

**(1998) 11 PAT CK 0048**

**In the Patna High Court**

**Case No : C.W.J.C. No's. 1047 and 1052 of 1998 (R)**

Classic Automobiles

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

**Date of Decision : 03-11-1998**

**Acts Referred:**

Bihar Finance Act, 1981 — Section 25, 27

Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein

Act, 1993 — Section 2, 27(1), 3, 4

**Citation : (1999) 47 BLJR 681 : (1999) 1 PLJR 209**

**Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J**

**Bench : Division Bench**

**Advocate : B. Poddar and A. Rawat, for the Appellant; I. Senchoudhary, S.C. I., Anil Kumar and Rajesh Kumar Sinha, J.Cs. to S.C. I., for the Respondent**

**Final Decision : Dismissed**

## **Judgement**

R.A. Sharma, J.—The petitioner, during the years 1996-97 and 1997-98, imported cars and other goods from D.C.M. Daewoo Motors Ltd. into the local areas (Dhanbad Municipality) from outside the State of Bihar for sale without paying entry tax. In order to recover the said tax dues amounting to Rs. 4,74,323.67 (rupees four lacs seventy-four thousand three hundred twenty-three and sixty-seven paise) and Rs. 1,30,169.40 (rupees one lac thirty thousand one hundred sixty-nine and forty paise) for the assessment years 1996-97 and 1997-98 respectively, two identical orders dated March 25, 1998 have been issued u/s 27 of the Bihar Finance Act, 1981 (hereinafter referred to as "the Finance Act") by the Assistant Commissioner of Commercial Taxes, Dhanbad, attaching the bank accounts of the petitioner in the Oriental Bank of Commerce, Dhanbad (hereinafter referred to as "the Bank") and directing the bank to pay the amount mentioned in the said orders out of the attached bank accounts. Being aggrieved by the said orders, the petitioner has filed these writ petitions.

2. As both the writ petitions involve the same controversy on identical facts, they

have been heard together and are being disposed of by this common judgment.

3. The respondents have filed counter-affidavit and the petitioner has filed rejoinder-affidavit in reply thereto. We have heard the learned counsel for the parties.

4. The impugned orders have been challenged by the learned counsel for the petitioner on three grounds, namely, (i) they have been passed in violation of Section 27 of the Finance Act inasmuch as no notice of demand u/s 25 of the said Act has been issued, non-compliance of which is a condition precedent for taking action u/s 27, (ii) neither any assessment, proceeding as regards entry tax has been initiated, nor any assessment order has been passed so far against the petitioner on account of which there is not even determination of the tax liability ; there is thus no tax due and the question of its recovery does not arise, and (iii) the entry tax, if paid on import of motor vehicles, is adjustable towards the sales tax, i.e., sales tax liability of the importers of the motor vehicles is reduced to the extent of the entry tax already paid. As the petitioner has already paid the admitted sales tax, there was no justification to recover the entry tax dues. The learned Standing Counsel-I has disputed the above submissions.

5. The petitioner is a partnership-firm formed by Sri Anil Kumar and Sri Ranjan Prasad. Later on, the constitution of the said firm was changed replacing Sri Anil Kumar and Sri Ranjan Prasad by their respective wives, Smt. Abha Prasad and Smt. Sunita Prasad and a fresh deed of partnership was executed on July 1, 1996 under the name and style of Classic Automobiles. The petitioner-firm has been registered under both the State and the Central Sales Tax Acts. The State Sales Tax Act is known as Bihar Finance Act. The petitioner has been appointed as its authorised dealer by D.C.M. Daewoo Motors Ltd.

6. The State of Bihar has enacted another Act known as the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993 (hereinafter referred to as "the Entry Tax Act") providing for levy and collection of tax on entry of scheduled goods into local area for consumption, use or sale therein. Section 2(c) of the Entry Tax Act defines "entry of goods" as follows :

"2(c) "Entry of goods" with all its grammatical variations and cognate expressions means entry of goods into a local area from any place outside that local area or any place outside the State for consumption, use or sale therein."

