IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.01.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.**28255** of **2022**
and W.M.P.Nos.**27550, 27551 & 27554** of **2022**

Central Warehousing Corporation
(A Government of India Undertaking)
Represented by Warehouse Manager,
Central Warehouse, Chromepet,
Chitlapakkam, Chennai - 64. .. Petitioner

Vs.

1. The Commissioner,
   Tambaram Municipal Corporation,
   Muthuranga Mudali Street,
   Tambaram West, Chennai - 45.

2. M.Bharathidasan .. Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records and quash the entire proceedings of the 1st respondent in Na.Ka.No.165/2015/A1, dated 20.09.2022 including the notification in Na.Ka.No.165/2015/A1 dated 14.07.2022 in relation to awarding the tender/auction for toll collection for lorry entry at Central Warehouse, Chitlapakkam, Chennai - 64 as being null and void and consequently forbearing the respondents from collecting any fee/toll charges for lorry entering the Central Warehouse, Chitlapakkam, Chennai - 64.

For Petitioner	:	Mr.D.Baskar
For Respondent 1	:	Mr.P.Srinivas
For Respondent 2	:	No appearance

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ORDER

This writ petition has been filed challenging proceedings of the first respondent in Na.Ka.No.165/2015/A1, dated 20.09.2022 including the Notification in Na.Ka.No.165/2015/A1 dated 14.07.2022 in relation to awarding the tender/auction for toll collection for lorry entry at Central Warehouse, Chitlapakkam, Chennai - 64 and consequently to forbear the respondents from collecting any fee/toll charges for the lorries entering the Central Warehouse, Chitlapakkam, Chennai - 64.

2. The contention of the writ petitioner is that the first respondent Corporation has awarded tender/auction for toll collection for lorry/mini trucks entry at Central Warehouse, Chitlapakkam based on the resolution passed in the General Council meeting held on 11.07.2022 and a notification to that effect has been issued on 14.07.2022.

3. It is the contention of the petitioner that the first respondent has no right to collect toll from the vehicles entering into the petitioner's premises. The petitioner further contended that imposing such entry tax to the vehicles entering into the petitioner's premises is unjust and unreasonable. Hence challenging the above, the present writ petition has been filed.

4. The first respondent has filed counter. In the counter it is contended by the first respondent that the petitioner has no locus standi to file the writ petition as the petitioner is not a person aggrieved by the levy of toll to the vehicles that are entering into the petitioner's premises. The payment of the levy is by the owners of the vehicles and not by the petitioner. Further, due to the collection of the toll, no prejudice is caused to the petitioner.

5. It is further contended by the first respondent that collection of toll has been done for the past more than 30 years and the records of the Chitlapakkam Town Panchayat shows toll collection as early as from the year 1989. Resolution No.26 shows that licence to collect the fees for the vehicles coming to the petitioner's premises has been auctioned. The petitioner's premises is in use as a storage facility for the various traders and the movement of heavy vehicles into the area is due to the operations of the petitioner's facility. Despite the facility spread over several acres it is used by hundreds of traders and businesses to store their goods.

6. According to the first respondent, every day several heavy trucks of 20 tons and higher arrive at the petitioner's facility for moving the goods and also smaller vehicles to remove the goods are also arriving. Due to this the Chitlapakkam first main road that leads to the petitioner's premises and the connected roads namely the Nehru Street, Chitlapakkam 2nd main road, Hasthinapuram main road have to be frequently repaired and rebuilt.

7. Further according to the first respondent the frequency at which the particular roads have to be relaid and repaired is more than 10 times compared to other streets in the locality. In the last repair works, a sum of Rs.15 lakhs has been allocated for the Nehru Street and Rs.14 lakhs for the Hasthinapuram Main Road alone. The only reason for the heavy traffic on these streets is the presence of the petitioner's premises and the operations of the businesses in the same. Therefore, the present levy has no effect on the petitioner and only the vehicle users are aggrieved by the same and as such there is no discrimination with regard to the levy of toll. Only due to the fact that extraordinary traffic is caused due to the operations of the petitioner's premises, the levy which is a compensatory levy is being done by the first respondent. Therefore, there is no illegality in the same and hence oppose the writ petition.

