BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.06.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A(MD)Nos.1638 to 1640 of 2024
and
C.M.P(MD)Nos.12825 & 12827 of 2024

W.A(MD)No.1638 of 2024:

M/s.Vinoth Shipping Services,
Represented by its Partner
S.Sundara Krishnan,
No.1/422, Chinnakannupuram,
Tuticorin – 628 003. ... Appellant / Petitioner

Vs.

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

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order passed by the learned single Judge in W.P(MD)No.27664 of 2023 dated 15.07.2024, allow the Writ Appeal.

For Appellant : Mr.A.Satheesh Murugan

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

W.A(MD)No.1639 of 2024:

M/s.Vinoth Shipping Services,
Represented by its Partner
S.Sundara Krishnan,
No.1/422, Chinnakannupuram,
Tuticorin – 628 003. ... Appellant / Petitioner

Vs.

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

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order passed by the learned single Judge in W.P(MD)No.27818 of 2023 dated 15.07.2024, allow the Writ Appeal.

For Appellant : Mr.A.Satheesh Murugan

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

W.A(MD)No.1640 of 2024:

M/s.Vinoth Shipping Services,
Represented by its Partner
S.Sundara Krishnan,
No.1/422, Chinnakannupuram,
Tuticorin – 628 003. ... Appellant / Petitioner

Vs.

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

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order passed by the learned single Judge in W.P(MD)No.28048 of 2023 dated 15.07.2024, allow the Writ Appeal.

For Appellant : Mr.A.Satheesh Murugan

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON JUDGMENT

(Judgment of the Court was made by **G.R.Swaminathan J.**)

Heard both sides.

2.M/s.Vinoth Shipping Services is the appellant in all these three Appeals. The appellant had imported as many as 6 wheel loaders. The respondent herein passed assessment orders calling upon the appellant to make the following payments:

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 appellant dutifully complied with the demand and paid the amounts in question. Thereafter, the appellant filed the aforesaid three writ petitions questioning the assessment orders and sought refund. The learned single Judge dismissed the Writ Petitions vide order dated 15.07.2024 in the following terms:

> *"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."*

Challenging the same, these Writ Appeals have been filed.

4.The learned counsel for the appellant drew our attention to the latest order passed by the Hon'ble Division Bench dated 10.04.2023 in ***W.A(MD)No. 442 of 2022 etc batch (M/s.Hari & Co Vs The Assistant Commissioner (ST)-2, Tuticorin – 2-(C) Assessment Circle, Tuticorin)***. The Hon'ble Division Bench allowed the Writ Appeals in the following terms:

"2.Though the Writ Petitions were filed, seeking a Writ of Certiorari to call for the records pertaining to the Demand Notices of the respondents dated 30.09.2019, 30.12.2020 and 30.12.2020 respectively, demanding entry tax from the petitioner, the issue relating to the payment of entry tax is no longer res-integra. It is covered by a judgment of the Division Bench of this Court in Sri Balakrishna Transport Vs. Commercial Tax Officer, Tambaram I Assessment Circle, Chennai, reported in (2010) 28 VST 356 (Mad). The said judgment was also followed by the Division Bench of this Court to which one of us (R.SURBAMANIAN,J.) is a party in W.A.(MD)No.332 of 2007.

3.In view of such settled position of law, where this Court held that the demand notice is not valid, since there is no specific provision for assessment of a person, who has not filed return, these Writ Appeals stand allowed, the order of the writ court is set aside and the impugned Demand Notices stand quashed. No costs. Consequently, connected miscellaneous petition is closed."

5.The learned counsel for the appellant submits that the factual matrix obtaining in this case is similar to that which obtained in the aforesaid Writ Appeal. He called upon this Court to set aside the order of the learned single Judge and grant relief.

6.Per contra, the learned Additional Government Pleader submitted that the impugned order passed by the learned single Judge does not call for interference.

7.We carefully considered the rival contentions and went through the materials on record.

8.It is true that the Hon'ble Division Bench in the decision reported in ***[2010] 28 VST 356 (Mad) (Sri Balakrishna Transport Vs Commercial Tax***

Officer, Thambaram I Assessment Circle, Chennai) held that if no returns have been filed by the assessee, the assessing officer cannot proceed to make any best judgment assessment or pass an assessment order. This decision of the Hon'ble Division Bench had been consistently followed in several subsequent judgments.

9.It is true that in the instant case also the appellant did not file any return for the imported vehicle during the relevant assessment years. The question that calls for consideration is whether merely because the appellant had paid the amount, the Writ Petitions should have suffered dismissal.

10.It is true that if the assessment orders are illegal, the assessee cannot be non-suited merely because he made the payment or complied the demand set out in the assessment orders. Even though on first principles, we are one with the learned counsel for the appellant, we have to take note of certain distinguishing features. As rightly pointed out by the learned Additional Government Pleader, the appellant herein filed W.P(MD)No.593 of 2008 calling upon the authorities not to demand entry tax for the petition mentioned vehicle. The said writ petition was dismissed on 01.03.2019. Likewise, W.P(MD)No.314 of 2009 filed by the appellant herein to declare the entry tax act as ultra vires the Constitution of India as null and void was also dismissed on 25.08.2021. We can even take it that in view of the dismissal of these earlier writ petitions, the appellant chose to pay the entry tax when it was demanded by the respondent.

11.Be that as it may, the Act itself provides for levy of penalty which shall not exceed twice the tax amount. We do not find any limitation prescribed for levying penalty. Even if we agree with the learned counsel for the appellant that he could not have been assessed to tax because he did not file any return, still he cannot escape from penal consequences. Section 15 of the Tamil Nadu Tax on Entry of Motor Vehicles to Local Areas Act, 1990 is s follows:

> *"**15. Penalty***
>
> *(1) Where any person liable to pay tax under this Act falls to comply with any of the provisions of this Act, then the assessing authority may, after giving such person a reasonable opportunity of being heard, by order in writing impose on him in addition to any tax payable, a sum by way of penalty not exceeding twice the amount of tax.*
>
> *(2) If the person does not, without reasonable cause, pay the tax within the time he is required, by or under the provisions of this Act to pay the assessing authority may, after giving such person a reasonable opportunity of being heard, by order in writing,impose upon him by way of penalty, in addition to the*

amount of tax and penalty under sub-section (1) a sum equal to.—

(a) one and one half per cent, of the amount of tax for each month for the first three months, after the last date by which the person should have paid that tax, and

(b) two per cent, of the amount of tax for each month thereafter during the time the person continues to make default in the payment of tax."

12.We also take note of the fact that the appellant had registered the imported wheel loaders as motor vehicles. Since the goods in question are liable to be levied with entry tax, payment of the tax amount cannot be held to be illegal. Since the appellant himself had voluntarily made such payment, the question of refund does not arise. The approach of the learned single Judge cannot be faulted.

13.These Writ Appeals stand dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[G.R.S., J.]　　[K.R.S., J.]
23.06.2025

NCC　　: Yes / No
Internet　: Yes / No
Index　　: Yes / No
MGA

G.R.SWAMINATHAN, J

and

K.RAJASEKAR, J.

MGA

To

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

W.A(MD)Nos.1638 to 1640 of 2024

23.06.2025