IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.03.2022

Pronounced on : 15.07.2022

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.1045 of 2022, 29130 of 2019,
28430 of 2019, 28435 of 2019,
28436 of 2019, 28438 of 2019,
28441 of 2019, 5097 of 2021, 5099 of 2021
and
connected miscellaneous petitions

W.P.No.1045 of 2022

C. Joseph Vijay ..... Petitioner

-vs-

Assistant Commissioner (ST) (FAC)
K.K.Nagar Assessment Circle,
5th Floor,
PAPJM Annexe Building,
No.1, Greams Road,
Chennai - 600 006. ..... Respondent

Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari, calling for the records on the files of the respondents herein in Rc.73/2021/A3, dated 17.09.2021 received on 22.09.2021 and consequential recovery notice in Rc.73/2021, dated 17.12.2021 and quash the same.

W.P.No.29130 of 2019

J.Harris Jeyaraj ..... Petitioner

-vs-

1. The Assistant Commissioner (ST) (FAC)
   K.K.Nagar Assessment Circle,
   Chennai - 600 006.

2. The Commissioner of State Taxes
   Chepauk, Chennai - 600 005.

3. The Government of Tamil Nadu
   Rep. through its Secretary
   Department of Commercial Taxes
   Tamil Nadu Secretariat,
   Chennai - 600 003. ..... Respondents

Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari, calling for the records on the files of the respondents pertaining to impugned Recovery Notice No. RC.768/2019/A3, dated 27.09.2019 passed by the first respondent and quash the same.

W.P.Nos.28430 of 2019, 28435 of 2019,
28436 of 2019, 28438 of 2019, 28441 of 2019,
5097 of 2021 and 5099 of 2021

M/s. Adyar Gate Hotels Ltd.,
Rep. by its Joint Managing Director
No.132, T.T.K.Road,
Chennai - 600 018. ..... Petitioner in all the writ petitions

-vs-

1. The State of Tamil Nadu
   Rep. by the Secretary
   Commercial Taxes Department,
   Fort St. George,
   Chennai - 600 009.

2. The Assistant Commissioner (ST)
   Alwarpet Assessment Circle,
   Taluk Office Building, R.A.Puram,
   Chennai - 600 028.

..... Respondents
in all the writ petitions

Prayer in W.P.No.28430, 28435, 28436, 28438 and 28441 of 2019 : Writ petitions filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the second respondent in his proceedings in Rc.919/2019/A3 and quash the notice, dated 13.08.2019 passed therein.

Prayer in W.P.No.5097 of 2021 : Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the second respondent in his proceedings in Rc.1419/2011/A3 and quash the demand notice dated 05.02.2021 issued therein.

Prayer in W.P.No.5099 of 2021 : Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the second respondent in his proceedings in Rc.2559/2005/A3 and quash the notice dated 05.02.2021 issued therein.

For Petitioners : Mr.A.N.R.Jayaprathap
in W.P.No.1045 of 2022

Mr.Raghavan Ramabadran
for M/s. Lakshmi Kumaran
& Sridharan Attorneys
in W.P.No.29130 of 2019

Mr.R.L.Ramani, Senior Counsel
for Mr.B.Raveendran
in W.P.Nos.28430, 28435, 28436, 28438 and 28441 of 2019 & W.P.Nos.5097 and 5099 of 2021

For Respondents : Mr.Haja Nazirudeen, AAG-I
for Mr.Richardson Wilson, AGP
in all the writ petitions

COMMON ORDER

Since the issue raised in these writ petitions is one and the same, with the consent of the learned counsel appearing for the parties, all these writ petitions were heard together and are disposed of by this common order.

2. This batch of cases, insofar as the facts projected by the respective petitioners are concerned, are taken up in three separate categories. In the first two categories, two individuals filed the writ petitions and in the third category, a private limited hotel has filed some writ petitions.

3. **W.P.No.1045 of 2022** :

3.1. This writ petition has been field by an individual who purchased a BMW Car by way of import in September 2005, as there was no authorised dealer in Chennai at that time.

3.2. At that time, already The Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 (in short "The Entry Tax") was in force which provides for payment of entry tax on the entry of motor vehicles into the State of Tamil Nadu for the use or sale therein. The petitioner's imported vehicle when was produced before the Transport Authorities for registering the same, the Registering Authority orally insisted upon the payment of entry tax for the purpose of registering the imported vehicle.

3.3. This was triggered the petitioner to file a writ petition in W.P.No.38462 of 2005 for a direction to the registering authority to register the imported car without insisting upon payment of entry tax.

3.4. In the said writ petition, an interim direction was given in W.M.P.No.41180 of 2005, dated 29.11.2005, directing the registering authority to register the imported car without insisting upon the entry tax.

3.5. Thereafter, based on the legal position, as number of judgments had come in the line as to whether the imported vehicles like the petitioner is liable to be levied entry tax and some judgments passed by the Kerala High Court had gone for appeal to the Hon'ble Supreme Court and during the pendency of the same, judgments had come from this Courts, where two conflicting views had been taken by two different learned single Judges and ultimately the matter was referred to a Division Bench.

3.6. Those cases were pending for several years, i.e., up to 2019. While so, on 09.10.2017, the case arose from the Kerala High Court in the matter of State of Kerala v. Fr.William Fernandez, was decided on 09.10.2017 by the Hon'ble Supreme Court in (2017) SCC Online 1291, where the validity of the pari materia entry tax Act of the Kerala State was upheld and the liability to pay entry tax even for imported vehicle was confirmed.

3.7. Following the said Supreme Court decision a number of cases / writ petitions, which were pending before this Court were grouped together and decided by a Division Bench of this Court in V.Krishnamurthy v. State of Tamil Nadu, etc., batch, by order, dated 29.01.2019 reported in 2019 SCC Online Mad 8523.

3.8. In the meanwhile, the petitioner had sold the car in 2009 to another individual for consideration and it was not in the possession of the petitioner since 2009.

3.9. Only in that circumstances, after the legal battle was over as stated supra before the Hon'ble Supreme Court followed by the Division Bench of this Court referred to above in V.Krishnamurthy's case, the respondent Revenue issued a notice in the year 2021 to the petitioner for the payment of the entry tax, which was replied by the petitioner and pursuant to which, the Revenue proceeded to finalise the same and passed orders on 17.12.2021, calling upon the petitioner to pay the entry tax demand along with penalty, failing which steps would be taken to recover the money under Revenue Recovery Act.