8. The learned counsel appearing for the petitioner mainly contended that a perusal of the agenda for the Council meeting it can be clearly seen that the meeting has been convened only to fix the toll for the vehicles entering into Chitlapakkam Corporation Area, whereas, the licence has been granted only for collection of toll from lorries entering into the petitioner's premises. Therefore, it is his contention that it is only discriminatory in nature. Collecting toll from the vehicles entering the petitioner's premises alone is discriminatory in nature and the same cannot be allowed and in fact it has caused serious prejudice to the petitioner.

9. The learned counsel further submitted that if really the toll has been compensatory in nature they ought to have collected the same from all the vehicles entering into a particular road, but the order of the first respondent is for collecting toll from the vehicles entering into the petitioner's premises is nothing but discriminatory and the same cannot be sustained in the eye of law.

10. Whereas, the learned counsel appearing for the first respondent submitted that collection of toll has been going on for the past more than 30 years. He also brought to the notice of this Court the resolutions passed in the year 1989 and 1990 by the then Municipality in this regard. According to him, only in order to collect the cost for repairing the road due to heavy traffic flow in the area, licence has been provided and therefore there is no discrimination adopted. Further according to the learned counsel the collection of toll is from all the vehicles entering into those two roads and therefore submitted that the petitioner is not an aggrieved party and he cannot maintain the writ petition.

11. I have heard the learned counsel on either side and also perused the entire materials.

12. The first respondent issued the tender for collection of toll from the lorries entering into the petitioner's warehouse. Before the resolution by the Corporation, a meeting was convened and the agenda for the meeting indicated that to levy toll for the lorries entering into the entire Chitlapakkam area, whereas the licence was provided to collect toll only from the lorries entering into the petitioner's premises. It is relevant to note that for the other areas no toll whatsoever is collected. When in the meeting the minutes has been recorded to levy toll for the entire Chitlapakkam area, tender was issued inviting bids for collecting toll from the lorries entering into the petitioner's premises is nothing but a clear discrimination.

13. Though it is stated by the learned counsel appearing for the first respondent that the petitioner not being an aggrieved party cannot maintain the writ petition. It is to be noted that the petitioner is a Central Warehousing Corporation, a Government of India Undertaking. Several trucks and other vehicles will naturally enter into the petitioner's premises. If the restriction is put only to the lorries entering into the petitioner's premises, it will in fact discourage the traders to stock their goods in the petitioner's warehouse due to the toll collection. Therefore, this Court is of the view that the petitioner is certainly an aggrieved person and can maintain the writ petition.

14. Though, it is stated in the counter that levy of toll is compensatory in nature and only for the purpose of repairing the roads the tender has been invited. In the counter itself it is stated that they have spent around 29 lakhs for repairing two roads viz., Nehru Street and Hasthinapuram main road alone. Therefore, the levy is a compensatory levy only for compensating the above aspects and the toll has been levied only to the vehicles entering into the petitioner's premises. Since the first respondent has to upkeep the roads by incurring lot of expenses.

15. It is relevant to note that the essence of compensatory tax is that the services rendered or facilities provided should be more or less commensurate with the tax levied and tax should not be patently more than what was required to provide such facilities and the tax imposed for augmenting general revenue of the State cannot be construed as compensatory.

16. A Division Bench of this Court in ***ITC Limited Vs. State of Tamil Nadu*** reported in ***(2007) 2 CTC 577*** has held that tax levied under the Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001 is not compensatory tax within the meaning of Articles 301 and 304 of the

Constitution and also held that it cannot be said that maintaining of roads, providing bridges, etc., is compensatory in nature so as to meet the outlay incurred for some special advantage to trade, commerce and intercourse and it is also held that there is no connection or nexus with the collection of entry tax and its utilisation for the benefit of traders/manufacturers from whom such tax is collected and that consequently the levy of entry tax is unauthorised and violative of Article 301 of the Constitution. The same view has been taken by a Division Bench of Kerala High Court in ***Thressiamma L.Chirayil Vs. State of Kerala*** reported in ***(2007) 7 VST 293 (Ker)***.

17. In ***State of Karnataka Vs. Hansa Corporation*** reported in ***AIR 1981 SC 462*** the Hon'ble Apex Court has held as follows:

> *"The State did not attempt in the High Court to sustain the validity of the impugned tax law on the submission that it was compensatory in character. No attempt was made to establish that the dealers in Scheduled goods in a local area would be availing of municipal services and municipal services can be efficiently rendered if the municipality charged with a duty to render services has enough and adequate funds and that the impugned tax was a measure for compensating*

the municipalities for the loss of revenue or for augmenting its finances. As such a stand was not taken, it is not necessary for us to examine whether the tax is compensatory in character."