"Local areas" has been defined in Section 2(f) as under :

"2(f) "Local areas" means the areas within the limits of a--

(i) Municipal corporation ;

(ii) Municipality ;

(iii) Notified area committee ;

(iv) Cantonment board ;

- (v) Town board ;
- (vi) Mines board ;
- (vii) Municipal board ;
- (viii) Gram panchayat ;
- (ix) Any other local authority by whatever nomenclature called, constituted or continued under any law for the time being in force."

7. Section 3 is a charging section which provides for levy and collection of tax on entry of scheduled goods into a local area for consumption, use or sale therein. Section 5 requires every dealer to get himself registered under the Entry Tax Act. In November, 1996, the petitioner applied for registration under the Entry Tax Act and also furnished security bond executed by two registered dealers as required by the department. The security bond was, however, not accepted by the department as it was executed by the husbands of the two partners, who, according to the respondents, owe sales tax dues of about Rs. 3.5 crores. According to the department, inspite of letters and reminders issued by it, no other security bond has been furnished by the petitioner, on account of which no registration certificate was issued to it under the Entry Tax Act. The fact that it has not been granted registration under the Entry Tax Act. is admitted by the petitioner but receipt of the notice requiring it to furnish fresh security bond has been denied by it. Be that as it may, the fact remains that the petitioner has not been registered under the Entry Tax Act.

8. There is difference between the sales tax which is levied and collected under the Finance Act and the entry tax which is levied and collected under the Entry Tax Act. The sales tax under the Finance Act is levied on the first sale and is not required to be paid at the time when such sale is effected. Except in certain cases, such as deduction of tax at source, and payment of admitted tax at the time of filing of the returns, the dealer is required to pay sales tax after the assessment order has been passed and a notice of demand u/s 25 of the Finance Act fixing date by which payment is to be made has been issued. If the dealer does not make payment of tax within the time specified in the demand notice, it is liable to be recovered as arrear of land revenue and penalty can also be imposed on him. Sub-Sections (1) to (4) of Section 25 of the Finance Act, in this connection, are reproduced below :

"25. Payment and recovery of tax.--(1) The tax payable under this part shall be paid in the manner hereinafter provided.

(2) The amount of--

(a) tax estimated in advance under Sub-section (10) of Section 3, or

(b) tax due according to the return filed by a dealer where full payment of such amount has not been made, or

(c) tax assessed or reassessed u/s 17 or 18 or 19 or in pursuance of or as a result of an order on appeal, revision, reference or review, less the sum, if any, already paid by the dealer, or

(d) penalty, if any, imposed under any of the provisions of this part, shall be paid by the dealer or the person concerned into a Government treasury, or in such other manner, as may be prescribed by such date as may be specified in a notice issued by the prescribed authority for this purpose and the date to be so specified shall, ordinarily, not be less than forty-five days from the date of service of such notice :

Provided that the prescribed authority may, in respect of any particular dealer or person, and, for reason to be recorded in writing, extend the date of such payment, or allow such dealer to pay the tax due and the penalty, if any, by instalments :

Provided further that where the prescribed authority considers it expedient in the interest of State revenue, it may, for the reasons to be recorded in writing, require any dealer, or person to make payment forthwith.

(3) If a dealer has failed, without reasonable cause, to make payment of any amount of tax by the date, specified in the notice issued under Sub-section (2) or forthwith as required by the second proviso thereto, or in the like manner has failed to make payment of tax by the date extended under the first proviso of the said Sub-Section or has defaulted in payment of instalments, the prescribed authority may direct that the dealer shall pay, in the prescribed manner by way of penalty for such failure, an amount which may extend to five per centum of the amount of tax, for each of the first three months following the expiry of such date and to 10 per centum for each subsequent month or part thereof.