3.10. In respect of the said impugned notice / demand, the tax component was Rs.7,98,075/- and interest component was Rs.30,23,609/-. In view of the notice issued, where coercive steps was indicated by the Revenue, without prejudice or under protest, the petitioner paid the tax component of Rs.7,98,075/- and challenged the impugned order of notice-cum-demand issued by the Revenue, dated 17.09.2021 and 17.12.2021. That is how this writ petition was filed.

4. **W.P.No.29130 of 2019** :

4.1. This writ petition also was filed by an individual. The case of him is, he imported two foreign vehicles, one is on 01.02.2010 and another one is on 30.11.2010. When he approached the Registering Authority for registering the said vehicles it was not registered on the ground that, the petitioner should pay the entry tax under the Entry Tax Act. Therefore the petitioner had filed Writ Petitions in W.P.Nos.5122 of 2010 and 4056 of 2011 challenging the refusal of the transport authority in registering the vehicle, where the petitioner was able to get interim directions to the Registering Authority to register the imported vehicle without demanding the entry tax.

4.2. However, the said writ petitions, pursuant to the legal position as has been stated earlier, where the Hon'ble Supreme Court passed order on 09.10.2017 in Fr. William Fernandez's case, followed by the Division Bench judgment of this Court in V.Krishnamurthy's case, filed by the petitioner i.e., W.P.No.4056 of 2011 and 5122 of 2010 were dismissed on 20.11.2018 and 04.07.2019 respectively.

4.3. Thereafter, on 18.09.2019, the Revenue issued notice to the petitioner seeking information pertaining to import details, freight charge details, invoices and accessories and entry tax paid, if any, on the imported vehicles. Since only part of the details were filed, except insurance details, the Revenue proceeded to issue a recovery notice, dated 27.09.2019 demanding the tax arrears to the extent of Rs.13,07,923/-. Challenging the same, the present writ petition was filed.

5. **W.P.Nos. 28430 of 2019, 28435 of 2019, 28436 of 2019, 28438 of 2019, 28441 of 2019, 5097 of 2021 and 5099 of 2021** :

5.1. These seven cases have been filed by a private limited company, namely, M/s. Adyar Gate Hotels Ltd. The sum and substance of these cases, as per the affidavit averments is concerned, the petitioner is a star hotel and one of the services required to be rendered by the petitioner to the customers is the Airport transfers. For the said purpose, the petitioner was required to purchase imported cars for the use for its elite customers. Therefore at various point of time, cars were imported from foreign soil and when those imported cars were placed before the Registering Authority for registration, it was refused on the ground that, the petitioner should pay the entry tax under the Entry Tax Act and only at that juncture, the petitioner earlier had filed writ petitions and in those writ petitions, 15% of the tax demand was directed to be paid as a condition. Pursuant to the said order, 15% of the tax proposed or demanded was paid by the petitioner in each of the cases pertaining to various vehicles imported by the petitioner which are covered under the present writ petitions.

5.2. Ultimately, by virtue of the legal position in Fr. William Fernandez's case, as well as V.Krishnamurthy's case (*cited supra*), the

respondent Revenue started issuing fresh notices as well as demand, wherein after having calculated the tax due payable by the petitioner in respect of each of the vehicles imported by them, such notices were issued. Challenging the same, the present set of writ petitions have been filed.

6. In all these cases, it is to be noted that, the two individuals as well as the Hotels Private Ltd., had already approached this Court, filed writ petitions as stated supra and those writ petitions pending for some years, had been disposed of after 2017 or 2019 in view of the orders passed by the Hon'ble Supreme Court as well as the Division Bench of this Court in V.Krishnamurthy's case referred to above.

7. Now this is the last round of litigation, which are generated by these petitioners, where, they raised the ground that, there must be an assessment order before proceeding for any recovery or demand of tax and such kind of assessment has not been made in respect of the petitioners under the provisions of the Entry Tax Act as well as the rules made thereunder. Also insofar as making such an assessment since there was three

years limitation prescribed, within which since no assessment has been made, it is barred by limitation, therefore assessment cannot be made now. Therefore on these two grounds mainly they raised the contention that, the present demand or notices issued demanding or proposing to recover the tax as well as the penalty are concerned are unlawful and against the provisions of the Entry Tax Act. Therefore, on these grounds, they challenge the respective impugned notices as well as demand issued by the Revenue against each of these petitioners.

8. Arguments were advanced by Mr.R.L.Ramani, learned Senior counsel assisted by Mr.B.Raveendran, Mr.A.N.R.Jayapratap and Mr.Raghavan Ramabadran, learned counsel appearing on behalf of the petitioners. Like that, Mr.Haja Nazirudeen, learned Additional Advocate General assisted by Mr.Richardson Wilson, learned Additional Government Pleader appearing for the respondent Revenue made his submissions.

9. A line of Judgments have been cited by both sides, especially the Judgments, i.e.,

(i) Fr.William Fernandez v. State of Kerala, 1998 SCC Online Ker 230

(ii) M/s. Sumitomo Corporation v. State of Tamil Nadu and others, 1999 SCC Online Mad 700

(iii) M/s. TVS Electronics Limited, v. The Registering Authority, Chennai (Central), dated 19.04.2000 in W.P.No.8738 of 1999 of the Madras High Court

(iv) State of Kerala and others v. Fr.William Fernandez etc., 2017 SCC Online 1291

(v) V.Krishnamurthy v. State of T.N, 2019 SCC Online Mad 8523

(vi) Aashish Gulati v. State of Tamil Nadu, dated 14.11.2019 made in W.P.No.11033 of 2000 of the Madras High Court.

