HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.5873 of 2017

Order: (per V.Ramasubramanian, J.)

Questioning the very jurisdiction of the 1st respondent/ Commercial Tax Officer in issuing a notice of assessment under Telangana State Tax on Entry of Motor Vehicles into Local Areas Act, 1996, an assessee under the Telangana Value Added Tax Act, 2005, has come up with the above writ petition.

2. Heard Mr. S.Suri Babu, learned counsel for the petitioner and Mr. M.Govind Reddy, learned Special Standing Counsel for the respondents.

3. In normal circumstances, we would not entertain a writ petition as against a notice of assessment. The scope of interference with a show cause notice is extremely circumscribed.

4. But in the case on hand, the petitioner challenges the show cause notice primarily on 3 grounds, namely, (a) that the dumpers and excavators upon which entry tax is sought to be levied are not tyre-mounted vehicles but chain-mounted vehicles used exclusively in mines and that therefore there was no question of bringing those vehicles within the purview of the Act, (b) that the 1st respondent, who is a subordinate authority, has issued the notice on the receipt of instructions from the Assistant Commissioner (CT)-I, Enforcement Wing

and hence the further proceedings by the 1st respondent would only be an empty formality and (c) that in any case, the time limit granted by the 1st respondent is too short, putting a heavy pressure on the petitioner in the matter of availing an opportunity of hearing.

5. Opposing all the above 3 contentions, it is submitted by the learned Special Standing Counsel that whether dumpers are motor vehicles or not is covered by several decisions of the Supreme Court, starting from *Bolani Ores Ltd. v. State of Orissa*[1], *M/s. Central Coal Fields Ltd. v. State of Orissa*[2], *Chief G.M., Jagannath Area v. State of Orissa*[3] and in *Bose Abraham v. State of Kerala*[4]. Therefore, the learned Special Standing Counsel contended that it is too early for this Court to interfere at the stage of show cause notice.

6. We have carefully considered the above submissions.

7. It is true that the definition of the expression "motor vehicle" as appearing in Section 2(18) of the Motor Vehicles Act, 1939 underwent a small change under Amendment Act No.100/1956. The 1939 Act was replaced by the 1988 Act, under which the expression "motor vehicle" was defined under Section 2(28). Some of the decisions relied upon by the respondents arose under the 1939 Act. Though we can certainly express an opinion on the legal issue, we refrain from doing so for the present, in view of the nature of the

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[1] AIR 1975 SC 17(1)
[2] AIR 1992 SC 1371(1)
[3] (1996) 10 SCC 676
[4] AIR 2001 SC 835

disposal that we would like to give to the present writ petition. This is for the reason that once we express an opinion on the question as to whether dumpers are motor vehicles or not, nothing further would remain to be done by the Assessing Officer and the exercise would turn out to be an empty formality.

8. But there is a justification on the part of the petitioner, on two aspects, namely, the time limit provided to him by the Assessing Officer and the manner in which the Assessing Officer is liable to examine the aforesaid question. Both these issues can be addressed by issuing appropriate directions. Once it is done, then the department can proceed in accordance with law and pass further orders. When the very vires of the Telangana State Tax on Entry of Motor Vehicles into Local Areas Act, 1996 was challenged before a bench of this Court, in *Vijaya Traders, Kadapa v. Commercial Tax Officer-I, Kadapa*[5], the bench of this Court even while upholding the validity of the Act, directed the Assessing Officer to hold an enquiry including a physical verification if necessary with the assistance of an expert in the field to know whether the vehicle is a motor vehicle for the purpose of levying entry tax under the Act. Taking clue from the said direction, we think it would be appropriate to dispose of the writ petition with certain directions.

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[5] (2011) 53 APSTJ 47

9. Therefore, the writ petition is disposed of to the following effect:

(1) The petitioner shall file their objections to the impugned notice on or before 13-3-2017;

(2) The 1st respondent, as a quasi-judicial authority, shall independently consider the issues without being carried away by the opinion of the Assistant Commissioner (CT)-I, Enforcement Wing;

(3) The 1st respondent shall take the assistance of a responsible official of the Transport Department of the State of Telangana to physically inspect the vehicles in question and give an opinion in writing as to whether the vehicles are motor vehicles within the meaning of Section 2(28) of the Motor Vehicles Act, 1988; and

(4) Thereafter, the 1st respondent may hold personal hearing and pass orders in accordance with law.

The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

22nd February, 2017.
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Note:-
Issue C.C. by 27-02-2017.
(B/o)
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.5873 of 2017
(per VRS, J.)

22nd February, 2017.
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