BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

**W.P.(MD) Nos.27664, 27818 and 28048 of 2023**
**and**
**W.M.P.(MD) Nos.23765 and 23916 of 2023**

M/S.Vinoth Shipping Services,
rep. by its Partner,
S.Sundara Krishnan

... Petitioner in all W.Ps.,

/vs./

The Assistant Commissioner (ST) (FAC),
Tuticorin III Assessment Circle,
Tuticorin.

... Respondent in all W.Ps.,

**COMMON PRAYER:** Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the respondent in TIN 33265922235/07-08-II, 33265922235/07-08 and 33265922235/2008-09 dated 13.11.2020, 22.10.2020 and 29.11.2021 respectively and quash the same as it is unlawful and without jurisdiction in terms of the decision of the Hon'ble Division Bench of Madras High Court in the case of Sri Balakrishna Transport reported in 28 VST 356.

For Petitioner
in all W.Ps., : Mr.RD.Ganesan

For Respondent
in all W.Ps., : Mr.J.K.Jeyaselan
Government Advocate

**COMMON ORDER**

By this common order, all the three writ petitions are being disposed of.

2.In these writ petitions, the petitioner has challenged the respective assessment orders passed by the respondent under the provisions of the Tamil Nadu Tax on Entry of Motor Vehicle into local Areas Act, 1990. The details of the writ petitions, respective assessment years, dates and the demand are as under:-

| S.No. | Writ Petition | Assessment Years | Date | Demand |
|---|---|---|---|---|
| 1 | W.P.(MD) No.27664 of 2023 | 2007-08 | 13.11.2020 | Rs.30,53,233/- |
| 2 | W.P.(MD) No.27818 of 2023 | 2007-08 | 22.10.2020 | Rs.16,60,501/- |
| 3 | W.P.(MD) No.28048 of 2023 | 2008-09 | 29.11.2021 | Rs.5,53,875/- |

3.The petitioner had earlier filed the following 3 writ petitions in respect of the subject vehicles that were imported by the petitioner from the supplier and purchased as high seas and therefore, there were certain difficulties in getting registrations and therefore, the petitioner had approached this Court in W.P.(MD) No.593 of 2008 for a Mandamus to direct the third respondent therein to register the three unit vehicles imported from china, namely 1.XMG made Zl 50 G wheel loader with coal bucket with standard accessories, 2.LUGONG MAK WHEEL LOADER MODEL ZL 50 CS, 1 pkgs, 16,000kgs and 3.LIUGONG MAKE WHEEL LOADER MODEL CLG 856, 1 pkgs, 16800kgs, from GUANGXI LILUGONG MACHINERY CO LTD., No.1 LILUTAI ROAD, LIUZHOU, GUANGXI, CHINA 545007, imported from outside India without insisting for payment of Entry tax. The said writ petition was also dismissed on 01.03.2019.

4.The petitioner had also filed W.P.(MD) No.4386 of 2008 and 314 of 2009 for the following reliefs:

> *"**W.P.(MD) No.4386 of 2008** is filed to issue of a writ of declaration to declaring the levy of entry tax under Tamil Nadu Tax on entry of Motor Vehicle into local area Act 1990 for Description of Goods i) Liugong make CLG 835 Wheel Loader M.C.SR 110116 ii) Ligong make CLG 856 Wheel Loaders M.C.SR.113740, Country Origin i)China, ii) China B/E/No. & Date 696761/19.3.2008 ii) 711626/8.4.2008 imported by the petitioner as ultraviers the constitution of India, and as null and void.*
>
> ***W.P.(MD) No.314 of 2009** is filed to issue a Writ of Declaration to declare the levy of entry tax under Tamil nadu Tax on*

*entry of Motor vehicle into local areas Act 1990 for Description of Goods : Liugong make CLG 856 Wheel Loader M.C. SR. 128344 ; Country of Origin - China ; B/E.NO and date - 874461/23.10.2008 imported by the petitioner as ultraviers the constitution of India and as null and void and thus render justice."*

5.The above mentioned writ petitions were dismissed by the Court following the decisions of the Hon'ble Supreme Court in ***State of Kerala and others Vs. Fr.William Fernandez etc.,*** reported in ***2017 SCC Online SC 1291,*** in ***Jindal Stainless Vs. State of Haryana*** reported in ***2016(11) Scale 1*** and in ***V.Krishnamurthy Vs. State of Tamil Nadu***. The above mentioned three writ petitions were dismissed by 3 separate orders as detailed below:

| S.No. | Writ Petition | Date |
|---|---|---|
| 1 | W.P.(MD) No.593 of 2008 | 01.03.2019 |
| 2 | W.P.(MD) No.4386 of 2008 | 16.10.2020 |
| 3 | W.P.(MD) No.314 of 2009 | 25.08.2021 |