10. These line of Judgments have been cited by the learned counsel appearing for both sides and they would contend that, insofar as the petitioners side is concerned, in view of the law having been declared by the Kerala High Court in Fr. William Fernandez's case referred to above (1998 SCC Online Ker 230), the pari materia entry tax Act of the Kerala State was

held to be unenforceable in respect of entry tax on imported vehicle and followed the same, in M/s. T.V.S.Electronics case, a single Judge of this court on 19.04.2000 had also held that, the imported vehicles cannot be subjected to entry tax even though earlier single Judge order of this Court in M/s. Sumitomo Corporation's case v. State of Tamil Nadu, taken a different view on 01.09.1999 and in view of the conflicting decisions taken by two learned Judges of this Court, when a similar issue came up for consideration before another learned single Judge in W.P.No.11033 of 2000 in the matter of Aashish Gulati v. State of Tamil Nadu, the learned Judge having taken a view that, entry tax would not be made applicable to the imported vehicle, he was pleased to refer the matter to a Division Bench for authoritative pronouncement and by virtue of that reference, it was posted before a Division Bench, where a Division Bench of this Court granted interim order restraining the Revenue from taking steps to collect any entry tax under the provisions of the Entry Tax Act on the vehicle imported by the petitioner and that writ petition also was pending for several years and in the meanwhile, number of writ petitions on similar line had been filed, which were also entertained and placed before the Division Bench for decision and

those cases were also pending and only after the order passed by the Hon'ble Supreme Court in State of Kerala and others v. Fr. William Fernandez etc., reported in 2017 SCC Online SC 1291, dated 09.10.2017, the cloud was removed and the position has been clarified and only thereafter, i.e., on 29.01.2019, all those writ petitions were disposed by a Division Bench of this court in V.Krishnamurthy v. State of Tamil Nadu, followed by the decision of another Division Bench on 14.11.2019 in the referred case, i.e., W.P.No.11033 of 2000 in the matter of Aashish Gulati v. State of Tamil Nadu, till such time, i.e., from the year 2000, nearly about 20 years, there was a fluid situation on the legal position as to whether the imported vehicles can be subjected to entry tax under the provisions of Entry Tax Act and such entry tax can be levied and recovered from them.

11. In view of the said confused legal position where litigations were pending for long years, where interim orders were granted restraining the revenue from taking any steps to recover the amount of tax under the provisions of the Entry Tax Act on imported vehicles and in some cases, interim orders were granted, directing the importers to pay 15% of the tax

proposed and with those interim orders since those writ petitions were pending for long years, neither the Revenue nor the importers have acted upon to collect the remaining entry tax or to pay the entry tax as the case may be and therefore these situation was prevailing up to 2019.

12. Only thereafter the Revenue started issuing notices and started demanding the tax due payable, by each of the importers who imported the foreign vehicles at various point of time including the petitioners herein. Therefore this round of litigation according to the learned counsel appearing for the parties have come up only in the year 2019, 2021 and 2022.

13. In this context, the two grounds raised by the petitioners side that, without assessment order, no demand can be made and the assessment order even cannot be made now in view of the limitation provided under the Act is concerned, it was the counter argument on behalf of the learned Additional Advocate General appearing for the Revenue that, the very liability of paying the tax since has been upheld by number of decisions of this court and in respect of each of these petitioners, they already

approached this Court and filed writ petitions which were also considered and decided by dismissing those writ petitions upholding the liability of them to pay the entry tax and all these years since litigations were pending, where interim orders were granted, no further action could be made by the Revenue to recover the tax, hence the point of limitation cannot be put against the Revenue in these cases because of the pendency of the writ petitions and therefore, the two grounds urged by the petitioners side are untenable and are liable to be rejected, submitted by the learned AAG appearing for the Revenue.

14. In order to delve into the said issue raised in this batch of cases, first, let me take the line of Judgments as indicated above, as to what has been exactly decided in those cases and then will proceed to examine whether the two grounds urged by the petitioners side are tenable or not.

15. **Legal position** :

15.1. When the liability of importers, who imported foreign vehicles to pay entry tax on the basis of a similar tax law as that of the Tamil Nadu

Act, in the State of Kerala, was the subject matter before a Division Bench of the Kerala High Court in the matter of Fr.William Fernandez v. State of Kerala in W.A.No.770 of 1997 etc., batch which was decided on 06.01.1998 reported in 1998 SCC Online Kerala 230 : (1998) 1 KLT 256. The following is the operative portion of the order passed by the Kerala Division Bench :

> "25. In the view we have taken about the applicability of the Act to imported cars, we think it unnecessary to deal with the question of exemption granted under the proviso to S.3 of the Act, that, it was said, is violative of Art. 14 of the Constitution. This aspect has been dealt with in the impugned judgment, where relevant judicial precedents have been considered and we agree that the contention urged was rightly repelled. We declare that vehicles brought from abroad are not liable to entry tax. They are directed to be given registration in Kerala in terms of the applications made there for before the concerned respondents, who shall not insist upon production of clearance certificate under the provisions of the Act."

15.2. Followed by the said Division Bench Judgment of the Kerala High Court in Fr.William Fernandez's case, a writ petition was moved before this Court in W.P.No.498 of 1991 in M/s. Sumitomo Corporation v. State of Tamil Nadu and others, which was dealt with by a learned Judge,who has taken a different view that, the Tamil Nadu Entry Tax provisions would be applicable to the imported vehicle also. The operative portion of the order of the learned single Judge in M/s. Sumitomo Corporation's case reads thus :

> "14. Under these circumstances, I hold that the impugned Act will apply on the entry of any motor vehicle into the local area of this State whether by way of import from foreign countries or by purchase from other States and Union Territories. Accordingly, there is no merit in the writ petition and the same is dismissed. No costs. Consequently, W.M.P.Nos.769 of 1991 and 12942 of 1995 are closed."

15.3. However, when a similar writ petition was moved before another learned Judge of this Court in M/s. TVS Electronics Limited v. The Registering Authority, Chennai (Central) in W.P.No.8738 of 1999, which

came to be decided on 19.04.2000, the learned Judge has taken a different view, of course by following the decision of the Kerala Division Bench in Fr. William Fernandez's case and held as follows :

> "9. In this result, the writ petition is allowed, issuing a direction to the respondent to register the imported vehicle viz., TOYOTA CAR - Harrier Wagon (5 seater), bearing Chassis No. MCU-15-0048264, Engine No. IMZ-0692834, imported by the petitioner for his use, within two weeks of production of a copy of this order along with necessary application. In the circumstances of the case, there is no order as to cost. Consequently, WMP.No.12354 of 1999 will stand dismissed."

