

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.08.2021

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.33800 of 2015

Mr.K.Dhanush

.. Petitioner

Vs

1. The State of Tamilnadu, Rep. By
its Secretary, Commercial Taxes
Department, Fort St. George,
Chennai – 600 009.

2. The Commercial Tax Officer
(Central), Greams Road,
Chennai – 600 006.

3. The Registering Authority-cum
Regional Transport Officer,
Chennai West,
Chennai – 600 078.

सत्यमेव जयते.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, forbearing the respondent and their subordinates from demanding or collecting Entry Tax in respect of the petitioner Imported ROLLS ROYCE GHOST FK42 RHD, Diamond Colour vide bearing Chassis No.SCA664S0XFUH18471, Enginer No.90311169 for the purpose of assignment of new registration mark by the 3rd respondent herein.

For Petitioner : Mr.S.Vijayan

For Respondents : Mr.V.Veluchamy
Government Advocate

ORDER

The writ on hand is filed to issue a mandamus forbearing the respondents and their subordinates from demanding or collecting Entry Tax in respect of the petitioner's Imported ROLLS ROYCE GHOST FK42 RHD, Diamond Colour vide bearing Chassis No.SCA664S0XFUH18471, Engine No.90311169 for the purpose of assignment of new registration mark by the 3rd respondent.

Facts of the case:

2. The petitioner states that he has purchased one ROLLS ROYCE GHOST FK42 RHD, Diamond Colour car of United Kingdom origin and the port of loading was London. The vehicle has been manufactured by Rolls Royce Motor Cars Limited and the price of the vehicle is Rs.2,15,26,563/- and the petitioner has paid customs duty of Rs.2,69,79,860/-. The petitioner approached the 3rd respondent for the purpose of new registration of the imported vehicle and the 3rd respondent insisted the petitioner to submit 'Entry Tax Clearance

Certificate' to be obtained from the 2nd respondent. When the petitioner approached the office of the 2nd respondent, the 2nd respondent insisted payment of Entry Tax in respect of the imported vehicle.

3. The petitioner states that he has paid the customs duty and therefore, no further tax is to be levied. Neither Sales Tax nor Entry Tax is levied for vehicles that are imported. The contention of the petitioner is that, the goods that are manufactured in India suffers payment of Excise Duty and the goods that are imported suffers Customs Duty. By questioning the levy of Entry Tax, the petitioner has prayed for an injunction restraining the respondents from collecting the Entry Tax in respect of the imported vehicle.

4. The issue raised in the present writ petition is no more *res integra*. The Hon'ble Supreme Court of India in the case of ***State of Kerala v. Fr. William Fernandez***, reported in [2018] 57 GSTR 6 (SC), has held as follows:

“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. The law on the subject

as decided by this Court as early as September 1, 1999 holds that the entry tax is leviable on imported vehicles. Therefore, the submission that the matter should be relegated to the Government for grant of administrative waiver is not tenable.”

5. The said judgment was followed by the Hon'ble Division Bench of this Court in the case of *V.Krishnamurthy Vs. State of Tamil Nadu and Others*, reported in [2019] 69 GSTR 326 (Mad).

Discussion:

6. The rich affluent and reputed persons are importing vehicle from other countries. The writ petitions are filed seeking injunction forbearing the respondents from demanding Entry Tax by the State. By virtue of interim orders passed in the writ petitions, they have registered the vehicle and plying the same using the roads within the State of Tamil Nadu. However, the Entry Taxes are not paid so far and thus, the relevance and importance are to be considered by this Court.

7. Large number of writ petitions are filed. Some of the writ petitions were disposed of and other writ petitions are kept pending on various reasons, including the reason that the said cases are not listed by the High Court.

8. Undoubtedly, the State suffers huge revenue loss for many number of years, as these tax dues are not collected on account of the interim orders granted and due to pendency of the writ petitions.

9. Every citizen of this great nation has a right to seek constitutional remedy. But if any litigation is instituted, then the responsibility lies that the matter is to be pursued and in the event of finality of the disputed issues, actions are to be taken even on pending cases. It is not as if a litigant can file a case and leave as it is and avoid payment of taxes, even after finality in respect of disputes.

10. Large number of unnecessary writ petitions are pending before the High Court either due to the non-cooperation of the litigants or on account of the fact that the interim orders are granted and such interim orders are being utilized for unjust gains. Cars imported several years back are plying on the roads within the State without paying Entry Tax.

Ultimate revenue loss undoubtedly would affect the public interest. Thus, this Court is of the opinion that the constitutional perspectives and the manner in which the writ petitions are filed are to be dealt with for

the interest of protecting the rights of the citizens, who are all approaching this Court for redressal of their genuine grievance.