6.In the light of the orders passed by this Court in the above 3 writ petitions, the petitioner has also paid the entry tax for a sum of rupees as detailed below:

| S.No. | Writ Petition | Amount |
|---|---|---|
| 1 | W.P.(MD) No.593 of 2008 | Rs.6,00,607/- |
| 2 | W.P.(MD) No.4386 of 2008 | Rs.11,04,361/- |
| 3 | W.P.(MD) No.314 of 2009 | Rs.5,53,875/ |

7.Thus, as on date, the entry tax payable on the import of the subject vehicle has been fully paid by the petitioner. After paying the aforesaid amount on various dates during 2020 to 2022, the petitioner has challenged the assessment in the impugned orders in table No.1 for the respective assessment years.

8.The case of the petitioner is that there is no basis, on which the impugned demand orders could have been passed, as the petitioner has not filed any returns as is contemplated under Section 7 of the Tamil Nadu Tax on Entry of Motor Vehicle into local Areas Act, 1990. Consequently, it is submitted that the question of assessment or reassessment under Sections 8 and 9 of the Act also cannot be countenanced.

9.The learned counsel for the petitioner has heavily relied on the decision of this Court rendered in ***Sri Balakrishna Transport Vs. Commercial Tax***

***Officer, Tambaram I Assessment Circle, Chennai*** reported in ***(2010) 28 VST 356 (Mad)***, wherein the Division Bench of this Court had dealt with the provisions of the Entry Tax Act, 1976. There, an assessment order was passed on 18.09.2002, whereby the entry tax was assessed at the rate of Rs.74,215 and penalty of Rs.1,48,430/- was imposed for the failure to comply with the provisions of the Act.

10.The aforesaid order was challenged in W.P.(MD) No.39034 of 2002. There, the Hon'ble Division Bench was not concerned with the constitutional validity of the levy of entry tax on the motor vehicles of goods. When the aforesaid decision was passed in ***Sri Balakrishna's case*** *(referred supra),* the Court after referring to Sections 7 and 8 of the Tamil Nadu Tax on Entry of Motor Vehicle into local Areas Act, 1990, concluded as under:

> *"8.Though section 7 requires every person liable to pay tax under the Entry Tax Act to file a return to the designated authority, there is no specific provision in the Entry Tax Act for assessing a person, who has failed to furnish the return. Section 8 of the Act provides for assessment on the basis of the return furnished by a person liable to pay tax and the related proceedings for passing the assessment order on best judgment basis. When the Act does not make a specific provision for assessment of an importer, who failed to furnish the return under section 7, it was not within the powers of the assessing authority to assess the importer long after the import made*

*by him, by making use of the details furnished by such importer consequent to the notice of demand made by the assessing authority.*

*9.There was no requirement on the part of the appellant to submit a return during the year 1995 under the provisions of the Entry Tax Act as the vehicle purchased by him was not a "motor vehicle" liable for registration under the Motor Vehicles Act, 1988. Therefore no return was filed by the appellant in respect of the import made by him. It was long after the import that the respondent has passed an order of assessment presumably on the ground that the JCB excavator was also a vehicle coming under the purview of the Motor Vehicles Act. When there was no liability to pay tax by the importer in respect of a vehicle which is not liable to be registered under the Motor Vehicles Act, it cannot be said that such importer is also liable to pay tax consequent to the subsequent clarification as to whether an excavator was also a "motor vehicle". The Entry Tax Act provides time-limit for making a best judgment assessments, as well as reassessment. When there is no specific provision in the Entry Tax Act for assessing a person who fails to furnish returns, the respondent was not entitled to make an assessment after a considerable point of time. It is trite that in case the words used in a taxation statute are plain and unambiguous they have to be interpreted in such a manner so as to give full effect to the wording of the statute. It is not permissible for including something in a taxing statute so as to give it a different meaning. In the absence of a provision enabling the tax collector to levy tax, it would be impermissible to levy tax, even if equity is in favour of the State. Therefore there should be an express provision authorising the assessing authority to collect tax from an importer, who failed to file returns as provided under section 7 of the Entry Tax Act. However there is no such provision which enables the authority to make an assessment for the purpose of recovery of entry tax. Therefore we are of the opinion that the respondent was not justified in demanding entry tax from the appellant.*

