IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 31.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.30360 of 2016 &
W.M.P.No.26328 of 2016

Tvl.Rason Earth Movers,
Rep. by its Partner, A.Arumugam,
No.3/1109, Morattupalayam,
Uthukuli - 638 051. .. Petitioner

Versus

The Assistant Commissioner (CT),
Perundurai Assessment Circle,
Perundurai. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records on the files of the respondent in TIN.33382922153/2010-11, dated 07.07.2016 and quash the same as being without jurisdiction and authority of law and beyond the prescribed period of limitation of three years.

For Petitioner : Mr. R.Senniappan
For Respondent : Mr. S.Kanmani Annamalai, AGP,

O R D E R

Heard Mr.R.Senniappan, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who accepts notice on behalf of the respondent. By consent of the learned Counsel appearing for both sides, the Writ Petition is taken up for final disposal, at the admission stage itself.

2. The petitioner has challenged the order passed by the respondent, dated 07.07.2016, under provisions of the Tamil Nadu Tax on Entry of Vehicle into Local Areas Act, 2001, (hereinafter will be referred to as “the Act”) pertaining to the assessment year 2010-11. According to the respondent, the petitioner has purchased JCB vehicle and as per the provisions of Sections 3(1) and 4(2) of the Act, tax shall be levied and collected on the entry of vehicles, into local areas for consumption, use or sale therein.

3. The learned counsel for the petitioner submits that an identical issue was considered by this court in the case of M/s Vishnu Enterprises vs. the Commercial Tax Officer, in

W.P.No.13631 of 2005 dated 27.07.2016, wherein this court followed a decision of the Hon'ble Division Bench, in the case of Sri Balakrishna Transport vs. Commercial Tax Officer, Tambaram I Assessment Circle Chennai, reported in [2010] 28 VST 356 (Mad) and set-aside the similar order of assessment stating that the respondent would have no jurisdiction to make such assessment for the purpose of recovery of entry tax.

4. At this stage, it would be useful to refer to the operative portion of the order, which reads thus:

> "....Though Section 7 requires every person liable to pay tax under the Entry Tax Act to file a return to the designated authority, there is no specific provision in the Entry Tax Act for assessing a person, who has failed to furnish the return. Section 8 of the Act provides for assessment on the basis of the return furnished by a person liable to pay tax and the related proceedings for passing the assessment order on best judgment basis. When the Act does not make a specific provision for assessment of an importer, who failed to furnish the return under Section 7, it was not within the powers of the assessing authority to assess the importer long after the import made by him, by making use of the details furnished by such importer consequent to the notice of demand made by the assessing authority."

> "....The Entry Tax Act provides time-limit for making a best judge assessments, as well as reassessment. When there is no specific provision in the Entry Tax Act for assessing a person who fails to furnish returns, the respondent was not entitled to make an assessment after a considerable point of time. It is trite that in case the words used in a taxation statute are plain and unambiguous they have to be interpreted in such a manner so as to give full effect to the wording of the statute. It is not permissible for including something in a taxing statue so as to give it a different meaning. In the absence of a provision enabling the tax collector to levy tax, it would be impermissible for including something in a taxing statue so as to give it a different meaning. In the absence of a provision enabling the tax collector to levy tax, it would be impermissible for including something in a taxing statue so as to give it a different meaning. In the absence of a provision enabling the

tax collector to levy tax, it would be impermissible to levy tax, even if equity is in favour of the State. Therefore there should be a express provision authorising the assessing authority to collect tax from an importer, who failed to file returns as provided under section 7 of the Entry Tax Act. However, there is no such provision which enables the authority to make an assessment for the purpose of recovery of entry tax..."

5. As pointed out by the Hon'ble Division Bench, unless there is a express provision, authorising the assessing officer to collect tax from the importer, who failed to file returns, as provided under Section 7 of the Entry Tax Act, the respondent would have no jurisdiction to make assessment for the purpose of recover of entry tax.

Thus, following the decision of the Hon'ble Division Bench, referred above, the impugned order is held to be without jurisdiction. Accordingly, the Writ Petition is allowed and the impugned order is quashed. Consequently, the connected miscellaneous petition is closed. No costs."

5. The learned Additional Government Pleader appearing for the respondent does not dispute the above legal position. Thus, following the above decision, the impugned order is held to be without jurisdiction. Accordingly, the impugned order is quashed and the writ petition is allowed. No costs. Consequently, the connected WMP is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To
The Assistant Commissioner (CT),
Perundurai Assessment Circle,
Perundurai.

+1 cc to Spl.Govt.Pleader,sr.49494

+1 cc to Mr.R.Senniappan,advocate,sr.49649.

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