First question to be considered is that whether a citizen filing the writ petition is bound to state about his identity including his profession and other particulars, or not?

11. The erstwhile rules of the High Court to regulate the proceedings under Article 226 of the Constitution of India stipulates the manner in which the Affidavits are to be filed in a writ petition and the same reads as under.

“5. Every Affidavit filed in support of a Writ Petition or Writ Miscellaneous Petition shall set forth the cause title of the Writ Petition or Writ Miscellaneous Petition as the case may be and the facts and grounds of the relief sought for. The Affidavit should also contain other alternative remedy, if any, available to the Petitioner and if such remedy is not availed of, the reasons therefor. It should also contain that there is no equally efficacious remedy.”

Every declarant of an Affidavit shall be described in such a manner that he/she can be identified clearly with full name, father's name, age, religion, profession or trade and place of residence and the affidavit shall be drawn up in the first person and shall be divided into paragraphs numbered consecutively. When the Affidavit covers more than one side of the sheet of paper, the writing shall be on both sides and the declarant shall sign his name at the foot of each page.”



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12. Even the current rules in force, which is, **Madras High Court Writ Rules, 2021**, Clause-6 stipulates '**Affidavits in support of Petitions**', as under.

6. Affidavits in support of Petitions

- (1) Every Petition shall be supported by an affidavit.
- (2) The affidavit shall bear the cause title of the Petition and set forth (a) facts leading to the filing of the Petition,
(b) facts giving jurisdiction to the High Court to entertain the Petition,
(c) the grounds, in case of a Writ Petition and
(d) the interim relief, final relief.
- (3) The interim relief and final relief, as far as possible, shall be in the penultimate and the last paragraphs respectively of the common affidavit.
- (4) The affidavit shall be drawn up in the first person and be divided into paragraphs numbered consecutively.
- (5) The deponent of an affidavit shall be identified clearly with full name, parent's/spouse's name, age, profession or trade and the official or the residential address.
- (6) The affidavit shall clearly mention whether the statements made therein are based on personal knowledge, information or belief. Where a statement is based on oral information, the affidavit shall disclose the source of such information and where the information is based on records, the affidavit shall give sufficient particulars of such records.

13. In the present writ petition, the petitioner has not shown his identity by mentioning his profession and other connected details and simply stated that petitioner has purchased a ROLLS ROYCE GHOST

FK42 RHD, Diamond Colour car of United Kingdom origin and the port of loading was London. Thus, the petitioner has suppressed his identity by not revealing his profession and therefore, it has to be construed that the writ petition is filed without furnishing the requisite details, amounts to suppression of facts.

14. When the matter was called on 03.08.2021, none appeared and the case is posted today, i.e. on 05.08.2021 and the learned counsel appeared and filed a Memo stating that the previous counsel on record passed away and therefore, there was no representation on 03.08.2021 and on receiving the information, the petitioner engaged the present counsel.

15. May that be, the Memo filed by the petitioner states that he had already paid 50% of the Entry Tax as per the interim order passed by this Court in the year 2015 and remaining 50% will be paid by the petitioner within seven days from the date of receipt of demand notice from the 3rd respondent. However, the learned counsel, who appeared on behalf of the petitioner before this Court in person submitted that the petitioner is ready to pay the tax either on 06.08.2021 or on 09.08.2021.

16. Under these circumstances, this Court thought fit that citizens of this great nation are to be reminded of their fundamental duties in order to avoid unnecessary litigations before the High Courts, which would not only cause over burdening, but the redressal of the grievance of the genuine litigants are being affected. On these facts, this Court is of the view that the constitutional principles and its importance, fundamental duties of the citizens are to be reminded by way of '*obiter dictum*'.

Definition of 'Obiter dictum':

17. The principles of “*Ratio decidendi*” and the “*Obiter dicta*” are defined in the case of ***Mohandas Issardas and others Vs. A.N.Sattanathan and others, reported in AIR 1955 Bombay 113***, wherein the Bombay High Court held as follows:

“6. But the question still remains as to what is an obiter dictum given expression to by the Supreme Court which is binding upon the Courts in India. Now, an obiter dictum is an expression of opinion on a point which is not necessary for the decision of a case. This very definition draws a clear distinction between a point which is necessary for the determination of a case and a point which is not necessary for the determination of the case. But in both cases points must arise for the determination