15.4. Thereafter when another writ petition came to be moved before another learned Judge of this Court in the matter of Aashish Gulati v. State of Tamil Nadu in W.P.No.11033 of 2000, that writ petition was decided by another learned Judge, by order, dated 06.09.2000, where he has taken the following view :

> "11. From a reading of the abovesaid definitions and the provisions of the Act, I am of the opinion

> that there cannot be any levy of entry tax under Section 3 of the Act on the imported case on the basis that there is evasion of sales tax. Moreover even according to the proviso to Section 3 of the Act, such levy of entry tax is exempted with reference to certain vehicles. This provision cannot be made applicable to cars brought from abroad. This provision also should be taken into consideration to come to the conclusion that the Act is not intended to levy entry tax on the imported cars from foreign countries. The abovesaid conclusion of mine is also supported by the decision of the Division bench of Kerala High Court in Fr.William Fernandez v. State of Kerala, Vol. 115 S.T.C - 591.
>
> 12. Since, I have taken a different view, Registry is directed to place the papers before My Lord, the Honourable The Acting Chief Justice, to post the case before the Division Bench for considering the issue."

15.5. Pursuant to the said reference, the writ petition was placed before a Division Bench, where interim order of injunction was granted

restraining the Revenue from taking steps to collect any entry tax under the provisions of the Tamil Nadu Entry Tax Act on the vehicle imported by the petitioner therein. The relevant order of the Division Bench was passed on 04.09.2001.

15.6. Subsequently, it seems number of similar writ petitions had been filed before this court, which were entertained and all those writ petitions had been kept pending, wherein either interim orders of injunction have been granted restraining the Revenue from assessing or recovering the entry tax payable by them on the imported vehicle or in some cases, conditional order of directing the importer to pay 15% of the tax demand and the remaining amount is concerned, interim order were granted and those cases were pending for several years.

15.7. In the meanwhile, the State of Kerala preferred appeals before the Hon'ble Supreme Court against the decision of the Kerala Division Bench in Fr. William Fernandez's case (cited supra) in Civil Appeal Nos. 3381 - 3400 of 1998. Those Civil Appeals with connected Appeals were

heard together and decided by the Hon'ble Supreme Court on 09.10.2017 in State of Kerala v. Fr. William Fernandez etc., reported in 2017 SCC Online SC 1291. In the said Judgment, the Hon'ble Supreme Court, having considered all aspects by an exhaustive decision has ultimately held as follows:

> " The appeals filed by the State of Kerala are allowed. The judgment of the Division Bench holding that no entry tax was leviable on the vehicle imported from territories outside the country is set aside, restoring the judgment of the learned Single Judge."

15.8. Subsequently, a number of writ petitions which were filed for the relief, following the legal position declared in Fr. William Fernandez's case by a Division Bench of the Kerala High Court of the year 2012, 2014 and some Writ Appeals also of the year 2006 were grouped together and heard by a Division Bench of this Court in the matter of V.Krishnamurthy v. State of Tamil Nadu reported in 2019 SCC Online Mad 8523. In the said decision of the Division Bench of this Court, dated 29.01.2019, it has been held as follows :

"67. Thus, in our considered view, the judgment in the case of Fr.Willilam Fernandez applies with full force to the cases on hand which arise under the provisions of the Tamil Nadu Act which is pari materia to the Kerala enactment, which was considered by the Hon'ble Supreme Court and levy of entry tax on imported vehicles was upheld. Thus, we are of the clear view that the prayer sought for by the writ petitioners in these cases are not tenable and the writ petitions are liable to be dismissed.

68. Mr.R.L.Ramani, learned Senior Counsel assisted by Mr.B.Raveendran counsel for the petitioner in W.P.No.33525 of 2007 argued on a slightly different plain. As we can understand from the submissions of the learned counsel that the learned counsel would not seriously contest the levy of entry tax on imported vehicles as there is no submission made on that aspect, but arguments were confined only on the ground that these are fit cases where administrative waiver of taxes has to be granted.

69. The submission of the learned Senior Counsel is that the first of the decisions was rendered by

this Court in a writ petition in W.P.No.498 of 1991 [M/s.Sumitomo Corporation v. State of Tamil Nadu and another] and the said writ petition was dismissed vide order dated 01.09.1999, thereby, holding that entry tax was leviable even for imported vehicles. In W.P.No.8738 of 1999 filed by M/s.TVS Electronics Limited v. The Registering Authority dated 19.04.2000, the writ petition was allowed with a direction to register imported vehicles without collection of entry tax. The third decision is in the case of Aashish Gulati v. The State of Tamil Nadu and others W.P.No.11033 of 2000, dated 06.09.2000, whereby, the learned single Bench did not agree with the view taken in the case of Sumitomo Corporation, largely on account of the decision of the Division Bench of Kerala High Court in Fr.William Fernandez (supra). On account of the differing view, the matter was referred to the Hon'ble Chief Justice to post the case before the Division Bench. We are informed that the matter is still pending. However, the decision of the Division Bench in Fr.William Fernandez (supra) has been reversed by the Hon'ble Supreme Court

and the matter has been decided against the assessee. Therefore, the said decision is an answer to the reference made in the case of Aashish Gulati (supra).

70. Therefore, in our considered view, there would be no necessity for a separate order to answer the reference and the decision of the Hon'ble Supreme Court in Fr.William Fernandez (supra) covers the issue referred for consideration of the Division Bench.

71. Coming back to the arguments of Mr.R.L.Ramani, learned Senior Counsel, it is submitted that the above orders will clearly show that there was ambiguity and different views were taken by different Benches and under similar circumstances when the provisions of Tamil Nadu General Sales Tax Act, 1959 were put to challenge, wherein as per Entry 150 in the Schedule to the Act, articles of food and drink sold to customer in 3 star, 4 star and 5 star hotels were taxable at 10% this was challenged as being discriminatory.

72. A Division Bench of this Court in Sangu Chakra Hotels (P) Ltd vs. State of Tamil Nadu

(1985) 60 STC 125 allowed the writ petitions on the ground that the demand of higher rate of tax for star category hotels were discriminatory. The State Government filed appeal before the Hon'ble Supreme Court, which was tagged along with other connected matters and the Supreme Court in Kerala Hotel and Restaurant Association and others v. State of Kerala and others [1990 Vol. 77 STC 253], allowed the appeals filed by the State holding that there is a rational nexus exists for such classification and the classification is founded on intelligible differentia. Subsequently, one of the petitioners had filed separate appeals before the Supreme Court in Civil Appeal Nos.101 and 102 of 1995, wherein, it was pointed out that after the Division Bench judgment in Sangu Chakra Hotels (P) Ltd., entry was struck down and subsequently after the decision of the Supreme Court in Kerala Hotel and Restaurant Association (supra), entry was revived and in the interregnum, tax was not collected and therefore, administrative waiver was granted.

