the pending batch of Writ Petitions, this Writ Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

To

The Commercial Tax Officer,
Woraiyur Assessment Circle,
Trichy.

+1 CC to M/s.SPL GP (SR-35193[F] dated 19/11/2021)

W.A. (MD) No.651 of 2007
18.11.2021

AM(CO)

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