

***THE HON'BLE MR JUSTICE BILAL NAZKI**
and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

+Writ petition No.21864 of 1997

% 30-09-2004

Between:

Union of India represented by Secretary, Department of Atomic
Energy, C.S.M.Marg, OYC Building, Mumbai and another

...Petitioners

A N D

The Secretary, Revenue Department, Govt. of Andhra Pradesh
Secretariat, Hyderabad and others

...Respondents

! COUNSEL FOR THE PETITIONERS: MR.R.S.MURTHY

^ COUNSEL FOR RESPONDENTS: G.P.FOR COMMERCIAL

TAXES

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> Head Note:

? CITATIONS:

AIR 1963 SC 1760

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 21864 of 1997

Between:

1. Union of India represented by Secretary, Department of Atomic Energy, C.S.M.Marg, OYC Building, Mumbai-400039.
2. The Chief Executive, Nuclear Fuel Complex, Department of Atomic Energy, ECIL PO, Hyderabad – 500 062.

..... PETITIONERS

AND

1. The Secretary, Revenue Department, Govt. of Andhra Pradesh Secretariat, Hyderabad – 500 004.
2. The Commissioner, Commercial Taxes, Andhra Pradesh, Hyderabad – 500 001.
3. The Commercial Tax Officer, Nacharam, Hyderabad, Ranga Reddy District.
4. The Commissioner of Transport, vth floor, BRK Complex, Tank Bund Road, Hyderabad – 500 029.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ in the nature of Mandamus or any other appropriate writ or orders or direction;

- i. Declaring the proviso to Section 3(1) of A.P.Tax on Entry of Motor Vehicle to Local Area Act, 1996 so far as it restricted exemption for Central Government for Defence purposes as void, illegal, arbitrary and ultravires the provisions of Article 285(1) of the Constitution.
- ii. Declare the proviso to Section 4(3) of A.P.Tax on Entry of Motor Vehicle to Local Area Act, 1996 in so far as it excluded the payment by way of Central Sales Tax as void, illegal, arbitrary apart from violating the principles of natural justice and fair play.
- iii. Declare Section 20 of the A.P. Tax on Entry of Motor

Vehicle to Local Area Act, 1996 as void and unenforceable being repugnant to Section 207 of the Motor Vehicle Act, 1988 having regard to Article 254 of the Constitution.

- iv. Declare the A.P.Tax on Entry of Motor Vehicles to Local Area Act, 1996 as void and unenforceable as a whole for the legislative incompetency with respect to the subject matter and absence of presidential consent contemplated in article 304(b) of the Constitution and issue a consequential direction to the respondents not to collect entry tax under the A.P.Tax on Entry of Motor Vehicle to Local Area Act, 1996 on the Motor vehicles owned and operated by the petitioner.

Counsel for the Petitioners : MR.R.S.MURTHY

Counsel for the Respondents : GP FOR COMMERCIAL TAXES

The Court made the following :

ORDER : (per Hon'ble Sri Bilal Nazki, J)

In this Writ Petition, the petitioners have sought the following relief;

- i. Declaring the proviso to Section 3(1) of A.P.Tax on Entry of Motor Vehicle to Local Area Act, 1996 so far as it restricted exemption for Central Government for Defence purposes as void, illegal, arbitrary and ultravires the provisions of Article 285(1) of the Constitution.
- ii. Declare the proviso to Section 4(3) of A.P.Tax on Entry of Motor Vehicle to Local Area Act, 1996 in so far as it excluded the payment by way of Central Sales Tax as void, illegal, arbitrary apart from violating the principles of natural justice and fair play.
- iii. Declare Section 20 of the A.P. Tax on Entry of Motor Vehicle to Local Area Act, 1996 as void and unenforceable being repugnant to Section 207 of the Motor Vehicle Act, 1988 having regard to Article 254 of the Constitution.
- iv. Declare the A.P.Tax on Entry of Motor Vehicles to

Local Area Act, 1996 as void and unenforceable as a whole for the legislative incompetency with respect to the subject matter and absence of presidential consent contemplated in article 304(b) of the Constitution and issue a consequential direction to the respondents not to collect entry tax under the A.P.Tax on Entry of Motor Vehicle to Local Area Act, 1996 on the Motor vehicles owned and operated by the petitioner.

The factual matrix in which this Writ Petition is filed, is that the petitioners purchased three vehicles, one Premier 118 NE and two Tata Sumo Jeeps from Telco, Pune. These vehicles were received on 04.07.1997 and 20.08.1997. They also ordered for three vehicles which were expected to be delivered, when the Writ Petition was filed. The Regional Transport Officer, Ranga Reddy District was addressed on 07.07.1997 for grant of Registration and issue of Certificate. The Registration Certificate was not given on the ground that the entry tax under the Andhra Pradesh Tax on Entry of Motor Vehicles Into Local Areas Act, 1996 (hereinafter referred to as 'the Act') was not paid. The levy of entry tax at the rate of 8% on the cost of the vehicle, is challenged by the petitioners.

Counter has been filed. We have heard learned Counsel for the parties.

Mr.Murthy appearing for petitioners, has made three submissions in order to assail the action of the respondents in demanding payment of tax before registration, under the Act. Firstly, he contended that there was an exemption provided under Section 3 of the Act itself, which is the charging section. The proviso reads, *"Provided further that no tax shall be levied and collected in respect of any motor vehicle which is owned by Central Government and is used exclusively for the purposes relating to the Defence of India."* It

is true that the vehicles are used by the Government of India, but there is nothing on record to show that the vehicles are exclusively used for the purposes relating to the Defence of India. Mr. Murthy submits that the Department of Atomic Energy is also engaged in the defence of India and as such it should be held that the vehicles are being used exclusively for the purposes relating to defence of India. Defence of India relates mainly to the defence of territories of India in terms of entries (1) & (2) in the List-I of Union List in the 7th Schedule of Constitution of India, which read as under;

“1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination of effective demobilization.

