IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.9.2015

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

WRIT APPEAL NO.1269 OF 2015 AND M.P.NO.1 OF 2015

M/s.A.M.Constructions, rep.by its Managing Partner Shri A. Manicavassalou ...Appellant

Vs

The Commercial Tax Officer (Main), Tindivanam. ...Respondent

Appeal under Clause 15 of the Letters Patent against the order dated 14.7.2015 made in W.P.No.21048 of 2015.

Writ of Certiorarified Mandamus Calling for the records on the file of the Respondent and quash the impugned order in TIN 33454723841/2012-13 -Entry Tax on Goods Vehicles dated 15.6.2015 and consequentially direct the respondent to provide an opportunity of being heard.

For Appellant: Mr.C.Natarajan, SC for Mr.N.V.Balaji

For Respondent : Mr.S.Kanmani Annamalai, AGP (T)

Judgment was delivered by V.RAMASUBRAMANIAN,J

The writ appeal arises out of the dismissal of a writ petition filed by the assessee on the ground of availability of a statutory alternative remedy of appeal.

2. Heard Mr.C.Natarajan, learned Senior Counsel appearing on behalf of Mr.N.V.Balaji, learned counsel for the appellant and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the State. 3. The appellant is an assessee under the Tamil Nadu Value Added Tax Act. A notice was issued on 23.8.2013 to the assessee, proposing to levy entry tax on certain motor vehicles. The appellant did not file any objections. Therefore, a fresh notice was issued on 13.4.2015 pointing out that the appellant purchased four Volvo vehicles, from Volvo India Private Limited, Bangalore, though an invoice

dated 28.11.2012 against Form C. Holding that the appellant did not report the purchase by filing the return in Form-1 under Rule 3 of the Entry Tax on Goods Vehicle Rules 1990, the notice called upon the appellant to file objections.

4. The appellant filed objections on 22.5.2015 contending that they purchased the vehicles in question for the purpose of executing a contract for the construction of the airport runway in Maldives. In short, the contention of the appellant in their reply was that they neither used nor consumed the vehicles in question so as to attract the levy of entry tax.

5. Overruling the objections of the appellant, the Commercial Tax Officer passed an order dated 15.6.2015 levying entry tax and also penalty. A demand was made, in Form-3 as a consequence of the said order, forcing the appellant to come up with a writ petition in W.P.No.21048 of 2015. But, the said writ petition was dismissed by a learned Judge, on the short ground that there is an effective alternative remedy of appeal under the statute. Hence, the appellant is before us.

6. Before proceeding further, it should be pointed out that in order not to lose on both ends, the appellant also filed a statutory appeal on the last date. But, the appeal was not entertained, as it was not accompanied by proof of payment of tax amount and penalty as required under Section 13.

7. The short issue canvassed by Mr.C.Natarajan, learned Senior Counsel appearing for the appellant is that under Section 3(1) of the Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001, a tax on the entry of any scheduled goods into any local area, can be levied and collected, if such entry was for consumption, use or sale therein. If neither of these three components namely use, consumption or sale is found to exist, it is not possible for the respondent to levy and collect entry tax. When a question of this nature is raised as to the very jurisdiction of the officer to demand tax, it is not necessary, according to the learned Senior Counsel, to non suit an assessee on the ground of availability of alternative remedy.

8. We have carefully considered the above submissions.



9. It is true that this Court will not normally entertain a writ petition, when it is found that an effective alternative remedy of appeal is available under the statute. Merely because the statute stipulates a pre-deposit condition for entertaining an appeal, the assessee is not entitled to by-pass the remedy and come up with a writ petition. But, the above general rule is not without exceptions. In cases where there has been a gross violation of the principles of natural justice and in cases where the very jurisdiction of the authority is questioned and

such question goes to the root of the matter, the power of this Court to entertain the writ petition, does not stand ousted.

10. In the case on hand, the positive claim of the appellant right from the beginning is that the vehicles in question were purchased from a company in Bangalore and that those vehicles were taken on road through the State of Tamil Nadu to the Tuticorin Port for eventual export to Maldives. The appellant not only made such a claim in their reply to the notice, but also produced copies of the letter issued by the Joint Director General of Foreign Trade providing an import export code allotment letter.

11. As a matter of fact, there is no dispute on facts. Neither in the notice nor in the order of assessment, has the Assessing Officer disputed the correctness of the stand taken by the appellant. But, nevertheless, the Officer thought that entry tax was leviable. Therefore, this question can be addressed purely from the point of view of the legal issue, since there is no dispute on facts except in respect of one thing. We shall right now point out the area of dispute on fact, which, as per the files produced by the learned Additional Government Pleader, is also in favour of the appellant.