of the tribunal. Two questions may arise before a Court for its determination. The Court may determine both although only one of them may be necessary for the ultimate decision of the case. The question which was necessary for the determination of the case would be the ratio decidendi; the opinion of the tribunal on the question which was not necessary to decide the case would be only an obiter dictum. Mr. Palkhivala's contention is that an obiter dictum is any definite opinion expressed by the higher tribunal whether the point arose before it or not. Mr. Palkhivala has attempted to make a distinction between an opinion and a definite opinion. He says that, if the higher Court says that a certain view may be possible, then it is not a definite expression of opinion, but if the tribunal definitely expresses its opinion, and not merely tentatively, then it is unnecessary for us to consider whether any points arise for determination before the higher authority, and the mere expression of opinion itself, provided it is definite, would become an obiter dictum, and, in India, binding upon the Courts if the obiter dictum is that of the Supreme Court. In our opinion, that argument appears to be entirely untenable. The very reason why the Courts in India agreed to be bound by the obiter dicta of the Privy Council was that the highest judicial authority in the Empire had applied its mind to a question of law which arose before it for its determination; and however unnecessary it was for it to decide that question, having expressed an opinion on that point it became an authoritative pronouncement on that question of law, and the Privy Council, by deciding that question of law, set its seal of approval upon that question of law. It cannot be suggested that the doctrine of obiter

dicta was so far extended as to make the Courts bound by any and every expression of opinion either of the Privy Council or of the Supreme Court, whether the question did or did not arise for the determination of the higher judicial authority."

18. In Stroud's Judicial Dictionary, which is based upon the case of '*Flower v. Ebbw Vale Steel, Iron & Coal Co*', 1934 2 KB 132 (A), it is held as follows:

"7.....The passage is at page 154 in the judgment of Mr. Justice Talbot. The question that arose before the Court of appeal was whether an earlier decision in Dew v. United British Steamship Co. [(1928) 139 L.T. 628.] was binding upon it, and this is what Mr. Justice Talbot says:—

"It is of course perfectly familiar doctrine that "Obiter dicta", though they may have great weight as such, are not conclusive authority. "Obiter dicta" in this context means what the words literally signify—namely, statements by the way. If a judge thinks it desirable to give his opinion on some point which is not necessary for the decision of the case, that of course has not the binding weight of the decision of the case and the reasons for the decision."

19. The Honourable Division Bench of Madras High Court in Writ

Appeal No.1330 of 2012 dated 04.01.2017, relied on the definition of the concept of "*Obiter dicta*" and the relevant paragraph 24 is extracted hereunder:

"24. Distinction between obiter dicta and a ratio decidendi has been explained by the Hon'ble Supreme Court in Director of Settlements, A.P. v. M.R.Apparao reported in AIR 2002 SC 1598, held that,

So far as the first question is concerned. Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has 'declared law' it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An 'obiter dictum' as distinguished from a ratio decidendi is an

observation by Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a bind effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (See AIR 1970 SC 1002 and AIR 1973 SC 794). When Supreme Court decides a principle it would be the duty of the High Court or a subordinate Court to follow the decision of the Supreme Court."

20. Importance and contribution of “Obiter dictum” by the Courts, for the development of field of law and interpretation of constitution:

(i) Great Lawyers and Great Judges have contributed for the March of law in our great Nation. High Courts and the Supreme Court are the custodian of the Constitution and bound to contribute for the development of the constitutional principles. For instance, facets of

Article 21 of the Constitution was developed from time to time and now providing a decent medical facility to the citizen becomes an integral part of Article 21 of the Constitution of India. Therefore, it is duty casted upon the Constitutional Courts to contribute for the development of Constitutional philosophy and principles, so as to achieve the Constitutional visionary of the vibrant democracy.

(ii). Indian Constitution is not a mere law. It is a visionary document and the makers of the Constitution had great vision and highlighting the vision and the development of the visionary perspectives are of greater importance for the purpose of creating a society, wherein people can freely enjoy their valuable rights and understand their fundamental duties. Rights and duties are inseparable. Person, who claims right must be reminded of his duties. One of the fundamental duty enunciated under Article 51A of the Constitution is *“to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.”*

The fundamental duty casted upon to every citizen under the above clause as well as in other clauses in the Article would provide that in every walk of life, the duties are to be reminded.

(iii). The recent trend is to claim right alone and forget duties. Such a mindset can never be encouraged. It is the duty of the Constitutional Courts to remind the citizens about their fundamental duties enunciated under the Constitution. When the rights and duties go together, Nation will flourish and reach the point of excellence in all spheres of individuals and the value of the rich heritage of our composite culture will be protected.

