IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.12481 of 2006 & W.P.M.P.No.14072 of 2006

S.Neppolian, Proprietor of
A.S.N.Earth Movers,
No,39, Bus Stand Complex,
Ariyalur-621 704. ... Petitioner

Vs.

The Commercial Tax Officer (FAC),
Ariyalur. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the respondent in his proceedings in Entry Tax Asst., No.TNGST 3602418/2005-2006 dated 03.04.2006, and quash the same.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

O R D E R

Heard Mr.S.Rajasekar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent.

2.The petitioner has impugned an order passed by the respondent under the provisions of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 by stating that the petitioner had imported a motor vehicle into the State of Tamil Nadu and liable to pay tax on the said imported motor vehicle. The petitioner had purchased a TATA Hitachi Model Ex 70 Hydraulic Excavator from Dharwad and transported the same through Jay Pee Roadways Vehicle No.KA 4900. This vehicle is now being subjected to entry tax under the provisions of the said Act.

3.The assessing officer placed reliance on the decision in the case of Bose Abraham v. State of Kerala reported in [2001] 121 STC 614 and held that the excavator, which was imported by the petitioner is motor vehicle and therefore, the petitioner is liable to pay entry tax. When the show cause notice was issued, the petitioner submitted their objections and stated that the vehicle is an off-loaded vehicle, no registration under the Motor Vehicles Act is required, it is not a motor vehicle, there is no tyre or wheel is available in this vehicle and the vehicle was a Chain operated machine.

4.Identical issue was came up for consideration before the Hon'ble Division Bench of this Court in the case of Rds Projects Ltd., v. Commercial Tax Officer, reported in [2007] 8 VST 574 (Mad), wherein an identical vehicle was involved and the Court after taking note of the statutory provisions held that the excavator in question was mounted on iron plates made into chain such as caterpillar vehicles or military tanks. Such an excavator is used for excavating the earth and loading in lorries and cannot be used upon public roads, since the roads would get damaged by the chains. The excavator moved around only in work sites and was not suitable or adapted for use in public roads. In the said decision, the Court has also distinguished the decision in the case of Bose Abraham (supra) by observing that the motor vehicle, which was subject matter of consideration in Bose Abraham's (supra) case was a motor vehicle fitted with inflated tyres and not chain plates.

5.In the para-wise instructions given by the learned Special Government Pleader, the respondent has referred to Bose Abraham's case (supra).

6.In the light of the binding decision of the Hon'ble Division Bench in the case of Rds Projects Ltd., (supra), the impugned order is held to be unsustainable in law. Accordingly, this writ petition is allowed and the impugned order is quashed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

abr

To

The Commercial Tax Officer (FAC),
Ariyalur.

+ 1 cc to MR. R. Hemalatha, Advocate SR.89898
+ 1 cc to Special Government Pleader SR.93000

W.P.No.12481 of 2006

(CS-VIII)
EU(11/01/2018)