In the High Court of Judicature at Madras

Dated : 17.7.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.24221 of 2004

The Tractor Air Compressor
Owners Association, rep.by its
Secretary K.Murugasamy ... Petitioner

Vs

1. The State of Tamil Nadu, rep.by its Secretary to Government, Home (Transport I) Department, Fort.St.George, Chennai-9.

2. The Transport Commissioner, Chepauk, Chennai-5.

3. The Regional Transport Officer, Gobichettipalayam, Erode.

4. The Assistant Registering Authority, Transport Department, Perundurai. Pin : 638052. Erode District. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the second respondent made in Lr.R.No. 23006/D1/2004 dated 28.4.2004, quash the same and consequently direct the respondents to collect 1/3rd of the normal tax from the members of the petitioner association by granting remission under Section 20A of the Tamil Nadu Motor Vehicles Taxation Act to the tractors fitted with air compressor.

For Petitioner : Mr.N.Manokaran

For Respondents : Mrs.A.Srijayanthi, SGP

ORDER

Heard both.

2. The petitioner, which is an association called as the tractor air compressor owners association, filed this writ petition praying to quash the order passed by the second respondent dated 28.4.2004 and consequently direct the the respondents to collect 1/3rd of the normal tax from the members of the petitioner association by granting remission under Section 20A of the Tamil Nadu Motor Vehicles Taxation Act to the tractors fitted with air compressors. By the impugned order, the Transport Commissioner informed the petitioner that the prayer sought for by them cannot be granted and that the Government has withdrawn the exemption vide G.O.Ms.No.875 dated 20.9.2002.

3. Earlier, the Government, vide Notification under G.O.Ms.No.561 dated 14.3.1970, granted exemption in respect of tractors mounted with compressors used for deepening wells by levying 1/3rd of the normal rate of tax leviable under the said Act so long as they are used exclusively for deepening wells. This exemption continued to remain in force, but it was withdrawn vide G.O.Ms.No.875 dated 20.9.2002.

4. On the earlier occasion, the petitioner filed a writ petition in W.P.No. 9699 of 2003 challenging the said withdrawn Notification in G.O.Ms.No.875 dated 20.9.2002 and this Court dismissed the said writ petition by an order dated 19.9.2003. The operative portion of the order dated 19.9.2003 reads as follows :

> "2. Mr.N.Manokaran, the learned counsel appearing for the petitioner submitted that all along, right from the year 1970 till 2002, the petitioner association, who is owning the tractor fitted with the compressor, was enjoying the benefit of tax concessions at one third of the normal rate. But all of a sudden, the Government has canceled the concessions. Except this argument, no other argument has been advanced attacking the present Government Order revoking the concessions already granted.
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> 3. Under Section 20 of the Motor Vehicles Taxation Act, the Government has every power to make an exemption, reduction in rate or other modification in regard to the tax payable by any person or class of persons or in respect of any motor vehicle or class of motor vehicles or motor vehicles

running in any particular area. The very same provision under Clause 2 empowers the State Government by notification to cancel or vary such exemption, reduction or other modification. The exemption provision itself is a provision like proviso in the main scheme of the Act. The entire scheme of the Act is in respect of levying tax on the motor vehicles. The power has been conferred with the Government to grant exemption, it cannot be stated that once the exemption has been granted and it was in existence for more than 30 years, that cannot be taken away by the Government. The unbridled and unfettered power has been vested with the Government either to grant exemption from the payment of taxation or cancel such exemption notification. Hence, I am of the view that the petitioner has not made out any case to challenge the notification dated 20.9.2002, by which, the Government has taken away the exemption, which has already been granted in favour of the petitioner. Hence, the writ petition is dismissed."

5. The above order attained finality, after which, it appears that a representation was made by the petitioner association to the Hon'ble Chief Minister, which representation has been forwarded to the Transport Commissioner, who has given the impugned reply dated 28.4.2004.

6. The learned counsel for the petitioner, by placing reliance on the decision in the case of Government of A.P. Vs. Road Rollers Owners Welfare Association [reported in 2004 (6) SCC 210], submitted that dumpers, rockers and tractairs, which were not built for being used on road, could be considered to be motor vehicles and that as these types of vehicles are never used on the roads, they are not motor vehicles within the meaning of the said Act. By referring to the said decision, it is submitted by the learned counsel that the tractors fitted with air compressors used for deepening wells have to be granted exemption as granted by the Government by their Notification dated 14.3.1970. It has been further submitted that the order impugned is not sustainable.

7. The learned Special Government Pleader has drawn the attention of this Court to the counter affidavit filed by respondents and submitted that the Notification canceling the concessional rate of tax was given effect to from 01.10.2004 and

after two years, the petitioner filed the writ petition and that all other persons remitted the tax at the correct rate as fixed by the Government upon cancellation of the concessional rate.

8. Firstly, it has to be pointed out that the petitioner had questioned the cancellation of the concessional rate of tax vide G.O.Ms.No.875 dated 20.9.2002 by filing the earlier writ petition, which was dismissed and that order has become final. Now, under the guise of the present writ petition, the petitioner cannot seek to get a relief, which they were held to be not entitled to in the earlier round of litigation. That apart, the photographs of the equipment shows that the tractor is capable of running in the road and that the air compressor is an attachment to the tractor. Therefore, the decision in the case of Road Rollers Owners Welfare Association, relied upon by the learned counsel for the petitioner, is clearly distinguishable on facts. Furthermore, the petitions seeking interim reliefs were dismissed on 18.1.2005. For all the above reasons, the petitioner has not made out any case to interfere with the impugned order.

9. Accordingly, the above writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Secretary to Government of Tamil Nadu, Home (Transport I) Department, Fort.St.George, Chennai-9.
2.The Transport Commissioner, Chepauk, Chennai-5.
3.The Regional Transport Officer, Gobichettipalayam, Erode.
4.The Assistant Registering Authority, Transport Department, Perundurai. Pin : 638052. Erode District.

+1cc to M/s.N.Manokaran, Advocate, S.R.No.50187

WP.No.24221 of 2004

MV(CO)
CU(11/08/2017)