18. It is also submitted by the learned counsel appearing for the first respondent that levy has been fixed in view of the power conferred under Section 249 of the Coimbatore City Municipal Corporation Act which also applies to the respondent Corporation. The said Section 249 reads as follows:

"Section 249. Power of the Corporation to recover expenses caused by extraordinary traffic — When by a certificate of an Officer of the Public Works department of the Government of a rank not below that of an Executive Engineer it appears to the Commissioner that having regard to the average expense of repairing roads in the neighbourhood, extraordinary expenses have been incurred by the Corporation in repairing a street by reason of the damage caused by excessive weight passing along the street or extraordinary traffic thereon, or by any process of loading, unloading or depositing excessive weights thereon the Commissioner may recover in the civil Court, from any person by or in consequence of whose

order such damage has been caused, the amount of such expenses as may be proved to the satisfaction of such Court to have been incurred by the Corporation by reason of the damage arising from such weight or traffic as aforesaid:

Provided that any person from whom expenses are or may be recoverable under this section may enter into an agreement with the Corporation for the payment to it of a composition in respect of such weight or traffic and thereupon the persons so paying shall not be subject to any proceedings under this section."

19. On perusal of the above Section, this Court is of the view that the above Section gives right to recover the expenses caused by extraordinary traffic in the Civil Court by proving the same. Except that, it does not permit to levy tax. Admittedly, there is no material whatsoever available on record so as to substantiate the submission of the first respondent to show that only because of the lorries entering into the petitioner's warehouse the roads suffered damages and to meet out that expenses recovery has to be made.

20. In ***Jindal Stainless Ltd. Vs. State of Haryana*** reported in ***(2006) 7 SCC 241*** the Hon'ble Apex Court has held that the compensatory tax is a charge for offering trade facilities and they are based on the principle of equivalence and relying upon the ***Hansa Corporation case*** (cited supra) has held in paragraph 11 as follows:

> *"11.....We are of the opinion that maintaining of roads, providing bridges, etc., cannot be said to be compensatory in nature so as to constitute special advantage to trade, commerce and intercourse. Even otherwise, a welfare State is bestowed with the responsibilities of providing good roads and bridges for the benefit of the tax-paying citizens and hence to contend that the impugned levy is being raised only for the said purpose is not justified. Maintenance of roads, bridges, etc., are generally met from the general funds or revenue. Whether goods are transported into the State or outside State or abroad, the State has got a duty to provide facilities like roads, bridges, etc., which are being enjoyed not only by the persons who bring the goods notified for levy of entry tax, but also by others. The roads, bridges expenditure test, which was applied in Automobile Transport case AIR 1962 SC 1406 in respect of the vehicle tax cannot be made applicable to the impugned enactment which sought to levy the entry tax on the entry of motor vehicles into the local*

areas of the State. As to what could satisfy such a test in the context of an entry tax could be gathered from para 28 in the case of State of Karnataka v. Hansa Corporation, which is extracted below:

> *'The State did not attempt in the High Court to sustain the validity of the impugned tax law on the submission that it was compensatory in character. No attempt was made to establish that the dealers in Scheduled goods in a local area would be availing of municipal services and municipal services can be efficiently rendered if the municipality charged with a duty to render services has enough and adequate funds and that the impugned tax was a measure for compensating the municipalities for the loss of revenue or for augmenting its finances. As such a stand was not taken, it is not necessary for us to examine whether the tax is compensatory in character'."*

21. Considering the above judgments, as in the auction notice the amount has been fixed as Rs.30,000/- and the same would not commensurate to the expected expenses as alleged in the counter. Such view of the matter, this Court is of the view that the action of the first respondent Corporation to collect toll only from the lorries entering the petitioner's premises is nothing but discriminatory and cannot be said to be compensatory in nature.

22. Such view of the matter, the impugned order of the first respondent is set aside and the writ petition is allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

05.01.2023

Index : Yes
Neutral Citation : Yes
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To

The Commissioner,
Tambaram Municipal Corporation,
Muthuranga Mudali Street,
Tambaram West, Chennai - 45.

N.SATHISH KUMAR, J.

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