(4) Subject to the provisions of Section 28 any amount of tax together with penalty, if any, which remains unpaid after the date specified in the notice issued under Sub-section (2), or penalty imposed under Sub-section (3) and remaining unpaid shall, without prejudice to any other mode of recovery, be recoverable as if it were an arrear of land revenue ;"

9. In addition, it is also open to the department to take action to recover the outstanding dues of the sales tax u/s 27 of the said Act, the relevant portion of which is quoted below :

"27. Special mode of recovery.--(1) Notwithstanding anything contained in Section 25 or any law or contract to the contrary, the prescribed authority may, at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the dealer at his last address known to the said authority) direct--

(a) any person from whom any money is due or may become due to a dealer who has failed to comply with a notice of demand served u/s 25, or

(b) any person who holds or may subsequently hold any money for or on account

of such dealer,

to pay into Government treasury, in the manner specified in the notice issued under this Sub-Section, either forthwith or upon the money becoming due or being held, or at or within the time specified in the notice (not being before the money becomes due or it is held) so much of the money as is sufficient to pay the amount of tax due from the dealer, together with penalty, if any, under this part or the whole of the money when it is equal to or less than that amount.

(2) The authority issuing a notice under Sub-section (1) may at any time or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

(3) Any person making any payment in compliance with a notice issued under Sub-section (1) shall be deemed to have made the payment under the authority of the dealer and the receipt from the Government treasury shall constitute a good and sufficient discharge of the liability of such person to the dealer to the extent of the amount specified in the receipt."

10. But the position as regards the entry tax is different. Unlike other Taxation Acts the scheme of the Entry Tax Act and the Rules framed thereunder is firstly to levy and collect the entry tax on entry of scheduled goods into the local area and thereafter require the importer of such goods to file an abstract of monthly import of goods, quarterly and annual returns on the basis of which to determine his total tax liability, adjust tax so paid on the import of vehicles towards the sales tax if the imported vehicle was sold and recover the balance of tax if any. The relevant event both for levy and collection of tax is the entry of scheduled goods/vehicles into the local area. Section 3 of the Entry Tax Act being the charging section is reproduced below :

"3. Charge of tax.--(1) There shall be levied and collected a tax on entry of scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding 5 per centum of the import value of such goods as may be specified by the State Government in a notification published in a official gazette subject to such conditions as may be. prescribed :

Provided different rates for different scheduled goods and different local areas may be specified by the State Government.

(2) The tax leviable under this Act shall be paid by every dealer liable to pay tax under Bihar Finance Act, 1981 or any other person who brings or causes to be brought into the local areas such scheduled goods whether on his own account or on account of his principal or takes delivery or is entitled to take delivery of such goods on such entry :

Provided no tax shall be leviable in respect of entry of such scheduled goods effected by a person other than the dealer if, the value of such goods does not exceed 25 thousands in a year.

(3) Notwithstanding anything contained in Sub-Sections (1) and (2) of this section and subject to the provisions of this Act there shall be levied and collected a 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 rate of tax shall be at such rate or rates as may be specified by the State Government by a notification published in the official gazette on the purchase/ import value of motor vehicle but not exceeding the rate prescribed for sales tax for such motor vehicles under the Bihar Finance Act, 1981 :

Provided that no tax shall be levied and collected in respect of any motor vehicle which was registered in any other State or Union territory under the Motor Vehicles Act, 1989, for a period of fifteen months or more before the date on which it is registered in the State under that Act."

11. In the case of import of a motor vehicle or other scheduled goods, tax has to be levied and collected on their entry into any local area. Therefore, entry tax has to be paid at the point of entry of scheduled goods into the local area. For such payment, the notice of demand is not required to be issued. It is the duty of every person who brings such goods into local area to pay tax at that time. If there is no payment of such a tax at that time, the importer is a defaulter against whom necessary action for recovery can be taken.

12. Section 4 of the Entry Tax Act provides for adjustment of tax paid on the import of motor vehicle towards the sales tax if the imported vehicles were sold. Rule 4 provides for filing of returns.

