IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8904 of 2009 & M.P.No.2 of 2009

K.Venkatachalam ... Petitioner

Vs.

The Assistant Commissioner (CT) (FAC),
Perundurai, Erode District. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records on the file of the respondent in Ref: 193-2/2009/A-4 dated 03.04.2009, and quash the same.

For Petitioner: Mr.J.Prasanna Kumar
for Mrs.R.Hemalatha

For Respondent: Mr.J.Ganesan,
Government Advocate

O R D E R

Heard Mr.J.Prasanna Kumar, learned counsel representing the learned counsel on record, Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent.

2.The petitioner owned an earthmoving equipment and he entered into a contract with a company for hiring a Chain Mounted Dozer. The respondent issued a notice to the petitioner calling upon the petitioner to produce the copy of the agreement, work order and copy of the log book within a stipulated time. The petitioner had produced the necessary documents and also submitted the written objections, wherein it was contended that to attract liability under Section 4 of the Tamil Nadu Value Added Tax Act, 2007 (hereinafter referred as "the TNVAT Act"), the entire possession of the machinery should be handed over to the transferee. Secondly, all consequences of use including the maintenance would be on the hirer. Further, it was stated that during the period of hire, the repair and maintenance of the machinery was entirely borne by the petitioner and has enclosed the bill along with the work done statement detail, log book etc. Therefore, it was stated that since the entire possession of the machinery is not fully handed over to the petitioner, no liability will accrue under Section 4 of the TNVAT Act. The respondent did not agree with the petitioner’s stand and overruled the objections and confirmed the proposal in his notice and accordingly, passed the impugned assessment order.

3.The respondent in the written instructions given to the learned Special Government Pleader, vide letter dated 25.06.2009, stated that the assessment has been made based on the essential attributes of the transaction, especially when the transferee company provides safety and security for the equipment and it is absolute that it should be parked within the yard of the transferee company. Therefore, the respondent seeks to justify the impugned assessment.

4.An Identical issue came up for consideration before the Division Bench of this Court in the case of State of Tamil Nadu vs. Elcome Surveys P. Ltd. reported in (2012) 47 VST 258 (MAD). The said case pertains to a matter under Section 3A of the TNGST Act, 1959, which is equivalent to Section 4 of the TNVAT Act. The questions, which were framed before the Hon’ble Division Bench for consideration was, whether in order to attract the provisions of Section 3A of the TNVAT Act, delivery and possession of the goods by the lessor to the lessee is sine qua non and whether the impugned transaction thereunder would fall within the purview of Section 3A of the TNGST Act, since there is delivery of equipment. The said case pertains to deploying of equipment required by ONGC. In the case, the respondent company had entered into an agreement with ONGC and was receiving the hire charges in respect of off-shore oil exploration equipments.

5.The Hon’ble Division Bench while dismissing the appeal filed by the State held that since no other person had any access to the equipments except the staff of the assessee and that they had been used by the assessee by deployment of the equipments with their specialized personnel, and that even ONGC had no right to use the equipment on its own, even though, the physical possession and the effective control of the equipments had been given to the ONGC. In the instant case, the agreement clearly provides that the entire control of the machinery is with the petitioner and he is in charge to maintain the drivers, who have to be appointed by him etc. These are the terms of the contract. Obviously, the same cannot be brought within the ambit of Section 4 of the TNVAT Act.

6.Thus, by following the above referred decision of the Hon'ble Division Bench of this Court, this writ petition is allowed and the impugned order is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

abr

To

The Assistant Commissioner (CT) (FAC),
Perundurai, Erode District.

+1cc to Mr.R.Hemalatha, Advocate SR.No.78356
+1cc to Special Government Pleader SR.No.78364

W.P.No.8904 of 2009

GN(29/11/2017)