IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.08.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

W.P.No.14077 of 2007
and M.P.No.1 of 2007

1 M/s.Indev Warehouse and
Container Services P. Ltd
Now Known as M/s.
Gateway Distriparks (South) P. Ltd
Rep By its Finance Manager
Mr.S.Kalyana Raman,
New Manali, Chennai – 600 103.

... Petitioner

Vs

1 The Deputy Commercial Tax
Officer Enforcement (South) PAPJM Building
Greams Road, Chennai 6.

2 The Commercial Tax Officer
Mannady (East) Assessment Circle,
No.151, NSC Bose Road Chennai 600 001.

3 The State of Tamilnadu
Rep By its Secretary, Commercial Taxes Dept.
Fort St.George Chennai 6.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to restrain the respondents from assessing or levying or collecting or recovering the entry tax on the import of containers containing 58 pieces of 2 nos of Fantuzzi Reachstaker Model CS45KM in knocked down condition in 29 packages under the provisions of the Tamilnadu Tax on Entry of Motor Vehicles into Local Areas Act 1990.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

O R D E R

(Order of the Court was made by Dr.ANITA SUMANTH,J.)

The petitioner has imported two numbers of Fantuzzi Reachstaker Model CS45KM in Knocked Down Condition (KDC) in 29 packages. In this Writ Petition, the prayer is for a mandamus to restrain the respondents from assessing, levying, collecting or recovering entry tax on the aforesaid imports in terms of the provisions of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 (in short 'Act').

2. We find that the very institution of this Writ Petition is misconceived. The imports were made in March, 2005. Upon such import, the question of liability to Entry Tax under the Act was raised by the authorities prompting this Writ Petitioner to file W.P.No.39912 of 2005, wherein the prayer was for issuance of a Writ of Prohibition prohibiting the respondents from assessing, levying, collecting or recovering Entry Tax under the provisions of the Act.

3. That Writ Petition came to be disposed on 14.12.2005, the learned Judge recording the rival contentions of the parties at paragraphs 3 and 4 of the order. In conclusion, the learned Judge notes that there had already been an exchange of show cause notice and objections thereto by the petitioner, and hence directs the first respondent to consider the objections, hear the petitioner and pass final orders.

4. Pursuant thereto, the respondent is also seen to have issued notice to the petitioner on 09.03.2007 calling for objections to be filed within a prescribed time. It is the issuance of the aforesaid notice that has led to the institution of the present Writ Petition on 17.04.2007, reiterating the same prayer as in the earlier Writ Petition, W.P.No.39912 of 2005. On a comparison of the prayer in W.P.No.39912 of 2005 and the present Writ Petition, W.P.No.14077 of 2007, we find the two to be materially identical. This, by itself, is an aberration.

5. Along with the present Writ Petition, the petitioner also moved W.P.No.14078 of 2007, which was for a declaration challenging the provisions of the Act, qua import transactions. That Writ Petition ultimately came to be withdrawn on 04.04.2024 consequent upon the judgment of the Hon'ble Supreme Court in the case of *State of Kerala and others V. Fr.William Fernandez and others* ((2021) 11 SCC 705).

6. The petitioner is thus seen to have explored every avenue possible to

challenge the entry tax proceedings. While this, by itself, cannot be faulted, we are of the considered view that the petitioner cannot be permitted to reiterate the same prayer, and seek the identical relief in multiple Writ Petitions.

7. Incidentally, we may note that the issues raised and argued by the petitioner in this Writ Petition would require marshalling, assimilation and appreciation of various factual particulars. This Court has, as early as on 14.12.2005, noted that the petitioner has made its objections before the authority and we hence believe that it would be appropriate for the petitioner to participate in those proceedings. For this reason as well, we are not inclined to consider the prayer.

8. The second respondent will grant audience to the petitioner on 03.09.2024 at 12.00 noon when the petitioner shall appear before the officer. The petitioner shall not anticipate any further notice from the respondents in this regard. The petitioner may file supporting material and additional written submissions, if it so desires.

9. After hearing the petitioner and considering materials, if any, filed, a speaking order shall be passed by the second respondent in accordance with law, within a period of four (4) weeks from date of personal hearing, i.e., on or before 01.10.2024,.

10. The timelines as fixed aforesaid shall be observed scrupulously by

the parties and utmost cooperation shall be extended by the petitioner in the completion of the assessment, seeing as the import relates to the period March, 2005. If there is no appearance by the petitioner on the date as aforesaid, the second respondent will proceed to pass orders within the time frame as fixed aforesaid on the basis of the materials already available on record.

11. Let a complete set of Writ Petition and its annexures be forwarded by the learned Government Advocate to R2 in order that the authority may have the benefit of the materials that were placed before the Court in the course of hearing of this Writ Petition.

12. This Writ Petition is dismissed with liberty as above. No costs. Connected Miscellaneous Petition is also dismissed.

(A.S.M.,J) (G.A.M.,J)
28.08.2024

Index:Yes/No
Speaking order
Neutral Citation: Yes
sl
Note: Registry is directed to issue this order on or before 29.08.2024.

Dr.ANITA SUMANTH,J

AND
G.ARUL MURUGAN,J.

sl

To

1 The Deputy Commercial Tax
Officer Enforcement (south) PAPJM Building
Greams Road Chennai 6.

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