The Entry Tax Act does not contain any provision providing for assessment, reassessment, collection/recovery of entry tax and penalty but by Section 8 of the said Act, which is reproduced below, the relevant provisions of the Finance Act relating to assessment, reassessment, collection of entry tax and penalty have been adopted with certain conditions :

"8. Applicability of the provisions of the Bihar Finance Act, 1981 (Bihar Act 5, 1981) and Rules made thereunder.--Subject to other provisions of this Act and the Rules framed thereunder, the authority empowered to assess, reassess, collect and enforce payment of tax and penalty payable by a dealer under the Bihar Finance Act, 1981 (Bihar Act 5, 1981) shall assess, reassess, collect and enforce payment of tax and penalty payable under this Act and for this purpose they may exercise all or any of the powers assigned to them under the said Act and the Rules made thereunder in the time being in force including the provisions relating to returns, assessment, reassessment, escaped assessment, recovery of tax, special mode of recovery, maintenance of accounts, inspection, search and seizure, liability in representative character, refund, appeal, revision and reviews, statement of cases to the High Court, compounding of offences and other miscellaneous matter and the provisions of the said Act shall mutatis mutandis apply accordingly."

Although Section 8 by reference incorporates certain provisions of the Finance

Act in the Entry Tax Act but those provisions have not been bodily transplanted into the latter Act. Referential incorporation as is contained in the said section, is subject to two conditions, viz., firstly the applicability of the provisions of the Finance Act is subject to the provisions of the Entry Tax Act and the Rules framed thereunder and secondly the provisions of the Finance Act shall *mutatis mutandis* apply to the proceedings under the Entry Tax Act. The words "*mutatis mutandis*" means "with necessary changes" (Chambers English Dictionary).

In *Ashok Service center and Others Vs. State of Orissa*, the Supreme Court, while explaining the words "*mutatis mutandis*", held as under :

"Earl Jowitt's 'The Dictionary of English Law (1959)' defines '*mutatis mutandis*' as 'with the necessary changes in points of detail'. Black's Law Dictionary (Revised 4th Edn., 1968) defines '*mutatis mutandis*' as 'with the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like...' Extension of an earlier Act *mutatis mutandis* to a later Act brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the thing changed, subject of course to express provisions made in the later Act."

The above passage was cited with approval in *Mariyappa and Others Vs. State of Karnataka and Others*, .

13. The question as to the effect when provisions of a statute are applied *mutatis mutandis* to the proceedings under another Act was considered by the Supreme Court in *Paresh Chandra Chatterjee Vs. The State of Assam and Another*, while dealing with a case under the Assam Land (Requisition and Acquisition) Act, 1948. The said Assam Act provided for compensation for requisitioned land on the basis of agreement between the person interested and the Collector and in the event of disagreement between the two, provision was made for reference to the court and to such reference, the provisions of Land Acquisition Act, 1894, were *mutatis mutandis* applied. The Land Acquisition Act contains provisions for determining the compensation for the land acquired but it neither deals with, nor does it contain any provision for determining compensation for the requisitioned land, on the basis of which it was argued that the said Act does not lay down any principle on which and manner in which compensation can be determined in case the land is requisitioned. The argument was rejected by the apex Court holding as under :

"This argument ignores the expression '*mutatis mutandis*' in Sub-section (2) of Section 8. The said expression means 'with due alteration of details'. The Land Acquisition Act applies only to acquisition of land as distinguished from requisition of land. Acquisition deprives the owner permanently of his land ; and requisition deprives him only of his right to present possession. When the necessity for which the land was requisitioned ceased, it may be made to revert to him. Sub-section (2) of Section 8 of the Act makes the provisions of the Land

Acquisition Act, 1894, with due alterations of details or appropriate changes, apply in respect of any reference made to the court. Part III of the Land Acquisition Act provides for a reference to the court and the procedure thereof. With appropriate modifications the provisions of that chapter apply to a reference in respect of compensation for requisition."