73. In this regard, the petitioners relied upon G.O.Ms.No.973 Revenue Department, dated

27.05.1967. The Hon'ble Supreme Court directed the Government to examine the claim of the South India Hotels and Restaurants Association and the claim was considered and vide G.O.Ms.No.157 Commercial Taxes and Religious Endowments Department, dated 22.04.1996, administrative waiver was granted in subject to certain conditions. Therefore, it is the submission of the learned Senior Counsel that identical directions can be issued in these cases as well, as the petitioners cannot now pay tax.

74. We have heard the learned Special Government Pleader on the above submissions.

75. At the first instance, we need to point out that no Court can compel the Government to exercise its power to examine or for that matter to grant administrative waiver. It is a policy decision to be taken by the Government and it is not for the Court to dictate as to whether or not the Government should exercise such power. That apart, facts of the case in which Government granted administrative waiver subject to conditions vide G.O.Ms.No.157 dated 22.04.1996 was entirely different and cannot be applied to the present

cases, which arise out of a different enactment, the purport and intent being totally different. First of the decision was in the year 1999 holding that entry tax is leviable on import of vehicles. Another learned single Bench took a different view but did not distinguish the earlier decision, but chose to follow the decision of the Division Bench of the Kerala High Court in Fr.William Fernandez. In the third decision, there has been a reference because in the third decision, the first decision was noted. However, we need not labour much to make a further probe on this issue because the decision of the Division Bench of the Kerala High Court in Fr.William Fernandez has been reversed by the Hon'ble Supreme Court and the matters have attained finality. It is not in dispute that the petitioner in W.P.No.33525 of 2007 is still in possession and ownership of the vehicle imported by them. The law on the subject as decided by this Court as early as 01.09.1999 holds that the entry tax is leviable on imported vehicles. Therefore, we do not find any merits in the submissions that the matter should be relegated to the Government for grant of administrative waiver.

> 76. For all the above reasons, the writ petitions are dismissed and it is held that the petitioners are liable to pay entry tax on imported vehicles brought into the State of Tamil Nadu for use or for sale. Insofar as the miscellaneous petitions filed by the petitioners raising additional grounds are concerned, the learned Senior Counsel has not advanced any arguments, but their argument was only on the ground of administrative waiver in the light of the decision taken by us in the preceding paragraphs. Hence, there is no necessity to consider the additional grounds raised in the miscellaneous petitions. Accordingly, the same stands closed. No costs."

16. Therefore, what has been declared by the Division Bench in the said V.Krishnamurthy's case is that, the petitioners therein, like the present petitioners, were liable to pay entry tax on imported vehicles brought into the State of Tamil Nadu for use or for sale. Therefore the liability of every importer who imported and brought the foreign vehicle into the State of Tamil Nadu are liable to pay entry tax under the Entry Tax Act. Therefore, insofar as the liability is concerned, absolutely there is no scope for the petitioners to get rid of the situation.

17. It is further to be noted that, after the said Division Bench Judgment in V.Krishnamurthy's case, another writ petition in Aashish Gulati v. State of Tamil Nadu in W.P.No.11033 of 2000 which was referred to a Division Bench for an authoritative pronouncement in view of the conflicting decisions taken by two learned Judges of the writ court differently, also came to be disposed of by another Division Bench, by order, dated 14.11.2019, where the Division Bench following the decision of the Division Bench in V.Krishnamurthy's case, has dismissed the said writ petition in Aashish Gulati's case.

18. In view of the settled legal position, as the liability of these importers to pay the entry tax on their imported vehicle since has been declared or held in unequivocal terms by more than one decision of this Court, of course by following the earlier decision of the Hon'ble Supreme Court on the law, the Revenue started issuing fresh notices by calculating the tax component as well as the penalty component payable by each of the petitioners and only those notices or demand now are under challenge in these writ petitions.

19. **On legal ground submitted by the petitioner side** :

19.1. As indicated above, two legal grounds were raised by the petitioners side. One is that, there must be an assessment order, without which, no demand for recovery of the tax can be made by the Revenue. The second ground is that, even for making an assessment, in view of the limitation under the provisions of the Entry Tax Act, such an assessment cannot be made now. Therefore, on these two grounds, they wanted to assail the impugned notice or demand or recovery proceedings.

19.2. In order to deal with the said two grounds, first let me take to the relevant provisions of the Act, namely, the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 (in short "The Entry Tax Act").

19.3. Section 3 of the Act is the levying section or charging section which says that, there shall be levied and collected a tax on the entry of any motor vehicles into any local area for use or sale, within which is liable for registration, or for the assignment of new registration mark, in the State under the Motor Vehicles Act, 1998. The rate of tax shall be at such rate or

rates, not exceeding twenty per cent, as may be fixed by the Government by notification, on the purchase value of the motor vehicles.

19.4. Section 7 speaks about the return and it says that every person liable to pay tax under this Act, shall furnish returns in such form, for such period, by such dates and to such authority, as may be prescribed.

19.5. Section 8 deals with the Assessment which says that, the amount of tax due from a person liable to pay tax under this Act shall be assessed separately for such period as may be prescribed. Sub-section 2 of Section 8 says that, if the assessing authority is satisfied that the return furnished by a person liable to pay tax, is correct and complete, he shall assess the amount of tax due from the person on the basis of such return. Sub-section 3 says that if the assessing authority is not satisfied that the return furnished by a person liable to pay tax, is correct and complete and he thinks it necessary to require the presence of the person or production of evidence etc., notice to be served to require the presence of such person. Sub-section 4 says that, if a person fails to comply with the requirements of

any notice issued under sub-section (3), the assessing authority shall determine the purchase value of the motor vehicle under the proviso to clause (k) of Section 2 to the best of his judgment and assess the amount of tax due from him.