*10.The honourable Supreme Court in State of Punjab v. Bhatinda District Coop. Milk P. Union Ltd. [2007] 10 VST 180 while interpreting the provision of the Punjab General Sales Tax Act, 1948,* *which gives power to the assessing authority for reopening the order of assessment considered the question of limitation, even where no statutory period of limitation has been prescribed for reassessment and observed thus (at page 185):*

> *“18.It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.”*

*11.Since there is no provision in the Entry Tax Act for assessing a person who failed to furnish the return under section 7 of the Act, the only course open to the assessing authority was to levy penalty not exceeding twice the amount of tax due as provided under Section 15(1) of the Act. However in the present case, the levy of penalty has already been set aside by the learned single judge on the ground that there was no requirement to file a return or to pay entry tax on the motor vehicle into the local area as on the date on which the vehicle was imported by the appellant. No appeal has been preferred by the respondent against the order setting aside the imposition of penalty by the learned single judge and as such, the said order has become final. In such circumstances, we are of the considered view that it is not permissible for the respondent to collect penalty also in the present case.*

*12.In the result, the writ appeal is allowed and the direction of the learned single judge for payment of entry tax is set aside. No costs.”*

11.The learned counsel for the petitioner would submit that this view has also been followed by a Division Bench of this Court in the following two cases.

*i) W.A.(MD) No.332 of 2007 (Sree Pandeeswari Timbers and Saw Mill Vs. the Commercial Tax Officer (FAC)) dated 12.04.2022*
*ii) W.A.(MD) Nos.442 of 2022 (Hari and Co. Vs. The Assistant Commissioner (ST) 2) dated 10.04.2023"*

12.That apart, the learned counsel for the petitioner would rely on the decisions rendered by a Coordinate Bench of this Court in the following cases:

*"i) W.P.No.13631 of 2005* ***(M/s.Vishnu Enterprises Vs. The Commercial Tax Officer)*** *dated 27.07.2016.*
*ii) W.P.No.30360 of 2016* ***(Tvl.Rason Earth Movers Vs. The Assistant Commissioner (CT)****, dated 31.08.2016.*
*iii) W.P.No.20033 of 2021* ***(M/s.PSTS Heavy Lift and Shift Limited, Vs. The Assistant Commissioner (ST)****, dated 25.07.2023.*
*iv) W.P.No.19482 of 2022* ***(M/s.Indian Ocean Sands Company (P) Limited, Vs. The Assistant Commissioner (ST)****, dated 09.11.2023"*

13.It is therefore submitted that the demand that has been confirmed in the impugned orders is liable to be declared as arbitrary and without authority of law and therefore, the petitioner is entitled for refund of the amounts.

14.The learned counsel for the petitioner would also refer to a decision in W.P.(MD) Nos.3787, 3796 and 3800 of 2022 ***(M/S.Hari and Co Vs. The Assistant Commissioner (ST) and others)***, dated 01.03.2022, wherein a similar assessment order was passed, which was challenged before this Court. Although the writ petition was dismissed on 01.03.2022, the decision was reversed by the Division Bench in W.A.(MD) Nos.442, 452 and 453 of 2022.

15.The learned Government Advocate for the respondent, on the other hand, would submit that these writ petitions are without any merits and are liable to be dismissed. It is submitted that the petitioner has also complied with the order by remitting the tax due pursuant to the dismissal of the writ petitions in table No.2 and therefore, these writ petitions are liable to be dismissed.

16.It is further submitted that as per Section 8(1) of the Tamil Nadu Tax on Entry of Motor Vehicle into local Areas Act, 1990, the amount of tax due from the person liable to pay tax under the Act shall be assessed separately for such period as may be prescribed. In this connection, the learned Government Advocate for the respondent would draw attention to Rule 3(3) of the Tamil Nadu Tax on Entry of Motor Vehicle into local Areas Rules, 1990.

17.It is submitted that an importer other than one specified in sub Rule 2 shall furnish returns for only the quarter in which an entry of motor vehicle into local area is effected by him and such return shall be furnished on or before the last date. It is therefore submitted that failure to file return under the provisions of the Act as is contemplated under Rule 3 would not bestow any special privilege on a evader of tax.

18.In any event, it is submitted that the attempt of the petitioner to stave-off the levy was unsuccessful in the writ petitions that were filed by the petitioner referred to in table No.2 of this order, which was dismissed on the dates mentioned therein. It is therefore submitted that the writ petitions are liable to be dismissed.