The apex Court accordingly applied the provisions of the Land Acquisition Act to the Assam with certain changes. In this connection, the relevant portion of the judgment of the apex Court is reproduced below :

"If instead of the word "acquisition" the word "requisition" is read, and instead of the words "the market value of the land" the words "the market value of the interest in the land" of which the owner has been deprived are read, the two Sub Sections of the section can, without any difficulty, be applied to the determination of compensation for requisition of a land. So too, the other sections can be applied."

14. In the instant case also, the provisions of the Finance Act as regards assessment, reassessment, payment/collection of entry tax and the penalty have been mutatis mutandis applied to the Entry Tax Act. The result is that action to recover entry tax can be taken under the relevant provisions of the Finance Act but if the recovery of such a tax under the original provisions of the Finance Act is not possible, necessary changes have to be read in those provisions so as to effectuate the legislative intention and make them workable and in harmony with the Entry Tax Act. When Section 3 of the Entry Tax Act requires collection of entry tax on entry of the scheduled goods/vehicles into local area, the payment of such a tax has to be made at that point of time without any notice of demand. Such a payment cannot be deferred/withheld merely on the ground of want of notice of demand. If any person fails to pay the tax at the time of entry of goods into the local area, steps to recover such a tax can be taken by the State u/s 27 of the Finance Act straightaway. The notice of demand u/s 25 of the Finance Act not being a condition precedent for payment of entry tax at the time of entry of the goods into the local area, certain changes have to be read in Section 27. Instead of words "who has failed to comply with a notice of demand served u/s 25", the words "who has failed to pay the tax on entry of scheduled goods into the local area" should be read in Section 27(1)(a) of the Finance Act so as to make that provision workable and in harmony with the Entry Tax Act.

15. Learned counsel for the petitioner cited certain decisions of this Court laying down that issuance of notice of demand u/s 25 of the Finance Act and its non-compliance is a condition precedent for taking action u/s 27 of the Finance Act. It is not necessary to refer to those cases in this judgment because there is no dispute as regards the proposition of law laid down therein. But that law is applicable to recovery of sales tax and it cannot apply to the present case because it is not the recovery of the sales tax, which is involved in these cases. What is sought to be recovered here is the entry tax regarding which notice of demand u/s 25 of the Finance Act is not a condition precedent. The first

submission of the learned counsel for the petitioner is accordingly rejected.

16. The second submission of the learned counsel is also liable to be rejected. In view of the provisions of Section 3 of the Entry Tax Act, entry tax has to be levied and collected on the entry of the scheduled goods into the local area at the rate not exceeding 5 per centum of the import value of such goods as may be specified by the State Government by notification published in the official gazette. The Government has fixed 4 per cent of the import value of the vehicle as the rate of entry tax. The import value has been defined by Section 2(e) of the Entry Tax Act as under :

"2(e) "Import value" means the value of scheduled goods as ascertained from the purchase invoice/bills and includes insurance charges, excise duties, countervailing duties, sales tax, transport charges, freight charges and all other charges incidental to the import of scheduled goods :

Provided that where the purchase invoice/bills are not produced or when the invoice/bills produced are proved to be false or if, the scheduled goods are acquired or obtained otherwise than by way of purchase the import value shall be the value or price at which the scheduled goods of like kind or quality is sold or capable of being sold in open market."

Normally, the import value which is the basis for determining entry tax has to be ascertained from the purchase invoice/bills and other papers relating to incidental charges mentioned in the said provisions. Every importer of the scheduled goods has to produce such bills/papers before the concerned authority at the time of entry of the goods into the local area and he has also to pay the entry tax calculated on the basis of the import value of the scheduled goods over there at that point of time. The assessment as regards entry tax in the sense it is understood under the Finance Act is not required to be made at the time of payment of tax on entry of goods into the local areas.

