



WP No.1656 of 1996, etc. (batch)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP Nos.1656 of 1996; 139 of 2001;14345, 12708 & 26712 of 2008;
8109 & 8110 of 2005; 1864, 1865, 2115 & 7605 of 2006; 19949 of
1999; 26611 of 2004; and
WP (MD) No.9228 of 2010
and WPMP.No.2540 of 1996; WMP Nos.169 of 2001; 8109 of 2005;
M.P.Nos.1,1,2 of 2008; and M.P.No.1 of 2010

WP.No.1656 of 1996

M/s.Hindustan Motors Ltd.
Earth Moving Equipment Division,
P.O. Melnallathur, Tiruvellore 602 004. .. Petitioner

-VS-

1. The State of Tamil Nadu,
Rep. by the Secretary to Government,
Commercial Taxes and Religious Endowments
Department, Fort St. George,
Madras 600 009.
2. The Commercial Tax Officer,
Alandur Assessment Circle,
No.12, Nandi Street, Alandur.
3. The Commercial Tax Officer,
Egmore 1 Assessment Circle,
Madras-31. .. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring the provisions of Section 2 of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas (Amendment) Act 1991 (Act No.45 of 1991) amending section 311 of the Act providing that the rate of tax shall be at such rate or rates not exceeding twenty percent as may be fixed by the Government and the consequential amendment to the notification fixing the rate of tax for Light Motor Vehicles at 12 percent as unconstitutional and unenforceable in so far as the petitioner is concerned.

For the Petitioners

in WPs.1656/1996, 139/2001,

8109 & 8110/2005, 12708/2008 : Mr.N.Prasad

in WPs.26611/2004, 7605/2006,

26712/2008, 14345/2008 : Mrs.R.Hemalatha

in WPs.1864/2006, 2115/2006,

1865/2006 : M/s.Malliga Srinivasan

in WP.19949/1999

: Mr.K.Mahendran
for M/s.MC Gan Law Firm

in WP(MD)9228/2010

: No appearance

For the Respondents

in all WPs.

: Mr.Haja Nazirudeen
Addl. Advocate General-I
assisted by
Mr.C.Harsharaj, Addl.G.P.
and Mr.P.Haribabu, G.A.

* * * * *



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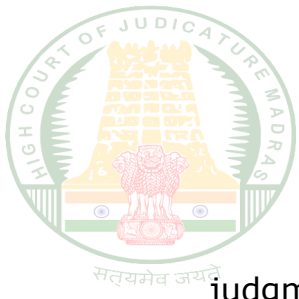
COMMON ORDER

(Made by the Hon'ble Chief Justice)

We have heard the learned counsel for the petitioners and the learned Additional Advocate General for the respondents.

2. The petitioners in these petitions seek declaration for the incidence of entry tax levied under The Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 as against the incidence of Local Sales Tax leviable on the goods manufactured within the State for the period from 01.04.1992 to 31.03.1998 is discriminatory and violative of Articles 301 and 304(a) of the Constitution of India.

3. The substratum of the petitioners' contention is that there is a disparity in the entry tax on the goods imported from the other States and the sales tax/VAT levied on the goods manufactured within the State. The same is impermissible. If the entry tax is more than the sales tax leviable on the local product, then the petitioners are entitled for refund of the excess entry tax paid. Reliance is placed on the



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judgment of the Constitution Bench of the Apex Court in the case of **Jindal Stainless Ltd. v. State of Haryana [AIR 2016 SC 5617 :: (2017) 12 SCC 1]** and three Division Bench judgments of this Court in **Commercial Tax Officer, Peelamedu South Assessment Circle v. Coimbatore Auto Carage (P) Ltd. [{2011) 45 VST 69 (Mad.), Khivraj Motors Limited v. Assistant Commissioner (CT), Fast Track Assessment Circle III, Chennai [W.A.Nos.3201 to 3204 of 2004 dated 04.02.2010]** and **State of Tamil Nadu v. Ganesh Automobiles [(2004) 134 STC 272 (Mad.)]**.

4. In most of the writ petitions, the vehicles are cars and in W.P.No.139 of 2001, the vehicle is a tractor, in W.P.No.7605 of 2006, the goods involved are being used for conversion of CTD Bars and in W.P.No.26712 of 2008, the vehicle is JCB.

5. The learned Additional Advocate General fairly concedes that in view of the judgments referred to above, the Revenue would not be entitled to charge entry tax more than the sales tax.



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6. In light of the above, it is held that the respondents are not entitled to charge entry tax on the vehicles or the goods referred to in the writ petitions imported from outside the State more than the sales tax/ VAT levied on the goods manufactured within the State.

7. The next contention of the learned counsel for the petitioners is for refund of the amount pursuant to the excess entry tax paid.

8. It is submitted that in some of the matters in the assessment orders the excess entry tax paid is also quantified. However, the Assessing Officer has forfeited the same. The learned counsel for the petitioners submits that the petitioners would be entitled for the refund of the amount. The concept of unjust enrichment as is applicable under the Central Excise Act, 1944, would not be applicable under the Tamil Nadu Tax on Entry of Motor Vehicles into the Local Areas Act, 1990. The provision similar to Section 11(b) of the Central Excise Act does not exist under the Act of 1990.



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9. The learned Additional Advocate General relies upon the observation of the Apex Court in the case of ***Jindal Stainless Limited vs. State of Haryana***, supra.

10. According to the learned counsel for the petitioners, the same was not an issue in the said petitions, however, only a passing reference has been made. Even the obiter dictum of the Apex Court is binding on this Court. The judgment of the Apex Court in case of ***Jindal Stainless Limited*** (supra) is also upon interpreting the provisions of the Haryana Local Entry Tax and similar other provisions.

11. In light of the above, we pass the following order:

The petitioners may apply to the concerned authority for refund of the difference in the excess amount between the entry tax paid and the local sales tax leviable. The authority concerned shall consider the case put forth by the petitioners and take a decision on the application of the petitioners for refund of the amount, preferably within three months from the date the petitioners file the application.



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With the aforesaid observations, the writ petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.V.G., CJ.)

(D.B.C., J.)

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Index : Yes/No
Neutral Citation : Yes/No
sra

To

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