19.The learned Government Advocate for the respondent would further draw attention to the decision of the Hon'ble Supreme Court in ***Balakrishna Transport Vs. Commercial Tax Officer, Tambaram I Assessment Circle, Chennai*** reported in ***(2010) 28 VST 356 (Mad)***. He would submit that although the Court had come to rescue the petitioner therein, the Court had also held that the penalty can be imposed under Section 15(1) of the said Act. It is submitted that in this case, the petitioner has paid tax after the dismissal of the writ petitions mentioned in table No.2 of this order and therefore, the decision is distinguished on the facts of the case.

20.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

21.The decision of the Division Bench of this Court in ***Balakrishna's case*** *(referred supra)* cannot be applied to the facts of this case, although the dispute pertains to the demand of entry tax under the provisions of the aforesaid Act.

22.The facts of this case are almost identical to the facts in *Balakrishna's case (referred to supra)* except that in this case, the petitioner has challenged the levy in W.P.(MD) Nos.4386 of 2008 and 314 of 2009. The petitioner was also enjoying the benefit of a stay order and therefore, the petitioner would not have complied with the statutory requirements of filing of returns under Section 7 of the Act.

23.Consequently, the assessment orders could not have been passed as there were no returns at that point of time. The decision in *Balakrishna's case (referred to supra)* was rendered pertain to a case, where the party accepted the validity of the levy, but questioned the assessment, as no return was filed. There, the Court had in para 9 noted that "*There was no requirement on the part of the appellant to submit a return during the year 1995 under the provisions of the Entry Tax Act as the vehicle purchased by him was not a "motor vehicle" liable for registration under the Motor Vehicles Act, 1988. Therefore no return was filed by the appellant in respect of the import made by him.".* It was in that context, the Court observed that when there was no liability to pay tax by the importer in respect of a vehicle which is not liable to be registered under the Motor Vehicles Act, it cannot be said that such importer is also liable to pay tax consequent to the subsequent clarification as to whether an excavator was also a "motor vehicle.

24.In this case, the petitioner has questioned the vires of levy by way of written declaration in W.P.(MD) Nos.4386 of 2008 and 314 of 2009, which came to be dismissed on 16.10.2020 and 25.08.2021 respectively. Therefore, the decision in ***Balakrishna's case*** *(referred to supra)* cannot be applied to the facts of the case.

25.In this case, the petitioner had approached this Court in W.P.(MD) No. 593 of 2008 for a Mandamus to direct the third respondent therein to register the three unit vehicles exported from china, namely 1.XMG made Zl 50 G wheel loader with coal bucket with standard accessories, 2.LUGONG MAK WHEEL LOADER MODEL ZL 50 CS, 1 pkgs, 16,000kgs and 3.LIUGONG MAKE WHEEL LOADER MODEL CLG 856, 1 pkgs, 16800kgs, from GUANGXI LILUGONG MACHINERY CO LTD., No.1 LILUTAI ROAD, LIUZHOU, GUANGXI, CHINA 545007, imported from outside India without insisting for payment of Entry tax. The said writ petition was also dismissed on 01.03.2019.

26.That apart, it would be sending a wrong message to the assessees as those complying with the procedural requirements of the Act could be penalized and levied with tax whereas, those evading tax would go scot free. This is not the intention of the Act. If the petitioner had not approached this Court for a Writ of Declaration in W.P.(MD) Nos.4386 of 2008 and 314 of 2009 and if the demand was confirmed vide impugned orders, the petitioner may have been entitled to the benefit of the decision of the Division Bench of this Court in *Balakrishna's case (referred to supra)*.

27.In this case, there is a voluntary compliance of the petitioner pursuant to the dismissal of the writ petitions in table No.2. That apart, the writ petitions are also belated and are liable to be dismissed in the light of the decision of the Hon'ble Supreme Court in ***Assistant Commissioner (CT) LTU, Kakinada and others Vs. Glaxo Smith Kline Consumer Health Care Limited*** reported in ***2020 SCC Online SC 440.***

28.Therefore, I find no merits in these writ petitions and hence, the writ petitions are liable to be dismissed and are accordingly, dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No **15.07.2024**
Internet : Yes / No
mm

To

The Assistant Commissioner (ST) (FAC),
Tuticorin III Assessment Circle,
Tuticorin.

**C.SARAVANAN, J.**

mm

**W.P.(MD) Nos.27664, 27818 and 28048 of 2023**

**15.07.2024**