17. Although the person who imports scheduled goods has to pay entry tax at the time of entry of goods into the local area but he has also to file both quarterly and annual returns. In this connection, the relevant extract of Rule 4 of the Bihar Tax on Entry of Goods into Local Areas Rules, 1993, is reproduced below :

"4. Returns and payment of tax.--(1) Every registered dealer or any other person liable to pay tax under Sub-section (2) of Section 3 of the Ordinance shall furnish an abstract of monthly import of goods in form ET-III, a true and complete return for each quarter in form ET-IV and also an annual return for each year in form ET-V in respect of import of all scheduled goods and tax payable thereon in accordance with the provisions of the Bihar Finance Act, 1981 (Bihar Act 5, 1981) and in the manner as laid down in the rules made thereunder in this behalf.

(2)(a) Every registered dealer or any other person liable to pay tax under the Ordinance shall pay the amount of tax or penalty or both into Government

treasury by challan in form ET-VI :

(b) A challan in form ET-VI shall be in quadruplicate. The portion of the challan marked "Original" shall be sent by the Treasury Officer to the officer in-charge of the circle, the portion marked "Duplicate" shall be retained by the treasury and the portion marked "Triplicate" and "Quadruplicate" shall be returned to the dealer or the payer after being duly receipted. The dealer or the payer shall retain the portion marked "Triplicate" and shall enclose the portion marked "Quadruplicate" with the abstract or monthly import or quarterly or annual return as required to be furnished under sub-rule (1).

(3)(a) An importer, other than a dealer, who imports a motor vehicle into any local area for his own use therein and who is liable to pay tax under Sub-section (3) of Section 3 of the Ordinance shall pay entry tax into the Government treasury on the import value of the motor vehicle before making an application for registration of the motor vehicle under the Motor Vehicles Act, 1988.

(4) If a dealer claims that any part of his turnover relating to import of scheduled goods is not liable to tax on the ground that tax was paid at the first point of entry into a local area he shall furnish along with his return a statement in form ET-XI showing separately the total purchases made from each registered dealer who as first importer paid the tax at the time of first entry of the concerned scheduled goods in a local area. The statement shall be furnished separately in respect of dealers registered under different circles and shall be signed by the dealer or his declared manager."

Rule 5 requires maintenance of accounts, etc. Rules 6, 7 and 8 deal with the exemption.

The filing of returns under Rule 4 is in addition to payment of entry tax at the time of entry of goods into local area. Even if a person who imports scheduled goods files returns, his obligation to pay entry tax at the time of entry of goods into the local area is not dispensed with.

18. On the basis of the returns filed by the importer his total liability of tax is determined. The tax paid on the import of vehicles is also adjusted towards the sales tax in accordance with Section 4.

In the present case, the petitioner has neither paid the entry tax at the time of entry of goods into the local area, nor has it filed any return. The authorities could not have known about the import of vehicles and scheduled goods into the local area by the petitioner but for some sales tax returns filed under the Finance Act. The respondents in paragraph Nos. 23 to 26 of their counter-affidavit in C.W.J.C. No. 1047/98R have stated that the petitioner has not paid a single paisa towards the entry tax dues. It is further stated that the Assistant Commissioner, by letter dated October 28, 1997, directed the petitioner to submit the agreement and other relevant papers with regard to the sale and purchase of motor vehicles. The Assistant Commissioner also wrote letters dated October 28,

1997 and March 31, 1998 to D.C.M. Daewoo Motors Ltd., seeking relevant information with regard to agreement and sale of vehicles, etc., to the petitioner, in response to which D.C.M. Daewoo Motors Ltd., vide letter dated March 12, 1998, informed the Assistant Commissioner about the agreement dated May 29, 1996 executed by it with Sri Anil Kumar and Sri Ranjan Prasad as partners. D.C.M. Daewoo Motors Ltd., also sent the statement of passenger cars sold by it to the petitioner for the amount of Rs. 1,56,12,385 and Rs. 92,82,137 for the periods 1996-97 and 1997-98 (between September 15, 1997 and November 14, 1997) respectively. It has further been stated in paragraph No. 27 of the counter-affidavit, which is reproduced below, that on the basis of the aforesaid information, the entry tax liability of the petitioner was calculated at the rate of 4 per cent of their import value which comes to Rs. 4,74,343.67 and Rs. 1,30,169.40 for the assessment year 1996-97 and part of 1997-98 respectively :