(iv). The petitioner may raise a ground that claiming exemption from payment of tax is his right. Undoubtedly, every citizen is entitled to claim his right, if he is of an opinion that his right is infringed. However, while dealing with the rights of the citizen, the Constitutional Courts are bound to remind the duties of the citizen under the Constitution to protect the Constitutional values and in the interest of the public at large. When the duties are reminded upon to citizen, they cannot make a complaint that Court has exceeded its jurisdiction by unnecessarily penning down certain points. There exactly the principles of "*Obiter dicta*" come into assistance. The "*Obiter dicta*" in a remarkable judgments especially by the Hon'ble Apex Court of India, contributed for

the March of law in our great Nation. Therefore, the importance of "*Obiter dicta*" in any judgment reminding the duties of the citizen or elaborating the Constitutional principles and in order to protect the Constitutional values and philosophies, can at no circumstances be undermined. The "*Obiter dicta*" as a part of the document is valuable ideas, perspectives, philosophies, visionaries of the Constitution, considered and delivered by the Courts with the assistance of the great lawyers and the Hon'ble Judges.

(v). The Constitutional Courts are not functioning to simply resolve the disputes by saying $1+1=2$. Beyond resolving the issues between the parties, the extraordinary powers conferred under Article 226 is bound to be exercised by the High Courts, whenever an occasion comes for the development and March of law. Thus, such wonderful ideas, ideologies, theories, doctrines in numerous judgments by way of "*Obiter dicta*" became the law of this great Nation and contributed for the development of our Indian democracy.

(vi). The arguments of the petitioner is that he has a right to seek constitutional remedy is well recognized and emphatically he has.

Equally, the fundamental duties enunciated under the Constitution also to be reminded to the citizen. Citizen commonly not filing writ petitions, seeking exemption from payment of taxes for the essential goods being purchased. Crores and Crores of poor and middle class people of this great Nation is purchasing half litre and one litre petrol for their low end two wheelers and they are not choosing to file cases for levy of tax or seeking exemptions. While so, citizen enjoying reputation in the society on importing most prestigious and luxury car of the world from England is expected to pay the Entry tax to the State Government as they are plying the imported luxury car from abroad on the road within the State of Tamil Nadu. The roads across the State are laid from and out of the tax payers' money. Thus, reminding the fundamental duty of the citizen is the Constitutional duty of the High Court.

सत्यमेव जयते

(vii). The vision of the High Court towards the citizen in general are neutral and equal. Achievement of the Constitutional goal to reach the vibrant democracy must be the vision of the High Court. We the people of India, resolved and adopted the Constitution. Thus, the visions expressed and implied are to be glorified for the purpose of reaching the Constitutional goals. The perception of equality enunciated in the

Constitution includes the equal economic status and for the upliftment of the poor and downtrodden.

21. In view of the above principles, this Court is of the considered view that it is the constitutional duty of the High Court to contribute for the development of the constitutional principles as the Indian Constitution is not a mere law but a visionary document. The '*Obiter dicta*' offered in various judgments become law for the purpose of development and to make the constitutional rights more vibrant to reach the constitutional goals. Therefore, the petitioner cannot say that his case is to be dismissed in a simple manner, by way of allowing the withdrawal of the writ petition, or by dismissing on the ground that the issues have already been settled.

22. The learned counsel for the petitioner made a submission that the petitioner is willing to withdraw the writ petition. Even in such circumstances, the Court has to consider the circumstances and conduct of the petitioner and pass appropriate orders in order to avoid such

unwarranted circumstances as well as to avoid unnecessary multiplicity of litigations in future. Thus, this Court though fit to pass orders, making the citizen aware, for the benefit of the public at large and to remind that the citizen are bound to respect the fundamental duties enunciated under the Constitution of India.

23. The respondents have informed this Court that the balance arrears of Entry Tax to be paid by the petitioner is Rs.30,30,757.00.

Decision:

24. In view of the facts and circumstances adjudicated in the aforementioned paragraphs, this Court is inclined to pass the following orders:

- i. the relief as sought for in this writ petition stands rejected.
- ii. The petitioner is directed to pay the balance arrears of Entry Tax of Rs.30,30,757.00, as demanded by the respondents, within a period of 48 hours.
- iii. The Registry, High Court Madras, is directed to ensure that affidavits filed by the litigants in writ petitions are entertained on compliance of the requirements as contemplated under The

Madras High Court Writ Rules, 2021. In the event of any lapses, negligence or dereliction on the part of the officials, the Registrar General, High Court, Madras, is directed to initiate appropriate action under the Service Rules in force.

iv. Accordingly, the writ petition stands disposed of. No Costs.

05.08.2021

Speaking
Index: Yes
Internet: Yes
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To

1. The Secretary, State of Tamilnadu, Commercial Taxes Department, Fort St. George, Chennai – 600 009.
2. The Commercial Tax Officer (Central), Greams Road, Chennai – 600 006.
3. The Registering Authority-cum Regional Transport Officer, Chennai West, Chennai – 600 078.

Copy to:

4. The Registrar-General, High Court, Madras.

S.M.SUBRAMANIAM, J.,

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