19.6. Sub-section (5) of Section 8 is very relevant, which says that, no order of assessment under sub-section (3) or (4) shall be made after the expiry of three years from the last date prescribed for filing of returns of the particular period.

19.7. Section 15 speaks about penalty, where sub-section (1) says that, where any person liable to pay tax under this Act fails 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.

19.8. Sub-section (2) of Section 15 says that, 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 it, 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 half percent of the amount of tax for each month for the first three months and (b) two percent of the amount of tax for each month thereafter.

19.9. These are all the important provisions which are to be noted. Therefore the scheme of the Act is that, the charging section is Section 3 and the liability of the tax payer to file return is under Section 7. Thereafter the assessment is under section 8 and the penalty provision is available in Section 15.

19.10. Under the rule making power, the rule making authority, i.e., the Government of Tamil Nadu, made rules called "The Tamil Nadu Tax on Entry of Motor Vehicles Rules, 1990 (in short "The Rules"), where rule 3

speaks about "Submission of Returns and Payment of tax". The sub-rule 2 of rule 3 says that, an importer, who is a dealer in motor vehicles, liable to pay tax under the General Sales Tax Act shall furnish return for each month and each such return shall be furnished on or before the 20th day of the month immediately succeeding. Sub-rule (3) says that, an importer other than the one specified in sub-rule (2) shall furnish return for only the quarter in which an entry of motor vehicle into a local area is effected by him and such return shall be furnished on or before the last day of the month immediately succeeding the quarter.

19.11. Therefore under sub-rule 3 of rule (3), a private importer, i.e., other than a dealer, shall furnish the return before the last day of the month immediately succeeding the quarter.

20. If we look at these provisions, insofar as the liability to pay tax on these petitioners are concerned, it has been well declared by the plethora of decisions referred to above. Therefore it should be taken into account that, these petitioners should have filed their return under Section 7 of the Act

r/w rule 3. Insofar as the dealer is concerned, under rule 3(2), such return should have been filed and for others, under rule 3(3) return should have been filed immediately following the succeeding month of the quarter.

21. In all these cases, these petitioners may not be the dealer but only can be treated as an individual, for their own use since they imported the vehicles concerned, they should have filed the return under rule 3(3). However, admittedly none of the petitioners have filed such return within the time. They stated that, the reason for non-filing of the return was that, before they imported the respective vehicles, the pari materia legislation of the State of Kerala was testified and it was declared so, that the entry tax cannot be levied on the imported vehicle.

22. When that being the legal position when paria materia provisions was available in the Tamil Nadu Act, i.e., Entry Tax Act of Tamil Nadu, the petitioners and similarly placed persons were on the impression throughout the State that, the entry tax cannot be imposed against the imported vehicle.

23. Therefore on that grounds, according to them, when they placed their vehicle before the Transport Authority for registration, since either it was refused for registration or insisting upon the importer to pay the entry tax for the purpose of registering the vehicle, that only triggered the petitioners to approach this court in the first round of litigation, seeking for a prohibitory order, that is restrainment against the transport authorities from insisting upon to pay entry tax for the purpose of registering their vehicle.

24. In those cases interim orders were passed directing the registering authority to register the vehicle without insisting the entry tax. Subsequently in some cases, it seems conditional orders were passed, whereby 15% of the tax were directed to be paid. It is to be noted that, in some of the cases filed in this nature, mainly against the transport authority, the Revenue people were not made as a party and in some cases, Revenue Authorities also, i.e., tax authorities were made as a party.

25. Be that as it may, the legal position was very fluid at that time, which was prevailing for more than 15 years between 2000 and 2017 and some light has been thrown only after the decision of the Hon'ble Supreme Court in State of Kerala v. Fr. William Fernandez's case, which was decided on 09.10.2017.

26. The moment such declaration has come from the Hon'ble Supreme Court in Fr. William Fernandez's case, the petitioners and similarly placed persons seems to have waited for the decision to be made in this regard on the pending litigations before this Court and ultimately in V.Krishnamurthy's case, all those writ petitions were heard together and disposed of by a Division Bench of this Court, by order dated 29.01.2019.

27. In the said batch of cases, order passed by the Division Bench has made it clear that, the law has been declared by the Hon'ble Supreme Court in Fr. William Fernandez's case, therefore, even though in Aashish Gulati's case reference has already been made to have an authoritative pronouncement by a Division Bench in W.P.No.11033 of 2000, which was

also pending, the Division Bench in V.Krishnamurthy's case held that, there was no necessity to give any answer to the reference made in Aashish Gulati's case, in view of the authoritative pronouncement of the Hon'ble Supreme Court in Fr.William Fernandez's case and following the same, the Division Bench in V.Krishnamurthy's case has made an elaborate order declaring that, the petitioners therein were liable to pay entry tax on imported vehicles brought into the State of Tamil Nadu for the use or for sale.

28. Therefore the bone of contention of the petitioners in most of the affidavits filed and the arguments advanced on behalf of the petitioners in this batch that, due to the fluid situation of the legal position as some judgments had come from Kerala High Court in favour of the petitioners, following the same, writ court in one case decided in favour of the petitioners and another court decided in favour of the Revenue and when third writ petition had come up, a learned Judge wanted to take a difference view, therefore he referred the matter to the Division Bench, where also the Division Bench granted some interim order and the cases were pending all

along for several years for more than a decade and so and therefore because of such a situation, where the legal position was not so clear, neither the Revenue could proceed further against these petitioners, nor the petitioners could move forward to pay the tax or decide otherwise.

29. If this is the stand taken by the petitioners and the arguments advanced on their behalf before this court in this batch of cases, their delay in paying the tax for the reason of pendency of cases and the fluid legal situation would certainly apply to the Revenue side also.

30. In number of cases restrain orders have been passed against the Revenue not to proceed against them and in some cases only conditional orders were passed by directing the importers to pay only 15% of the tax demand.

31. In all these cases, under Section 7 of the Act r/w rule 3(2) or 3(3), no return had been filed. Therefore invoking the best judgment theory, after collecting the details about the cost of the vehicle imported, duty paid on

them, insurance charges, clearance charges etc., all put together which are liable to be calculated for the purpose of assessing the entry tax either at the rate of 12.5% or at the rate of 14.5%, accordingly, those amount were assessed. Therefore, the said action taken on the part of the Revenue in completing the assessment based on the input supplied by the petitioners with regard to the value of the vehicle as well as the amount paid on such import by way of import duty etc., cannot be found fault with.