"27. That, it is stated that from the above facts establishes that the motor vehicle of the aforesaid value arrived into the local area on which the entry tax at 4 per cent amounting to Rs. 4,74,343.67 and Rs. 1,30,169.40 were payable by the petitioner to the State Exchequer."

The extent of tax liability as mentioned in paragraph No. 27 of the counter-affidavit has not been disputed by the petitioner in its rejoinder-affidavit. It is, thus, clear that tax was duly calculated by the respondents and the petitioner having failed to pay the same, the respondents were free to take appropriate steps for recovering the same.

19. In this connection, the learned counsel for the petitioner has submitted that even if an importer has neither paid the entry tax at the time of entry of goods into the local area, nor has he filed returns, it is not open to the respondents to recover said tax from him without making assessment order u/s 17 of the Finance Act. This submission has to be rejected for two reasons, namely (i) even if the assessment is condition precedent for recovering the tax due, it is not a fit case to interfere with under Article 226 of the Constitution. As mentioned hereinabove, paragraph No. 27 of the counter-affidavit, which contains the amount of tax due from the petitioner, has not been disputed in rejoinder-affidavit. In such a situation even if there is some technical error such as absence of formal assessment order, this Court is not bound to interfere, and (ii) assessment in the sense it is understood under the Finance Act is not required to be made with regard to the entry tax which is to be paid at the time of entry of goods into the local area. At that time the tax is calculated on the import value at the rate fixed by the Government on the basis of purchase invoice/bills and other papers relating to incidental charges in terms of Section 3 of the Entry Tax Act read with Government notification issued thereunder. If the importer fails to pay such a tax at that point of time, it will be open to the department to recover the same from him straightaway without waiting for filing of returns and passing of assessment orders. The quarterly or the annual returns are not required to be filed immediately after the goods are imported into the local area. If the

petitioner's submission is accepted, the department has to wait for a considerable period so as to enable the importer to file or not to file the returns. Such a case may lead to evasion of tax in many cases. The question of assessment of tax arises at a later stage.

20. The third submission also deserves the same fate. It is true that in view of the provisions of Section 4 of the Entry Tax Act, which is reproduced below, the liability of the importer as regards sales tax under the Finance Act on the sale of vehicles imported into local area is liable to be reduced to the extent of entry tax paid :

"4. Reduction in tax liability.--(1) Where an importer of motor vehicle liable to pay tax under Sub-section (3) of Section 3 of this Act being a dealer in motor vehicles becomes liable to pay tax under the Bihar Finance Act, 1981, by virtue of sale of such motor vehicle then his liability under the Bihar Finance Act, 1981 shall be reduced to the extent of tax paid under this Act.

(2) Where an importer who not being dealer in motor vehicle has purchased a motor vehicle for his own use from any other State or Union Territory then his liability under this Act shall subject to such conditions as may be prescribed, be reduced to the extent of the amount of tax paid if any, under the general sales tax law in force in that State or Union Territory."

But that does not absolve the person who has imported goods into the local area from paying the entry tax. Obligation to pay such a tax in view of the provisions contained in Section 3 of the Entry Tax Act is mandatory. If he fails to do so he becomes defaulter and all legal actions to recover the tax due can be taken against him. However, if he has sold the imported vehicles, his sales tax liability is liable to be reduced to the extent of entry tax paid.

21. For the reasons given above, these writ petitions are dismissed. No costs.

A.K. Prasad, J.

22. I agree.