IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-03-2025

CORAM

THE HONOURABLE DR JUSTICE ANITA SUMANTH
AND
THE HONOURABLE MRS JUSTICE R. HEMALATHA

WP No. 13813 of 2007

1. M/s. Tafe Access Ltd
No. 35, Nungambakkam High Road, Chennai
600 034

Petitioner(s)

Vs

1. The State Of Tamilnadu Rep.
By The Secretary To Government,
Commercial Taxes And Religious
Endowments Department,
Fort St. George,Chennai

2.The Commercial Tax Officer
Valluvarkottam Assessment Circle, Chennai

Respondent(s)

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration declaring that Section 2(d), Section 2(g) and Section 3 of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 in so far as it relates to Motor Car as ultra vires Articles 14, 19(1)(a), 19(1)(g), 301, 304(a) and 304(b) of the Constitution of India and also not a 'compensatory or regulatory tax' in view of the law laid down by the Supreme Court in the case of Jindal Stainless Steel & another v. State of Haryana and others reported in 145 STC 544 and therefore unenforceable and of no effect in so far as the petitioner herein is concerned.

For Petitioner(s): Mr. B.Ravindran

For Respondent(s): Mr. Haja Naziruddin, AAG
Assisted By Mr. TNC.Kaushik
Additional Government Pleader

ORDER

(Order of the Court was made by Dr.Anita Sumanth J.)

The prayer in this matter is for a Declaration to the effect that Sections 2(d), 2(g) and 3 of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 ('Entry Tax Act') are ultra vires various Articles of the Constitution of India.

2.Both Mr.B.Ravindran, learned counsel for the petitioner and Mr.Haja Naziruddin, learned Additional Advocate General for Mr.TNC.Kaushik, learned Additional Government Pleader for respondents would accede to the position that the Declaration sought for is not liable to be granted as the issue in question is covered by a judgment of Nine-Judges of the Hon'ble Supreme Court in *Jindal Stainless Limited and Others v. State of Haryana and Another* [(2017) 12 SCC 1].

3. An alternate contention is made now to the effect that the petitioner is entitled to refund of excess tax paid, bearing in mind the provisions of Section 4 of the Entry Tax Act.

4.Section 4 of the Entry Tax Act deals with the reduction of tax liability and states that where an importer is liable to pay tax both under the Entry Tax Act as well as the Tamil Nadu General Sales Tax Act, then the liability under the Entry Tax Act shall be reduced to the extent of the tax paid under the General Sales Tax Law.

5.Hence, excess of entry tax paid over and above the sales tax component is liable to be refunded to the assessee. This position has been consistently reiterated in several decisions of this Court such as *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.)]. This settled proposition has recently been reiterated by the First Bench of this Court in the case of *M/s.Hindustan Motors Ltd. v. State of Tamil Nadu and Others* in W.P.No.1656 of 1996 and batch, decision dated 28.03.2024.

6.In light of the same, liberty is granted to the assessee to make a representation seeking refund, if it is of the view that it is so entitled. Such representation, if filed within a period of four (4) weeks from date of receipt of this order, shall be disposed after hearing the petitioner within a period of four (4) weeks from date of personal hearing in accordance with law and having regard to the provisions of Section 4 of the Entry Tax Act as well as the decisions cited in this order.

7.This writ petition is disposed as above. The plea for Declaration is rejected and liberty is granted as aforesaid. No costs.

[A.S.M.,J.] **[R.H.,J.]**
03-03-2025

vs
Index:Yes
Speaking order
Neutral Citation:Yes
To

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Commercial Taxes And Religious
Endowments Department,
Fort St. George,Chennai

2.The Commercial Tax Officer
Valluvarkottam Assessment Circle, Chennai

Dr.ANITA SUMANTH J.
AND
R.HEMALATHA J.

vs

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