IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.08.2024

CORAM

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

W.P.Nos.30232, 30233 of 2005 and 7903 of 2006
and
W.P.M.P.Nos.33153, 33155 of 2005 and 8791 of 2006

M/s.K.R.R.Autos,
rep. by its Proprietor
Thiru.R.Balashanmugam
No.176, Mangalam Road,
Karuvampalayam,
Tirupur – 641 604
Coimbatore District.
... Petitioner in W.P.No.30232 of 2005

M/s.Anamalais Bus Transport Private Limited,
rep. by its DirectorateThiru.N.Shanmugasundaram,
Sakthi Nilayam, New No.92,
Nachimuthu Gounder Street,
Pollachi, Coimbatore Dist.
... Petitioner in W.P.No.30233 of 2005

M/s.DRS Industries Ltd.,
(A Unit of Millenium Motors)
rep. by its Managing Director
D.Sivakumar
S.F.No.501/1, Avinashi Road,
Goldwins, Civil Aerodrome Post
Coimbatore – 641 014.
.... Petitioner in W.P.No.7903 of 2006

Vs

1 The Commissioner of Commercial Taxes
Ezhilagam, Chepauk,
Chennai 600 005.
.... Respondent in all W.Ps.

2 The Commercial Tax Officer
Central 1, Tirupur.
... Respondent in W.P.No.30232 of 2005

2 The Commercial Tax Officer
Pollachi East, Pollachi.
... Respondent in W.P.No.30233 of 2005

2 The Commercial Tax Officer
Peelamedu South Circle,
Dr.Nanjappa Road,
Coimbatore – 641 018.
... Respondent in W.P.No.7903 of 2006

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writs of Certiorarified Mandamus calling for the records on the file of the 1st respondent in his clarification in Lr.No.K.Dis.Acts Cell-IV/22328/2002 dated 09.07.2002 quash the same and further direct the 1st Respondent to re-do the clarification in accordance with the provisions of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990.

In all W.Ps.
For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

COMMON ORDER

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

The petitioners in these Writ Petitions are dealers in motor vehicles. The challenge, in common, is to clarification dated 09.07.2002 issued by the Commissioner of Commercial Taxes in regard to the operation of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 (in short 'Act'). The text of the impugned clarification reads as follows:

> *The Petitioner is clarified as follows:-*
>
> *Entry Tax is leviable on the entry of any motor vehicles into any local area for use or sale therein. If the motor vehicle is returned to seller as purchase return or stock transferred to a branch of the Importer m another State, no entry tax is payable.*
>
> *In respect of purchase of motor vehicle from other State for sale in Tamil Nadu Entry Tax is payable along with the return for each month on or before the 20th day of the month immediately succeeding. The payment of entry tax cannot be postponed till the vehicles are sold.*

2. The submissions of Mr.Rajasekar, learned counsel for the petitioners is targeted specifically at the concluding sentence in the impugned circular to the effect that '*the payment of entry tax cannot be postponed till the vehicles are sold'*. According to him, since the charging provision states that the levy or collection of entry tax is on the entry of any motor vehicle into a local area *'for use or sale therein'*, it is only on the event of *'use or sale'*, that the incidence of tax will stand triggered.

3. Thus, the Circular, that states that entry tax will be levied on mere

entry of a vehicle, is contrary to the avowed intention of the Act. In this regard, he relies on a judgement of the Supreme Court in the case of *Tata Engineering & Locomotive Company Limited V. Municipal Corporation of the City of Thane* (86 STC 363).

4. Mr.Prashanth Kiran, learned Government Advocate appearing for the Revenue would take us through the scheme of the Act and submit that the charge for entry tax is on the entry of a motor vehicle and there need be no further reference to the deployment of the vehicle thereafter. He draws attention to the impugned Circular where the Commissioner has himself stated that if, after entry, the motor vehicle is returned to the seller as a purchase return or stock transfer to a branch of the importer in another State, there would be no incidence of entry tax.

5. He relies on a decision of this Court in the case of *V.Krishnamurthy V. State of Tamil Nadu and others* (2019 SCC Online Mad 8523), which, in turn has placed reliance on the judgment of the Supreme Court in the case of *State of Kerala and others V. Fr.William Fernandez and others* ((2018) 57 GSTR 6).

6. We have heard both learned counsel and studied the case law placed before us.

7. The scheme of the Act provides for a charge of tax on the entry of

any motor vehicle into a local area for use or sale therein. The challenge that was considered by both the Supreme Court as well as this Court in the case of *Fr.William Fernandez* and *V.Krishnamurthy* (supra) related to whether the charge to tax would stand attracted in the case of import of a vehicle from outside the country. The question was answered in the affirmative by the Supreme Court noting that the incidence of levy of entry tax was on the point of entry of the goods/motor vehicles.

8. Thus, it became immaterial as to whether the entry had been from outside the country or outside the State and to put it differently, the point of origin of the goods/motor vehicles outside the State would have no bearing on the charge of tax under the Act, as what is material was only the factum of entry of the goods/motor vehicles into the State.

9. We thus find nothing untoward in the impugned clarification to the extent to which the Commissioner has only reiterated the contents of the charging provision therein.

10. Coming to the specific grievance of the petitioners in regard to the statement that the payment of entry tax would stand triggered on mere entry and cannot be postponed until the vehicles are sold, we find it unnecessary to delve into this stipulation in the light of the facts and circumstances of the present cases. It is an admitted position that the Writ Petitioners, who are all

dealers in motor vehicles, will hold in their stock motor vehicles that have been brought into the State for the purpose of their business.

11. Those vehicles, having once entered the State, would form part of the stock-in-trade of the Writ Petitioners for use in their business. Hence, we are unable to fathom how the motor vehicles would not have been *'put to use'* as the very purpose of their entry into the State is only for use in the business of the petitioners. Since, both the ingredients of the charging provisions, ie., factum of 'entry' as well as 'use' would stand satisfied upon entry of the motor vehicles, the challenge to the Circular is found to be devoid of merit and is rejected.

12. These Writ Petitions and the connected Miscellaneous Petitions are dismissed. No costs.

(A.S.M.,J) (G.A.M.,J)
29.08.2024

Index:Yes
Speaking order
Neutral Citation: Yes
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