12. In paragraph 3 of the show cause notice dated 13.4.2015, the Commercial Tax Officer has stated that the appellant did not report the purchase by filing the return in Form-1 under Rule 3 of the Entry Tax on Goods Vehicles Rules, 1990. But, the file produced by the learned Additional Government Pleader from the office of the Assistant Commissioner (CT) shows in page 109 that the appellant had in fact reported the purchases in their monthly return in Form-1 under the Tamil Nadu Value Added Tax Act, 2006 under Annexure 1A in the monthly return for November 2012 and January 2013. Therefore, the statement in the show cause notice dated 13.4.2015 is obviously incorrect.

13. Having seen that the only question of fact is also in favour of the assessee, let us take up for consideration the legal issue involved.

14. Section 3 of the Act, as we have indicated earlier, makes the motor vehicles that enter into any local area, liable for levy and collection of tax, if it is used or consumed in the area. Section 3 reads as follows :

> "Levy of tax :-
> (1) Subject to the provisions of this Act, there shall be levied and collected a tax on the entry of any motor vehicles into any local area for use or sale therein which is liable for registration, or for the

assignment of a new registration mark, in the State under the Motor Vehicles Act, 1988 (Central Act No.59 of 1988). 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 :

Provided that in respect of any motor vehicle which was registered in any Union Territory or any other State under the law relating to motor vehicle:-

(a) before the 10th September, 1996, no tax shall be levied and collected, if the owner of such vehicle applies for the assignment of a new registration mark in this State after a period of fifteen months from the date of its registration;

(b) on or after 10th September, 1996, no tax shall be levied and collected, if the owner of such vehicle applies for the assignment of a new registration mark in this State after a period of eighteen months from the date of its registration.

Explanation :- For the purpose of this proviso, the expression 'law relating to motor vehicle' means the Motor Vehicles Act, 1939 or the Motor Vehicles Act, 1988, as the case may be.

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

15. In Burma-Shell Oil Storage and Distributing Co.of India Limited Vs. Belgaum Borough Municipality [AIR 1963 SC 906], the challenge before the Supreme Court was as to the charging of octroi by the local municipality upon the products brought inside the octroi limits for sale. After referring to the statutory provisions, the Supreme Court pointed out in paragraph 21 of the report that the assessee in that case was bringing in goods, for three purposes namely (i) for consumption by itself (ii) for re-export either by itself or through dealers and (iii) for sale by it directly to consumers. The Supreme Court held that the goods must be regarded as having been brought in for the purpose of consumption, when a person brings them either for his own use or consumption or to put them in the way of others in the area who are to use or consume. Therefore, what is important is to see whether the goods were brought in to the State of Tamil Nadu either for use or for consumption either by the assessee itself or by other people. But, if these ingredients are not satisfied, the statutory prescription will not get attracted.

16. In Entry Tax Officer, Bangalore Vs. Chandanmal Champalal & Co. [(1994) 95 S.T.C. 5], the Supreme Court pointed out that the words 'sale therein' occurring in Entry 52 of List II should be taken to indicate the sale of goods within a local area for use or consumption therein. In a given case, it is possible that the goods may be taken out and consumed in a different place. But, in the case on hand, the goods merely passed through the State of Tamil Nadu.

17. What happened in Chandanmal Champalal & Co., was that the decision of the Karnataka High Court to the effect that the levy created by Section 3 of the Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1979, would apply only to sales effected within a local area, which are meant for consumption or use within such area, was confirmed by the Supreme Court.

18. In Acqueous Victuals Private Limited Vs. State of U.P. [AIR 1988 SC 2278], a question similar to the one that arose in Burmah-Shell Oil Storage and Distributing Co.of India Limited again came up for consideration. The question was whether the glass bottles brought within the municipal limits were liable to be levied with octroi, on the ground that they were used or consumed. In paragraph 15 of the said decision, the Supreme Court re-emphasized the fact that before a municipality can impose octroi duty on any commodity, it has to be shown that the commodity concerned was brought within the municipal limits for consumption.

19. In view of the above, we are of the considered view that the very attempted levy and collection of entry tax on the vehicles that admittedly passed through the State eventually to be exported to Maldives was without jurisdiction and hence, the assessment order deserves to be set aside.

20. Accordingly, the writ appeal is allowed. The order of the learned Single Judge is set aside. The order of assessment is also set aside. No costs. Consequently, the above MP is closed.



Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To
The Commercial Tax Officer (Main),
Tindivanam.

+1cc to Mr.N.V.Balaji, Advocate sr.49925

W.A.No.1269 of 2015
and M.P.No.1 of 2015

rs(CO)
srg(18/03/2016)