2. Naval, military and air forces; any other armed forces of the Union.

[2A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the Civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.]”

We are not referring to entries 1 and 2 of the Union List under Schedule 7 for the purposes of coming to the conclusion as to what is meant from, “Used exclusively for the purposes relating to the Defence of India”, as used in the proviso. But it is only referred to for understanding as to what was meant by the Legislature when they used this terminology in the proviso. By no stretch of imagination it can be said that the vehicles purchased by the Nuclear Fuel Complex of the Department of Atomic Energy are used exclusively for the purposes of defence of India. This argument has to fail.

Secondly it was argued that the vehicles belong to the Union of India and as such the State could not levy tax on those vehicles in terms of Article 285. Article 285 gives total exemption of property of the Union from State Taxation, but in such a case, it has to be seen as to

whether the tax is on the property of the Union or any other event. Section 3 of the Act lays down;

“3. Levy of Tax : (1) *Subject to the provisions of this Act, there shall be levied and collected tax on the entry of any motor vehicle into any local area for use or sale therein which is liable for registration in the State under the Motor Vehicles Act, 1988. The tax levied shall be at such rate or rates as may be fixed by the Government, by notification, on the purchase value of the motor vehicle but not exceeding the rates specified for motor vehicles in the First Schedule to the General Sales Tax Act, 1957 :*

Provided that no tax shall be levied and collected in respect of any motor vehicle which was registered in any Union Territory or any other State under the provisions of the Motor Vehicles Act, 1988, prior to period of fifteen months or more from the date on which it is registered in the State :

Provided further that no tax shall be levied and collected in respect of any motor vehicle which is owned by Central Government and is used exclusively for the purposes relating to the Defence of India.

(2) The tax shall be payable by the importer in such manner and within such time as may be prescribed.

(3) Where the motor vehicle is taken delivery of, on its entry into a local area or brought into a local area by a person other than importer, the importer who takes delivery of the motor vehicle from such person shall be deemed to have brought or caused to have brought the motor vehicle into the local area.”

From a bare perusal of this charging section, it becomes clear that the taxing event is the entry of the vehicle into the territory of Andhra Pradesh. As such, by this Act, no tax is imposed on the vehicles owned by Union of India, but the tax is imposed on entry of the vehicle into the territory of Andhra Pradesh. In the famous judgment

of *Sea Customs Act, 1878, S. 20(2)*, which till date remains the law of land and was a decision by nine Judges of the Hon'ble Supreme Court, it was laid down;

“This will show that the taxable event in the case of duties of excise is the manufacture of goods and the duty is not directly on the goods but on the manufacture thereof. We may in this connection contrast sales-tax which is also imposed with reference to goods sold, where the taxable event is the act of sale. Therefore though both excise duty and sales-tax are levied with reference to goods, the two are very different imposts; in one case the imposition is on the act of manufacture or production while in the other it is on the act of sale. In neither case therefore can it be said that the excise duty or sales tax is a tax directly on the goods for in that event they will really become the same tax. It would thus appear that duties of excise partake of the nature of indirect taxes as known to standard works on economics and are to be distinguished from direct taxes like taxes on property and income.”

In view of this judgment and in view of the Act that the taxing event is not the vehicle itself but the taxing event is the entry of the vehicle into the State of Andhra Pradesh, the second contention of Mr.Murthy also cannot be accepted.

Thirdly Mr.Murthy submitted that the Act is contrary to the provisions of Motor Vehicles Act, 1988. Particularly he made a reference to Section 20 of the Act and Section 207 of the Motor Vehicles Act, 1988. Both these Acts operate in two different fields and Section 20 of the Act gives a remedy to the authorities in case of violation under the Act whereas Section 207 of the Motor Vehicles Act gives remedy to the authorities if there is a violation under the Motor Vehicles Act. It may be also pointed out that in terms of Section 60 of the Motor Vehicles Act, Central Government authorities are not exempt from getting vehicles registered and from payment of the registration fee unless such authority has the Central Government may, by notification in the official Gazette, specify for the purpose of

registration of vehicles belonging to the Central Government and are used for the purposes relating to the defence of the Country and are unconnected with any commercial enterprise. That means that without a notification from the Central Government, even the Central Government vehicles are not exempt from registration under the Motor Vehicles Act, 1988. Mr. Murthy while arguing the matter, also stated that while purchasing the vehicles from Pune, the petitioners had paid Central Sales Tax, which makes it abundantly clear that the vehicles owned by the petitioners were not exempt from Sales Tax and were not engaged exclusively in defence of India.

For these reasons, we do not find merit in the Writ Petition, which is accordingly dismissed. No costs.

(BILAL NAZKI, J)

30th September, 2004.

(S. ANANDA REDDY, J)

Note: L.R. copies to be marked

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One fair copy to the Hon'ble Sri Justice Bilal Nazki

(for his Lordships kind perusal)

One fair copy to the Hon'ble Sri Justice S.Ananda Reddy

(for his Lordships kind perusal)

To

1. The Secretary, Revenue Department, Govt. of Andhra Pradesh Secretariat, Hyderabad – 500 004.
2. The Commissioner, Commercial Taxes, Andhra Pradesh, Hyderabad – 500 001.
3. The Commercial Tax Officer, Nacharam, Hyderabad, Ranga Reddy District.
4. The Commissioner of Transport, vth floor, BRK Complex, Tank Bund Road, Hyderabad – 500 029.
5. Two C.Cs. to the GP for Commercial Taxes, High Court buildings,

Hyderabad (O.U.T)

6. 8 L.R.copies
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