32. Though some arguments were advanced by the learned counsel appearing for the petitioners that, if at all the litigation period is to be excluded for the purpose of calculating the limitation for making the assessment order is concerned, there is no such express provision available in the Entry Tax Act, however, similar such provisions to exclude the litigation period from the purview of limitation is available expressly in various tax legislations, therefore in the absence of such a provision, the litigation period cannot be excluded for the purpose of calculating the limitation to proceed further either for assessment or for demand of tax on the part of the Revenue is concerned, that argument is liable to be rejected,

because, it is a settled legal proposition that, when courts have taken cognizance of the issue, of course at the instance of the tax payer, challenging the liability or otherwise of the tax payable under any tax legislation and in this context, in those litigations, if the tax payer was able to get interim orders or restrain orders against the Revenue and those litigations if were pending for several years, certainly the Revenue were precluded from proceeding further. Therefore that period where the litigations were pending all long before the Court of law, certainly has to be excluded and in this regard, the provisions of the Act need not have an express wordings enabling the Revenue to exclude the period of litigation for the purpose of calculating the limitation.

33. Moreover in these cases, the very liability itself was questioned by number of persons in the earlier round of litigations and those litigations were pending for several years and ultimately decided only in the year 2019. Till such time, absolutely there was no scope for the Revenue to proceed further as in number of cases since there were interim orders issued which were subsisting all these years, any move if it had been taken on the side of

the Revenue, that would have been treated as a contempt of Court and therefore certainly such litigation period up to the decision of the Division Bench in V.Krishnamurthy's case can be excluded from the purview of limitation.

34. Therefore the argument advanced on behalf of the petitioners side that, the Revenue lost its limitation in proceeding further against the petitioners have no substance, therefore that argument is liable to be rejected.

35. Though in one case, the petitioner submitted that the vehicle purchased by him in 2005 was sold to some other party in 2009, therefore he is not liable to pay any tax is concerned, it is not the liability as on today but it was the liability at the time of importing the vehicle and brought the vehicle into the State of Tamil Nadu, i.e., in the year 2005. Therefore that argument also is liable to be rejected.

36. In respect of the other ground raised by the petitioners that, no assessment order has been made, for which, no notice has been given is concerned, in some of the cases repeatedly notices have been given even now, i.e., after 2019 and for the remaining cases, notice were issued earlier. In fact the liability on the part of the importers to file return under Section 7 r/w rule 3(3) was very clear, however, these petitioners have chosen not to file the return. Therefore based on the best judgment theory, under sub-section 4 of Section 8, the Revenue proceeded to assess the tax payable by these petitioners and accordingly, the tax liability along with penalty having been calculated was demanded from these petitioners.

37. Therefore the two grounds raised by the petitioners side since are untenable for the reasons and the discussions herein above made, those two grounds raised on behalf of the petitioners are hereby rejected.

38. Now let us come to the point with regard to the penalty imposed against the petitioners.

39. In this context, it was contended on behalf of the Revenue that, Section 15 of the Act provides for such a penalty, especially under Section 15(2), that if a 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 it, 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 one and half percent of the amount of tax for each month for the first three months and two percent of the amount of tax for each month thereafter.

40. By citing this provision, the Revenue contended that, since these persons, i.e., the petitioners have not paid the tax without any reasonable cause, they are liable to be inflicted with the penalty, i.e., two percent of the amount of tax for each month. That is the reason why they calculated such penalty and imposed the same on the petitioners.

41. In this context, it is to be noted that, sub-section (2) of Section 15 makes it very clear that, “if the person does not, without reasonable cause pay the tax within the time he is required”, which means, if the delay is caused without any reasonable cause, then only such a penalty clause can be invoked. In other words, if the delay is caused for any reasonable cause certainly the penalty provisions cannot be invoked.

42. Here in the case in hand, the very liability itself was under cloud or in question in view of the decisions of the Court of law referred to above. There were line of judgments and unless and until the finality comes from the Hon'ble Supreme Court in Fr. William Fernandez's case on 09.10.2017 followed by the decision of a Division Bench of this Court in V.Krishnamurthy's case, dated 29.01.2019, the legal position was not so clear as three conflicting decisions were taken by the writ courts in various writ petitions as referred to above.

43. Moreover in number of cases in the first round including the petitioners who approached this Court, of course against the transport

authorities, prohibitory orders were issued not to collect or not to demand the entry tax and directions were issued to register the vehicle of the petitioners without insisting the entry tax. In some cases, conditional orders were passed to pay only 15% of the tax demand.

44. In view of these decisions and the long pendency of various litigations including the litigations initiated by the petitioners, it cannot be expected that, the petitioners should have come forward to pay the tax in full at the earliest.

45. How the litigation time now is being deducted for the purpose of limitation on the side of the Revenue, the same logic would apply to the case of the petitioners also in not paying the tax in time.

46. The only possible way to decide as to whether penalty clause can be invoked against the petitioners is concerned, whether they have paid the tax or have come forward to pay the tax at least after 29.01.2019, where the Division Bench has made in unequivocal terms about the liability of

these petitioners to pay the tax as referred to above. If somebody had come forward to pay the tax immediately after the pronouncement of the Division Bench Judgment in V.Krishnamurthy's case and paid the same, certainly those payment can be accepted by the Revenue, without invoking any penalty clause.

47. However even after the Division Bench judgment in V.Krishnamurthy's case still the petitioners have not paid the tax or belatedly paid the tax, the Revenue can invoke the penalty clause under Section 15 of the Act and can proceed to recover the penalty as provided under Section 15(2), w.e.f., 29.01.2019 till the payment of the tax.

48. In this context, when a similar issue had come up with regard to the imposing of penalty is concerned in M/s. National Asphalt Products and Construction Company v. State of Tamil Nadu, rep by its Secretary to Government, Department of Commercial Taxes and Religious Endowments and others, in W.P.No.11574 of 2006, a learned Judge of this Court, by order, dated 02.09.2020, has passed the following order :

6. The law, as on date, is to the effect that the imported vehicles brought into the State of Tamil Nadu for use or for sale would be subjected to payment of Entry Tax. Previously, the Hon'ble Division Bench of the Kerala High Court in the case of Fr. William Fernandez's case (supra) had held, in the year 1998, that entry of vehicles from abroad, is outside the scope of Entry Tax Act and therefore not liable for payment of Entry Tax. This position of law continued till the Hon'ble Apex Court in State of Kerala and others Vs. Fr. William Fernandez and others [2018 (57) GSTR 6 (SC)] decided on 09.10.2017 that the vehicles imported into a country would be subjected to Entry Tax. Admittedly, the petitioner had imported the three vehicles from Germany, in the year 2004/2005, at which point of time, the law was to the effect that Entry Tax is exempted for imported vehicles. While that being so, I do not find any fault with the petitioner when they had not paid the Entry Tax at the time of import. Furthermore, when the Enforcement Wing of the respondents had insisted for payment of the Entry Tax, the petitioner had immediately paid the Entry Tax of Rs.22,59,619/- on 26.10.2005 itself. However for such omission, the second respondent herein had now invoked Section 15(1) of the Entry Tax Act and

proposed a penalty, at twice the amount of the Tax.

7. It is no doubt true that the second respondent is empowered to levy such a penalty. However, this is the case where the Entry Tax was not paid by the petitioner on the first instance, in view of the prevailing law at that point of time. In such circumstances, when there are bona-fides on the part of the importer in refraining from paying the tax, the Hon'ble Apex Court in E.I.D Parry's case (supra) had held that the levy of penalty was not justified. The relevant portion of the order reads as thus:-

> "23. But so far as levy of penalty is concerned, we do not think that the sales tax authorities were justified in levying it. Till the judgment of the Madras High Court, on July 15, 1991, in Perambalur Sugar Mills Ltd Vs. State of Tamil Nadu [1992] 86 STC 17, the correct position of law within the State of Tamil Nadu was not free from doubt. Even thereafter, the Sales Tax Tribunal had in subsequent orders held that transport subsidy was not includible in the taxable turnover. Such a view was held by the Tribunal till March 19, 1993. It appears that on bona-fide belief that planting and transport subsidies were not includible in the taxable turnover, the appellants

had not included those amounts in their turnover and for that reason non-inclusion of these two items in the turnover do not seem to be intentional. Though we have now held that the appellants were not right in not including the amounts of planting subsidy and transport subsidy in the taxable turnover, considering the facts and circumstances of the case, it would not be correct to say that they had acted deliberately in defiance of law or that their conduct was dishonest or they had acted in conscious disregard of their obligation under th Sales Tax Act. The Sales Tax Authorities were, therefore, wrong in passing the orders of penalty and upholding the same. The High Court also, in our opinion, committed an error in upholding the orders of penalty. In the result, these appeals are partly allowed. The order of the High Court and the orders of the Sales Tax Authorities imposing and upholding levy of penalty are set aside. Only to that extend the appellants succeed and their appeals are allowed. The judgment of the High Court in respect to the planting subsidy and transport subsidy is upheld. In the facts and

circumstances of the case, there shall be no order as to costs".

8. A similar view has been taken in Hindustan Steels Limited's case (supra) , in the following manner:-

"8. Under the Act penalty may be imposed for failure to register as a dealer – Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so.

Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the

> penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out".
>
> 9. For all the foregoing reasons, this Court is of the affirmed view that the proposed levy of penalty is unjustifiable and opposed to the proposition laid down by the Hon'ble Apex Court in the aforesaid decisions. Accordingly, the impugned notice in Notice Ref.492/2006 dated 23.03.2006, is set aside. Consequently, the Writ Petition stands allowed. Connected Miscellaneous Petition is closed. No costs.

49. I am in agreement with the said view taken by the learned Judge in the said case, i.e., M/s. National Asphalt Products and Construction Company's case. Hence this Court has no hesitation to hold that, insofar as

the imposition of penalty on the belated payment of entry tax of these petitioners are concerned, such a penalty clause can be invoked by the Revenue only after 29.01.2019 but not before that date.

50. After 29.01.2019 whenever these petitioners paid the tax, only for the said period penalty can be imposed and even after 29.01.2019 till date, if any of these petitioners have not paid the tax in full as demanded by the respondent Revenue, it is open to the Revenue to invoke Section 15 and impose the penalty as stated therein and such penalty can also be recovered from such defaulted importer.

51. In view of all these discussions herein above made, this Court is inclined to dispose of these writ petitions with the following orders :

(i) In all these writ petitions, since the liability of the importers to pay the entry tax on the imported vehicle has already been held in unequivocal terms by this Court in V.Krishnamurthy's case (cited supra) followed by number of decisions, the petitioners are liable to pay the entry tax as demanded by the Revenue.

(ii) Insofar as the levy of penalty for non-payment of the tax as levied or imposed against the petitioners is concerned, such a

penalty can be imposed on the petitioners only after 29.01.2019 but not before that date.

(iii) As a sequel, the Revenue is hereby directed to verify as to when these petitioners have paid the tax and if the tax in full paid as demanded by the Revenue on or before 29.01.2019, no penalty can be imposed on them.

(iv) Instead if they paid only after 29.01.2019, penalty can be imposed on them, under Section 15 of the Act only from 29.01.2019 till the date of payment of the full tax.

(v) Even still if any of the petitioners have not paid the full tax, it is open to the Revenue to recover the full tax as well as the penalty calculating from 29.01.2019 till the date of complete recovery of the tax.

52. With all these directions, these writ petitions are disposed of accordingly, However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

15.07.2022

Index : Yes
Speaking order

tsvn

To

1. The Secretary
   Government of Tamil Nadu
   Department of Commercial Taxes
   Tamil Nadu Secretariat,
   Chennai - 600 003.

2. The Commissioner of State Taxes
   Chepauk, Chennai - 600 005.

3. The Assistant Commissioner (ST) (FAC)
   K.K.Nagar Assessment Circle,
   5th Floor,
   PAPJM Annexe Building,
   No.1, Greams Road,
   Chennai - 600 006.

4. The Assistant Commissioner (ST)
   Alwarpet Assessment Circle,
   Taluk Office Building, R.A.Puram,
   Chennai - 600 028.

R.SURESH KUMAR, J.

tsvn

Common Order
in
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