THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.40439 of 2017

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed seeking the following relief:

> "…to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus declaring the action of the respondent No.3 in seizing the VERMEER NAVIGATOR, C-230 HDD MISSION and the consequential proceedings No. C-230/A3/2017, dated 18-11-2017 issued by the respondent No.2 imposing Life Tax and Penalty a sum of Rs.5,97,510/- in respect of the Life Time Tax and penalty as arbitrary, illegal, contrary to the provisions of the Motor Vehicles Act, 1988 and the Central Motor Vehicle Rules, 1989 and well established legal principles apart from being violative of the fundamental rights guaranteed to the petitioner under Article 14, 19 & 21 of Constitution of India and consequently direct the respondent No.2 to release the VERMEER NAVIGATOR, C-230 HDD MISSION in favour of the petitioner by setting aside the proceedings No.C-230/A3/2017, dated 18-11-2017 issued by the respondent No.2 and pass such other order or orders as are deemed fit and proper in the circumstances of the case." [Reproduced verbatim]

2. Heard *Sri V.R.Reddy Kovvuri*, learned counsel appearing for the petitioner, and the learned Government Pleader for Transport appearing for the respondents 1 to 3. I have perused the material record.

3. The impugned notice, dated 18.11.2017, was issued informing the petitioner that tax is leviable on the subject vehicle as per Section 3 of the Telangana Motor Vehicle Taxation Act, 1963, and that the invoice price of the subject motor vehicle is Rs.53,11,170/- and that life time tax @ 7.5% of the cost of the vehicle is payable on the vehicle and that the representation, dated 16.11.2017, of the petitioner is considered and rejected and therefore, the petitioner is liable to pay Life Time Tax of Rs.3,98,340/- and penalty of

Rs.1,99,170/- @ 2% per month of Life Time Tax and other amounts as stated infra.

Life Time Tax @7.5%	: Rs.3,98,340/-
Penalty @2% on the said Tax	: Rs.1,99,170/- (for 25 months)
Total	: Rs.5,97,510/-
Compounding Fee for offences for using the vehicle	
i) Without payment of Life Time Tax	: Rs.1,000/-
ii) Without Driving Licence	: Rs.5,000/-
iii) Release order Fee	: Rs. 50/-
Total	: Rs.6,050/-

Aggrieved of the seizure of the subject vehicle and the impugned notice, the petitioner is before this Court.

4. The case of the petitioner is this: 'Section 3 of the aforesaid Act is not applicable to the subject vehicle, i.e., VERMEER NAVIGATOR, C-230 VBM HDD machine. It is a machine for Horizontal directional Drilling. It is a construction equipment vehicle useful for laying optic fibre cables through underground duct. It is fitted with rubber pads. It cannot move faster like other motor vehicles; and, as per its brochure and specifications, though it is self propelled and self navigated, its Maximum Ground Drive Speed is 1.5 km/h. No driving licence is required for the person who operates the said vehicle. As per the Central Motor Vehicle Rules, 1989, the subject vehicle shall be treated as a non-transport vehicle; and, its navigation on road is incidental to the main Off-High Way function. It is a chain mounted vehicle. As per circular of the 2nd respondent in Circular Memo no.3943/E1/2010, dated 17.05.2014, chain mounted vehicle (Crawler) like Excavator, Loader, Backhoe, Compactor roller (Road roller), Dumper, Motor grader, Mobile Crane, Dozer, Fork lift truck and Self loading mobile concrete mixer are not covered under the definition of 'motor vehicle'; and, hence, they are not required to be registered. Equipments coming under construction equipment category are to be registered

as non-transport vehicles; and, on such vehicles like the subject vehicle, life time tax is not collectable. Hence, the seizure of the vehicle under check report, dated 16.09.2017, and the failure to release the vehicle despite representation, dated 22.09.2017, of the petitioner and the impugned notice, dated 18.11.2017, rejecting the representation of the petitioner and informing the petitioner to pay life time tax, penalty and other amounts of compounding fee are all illegal, arbitrary, contrary to the provisions of Act & the Rules and the provisions of the Indian Constitution. Hence, the writ petition is filed to direct the 2nd respondent to release the subject vehicle by setting aside the impugned proceedings.'

5. Learned counsel for the petitioner while reiterating the above case of the petitioner, forcefully contended as under: 'The vehicle in question is a machine and as per the Dealer's letter, dated 11.11.2017, all machines like the subject machine equipped with ground drive tracks are not considered to be motor vehicles in any of the countries where they are sold and distributed. The machine is used for underground installation of gas, electric, water and telecommunication lines. The manoeuvrability is only to get the vehicle to job site location and provide power to do the job. The machine is designed specifically for horizontal directional boring with imported hydraulic pumps and enhanced cooling systems and increased drill manoeuvrability in difficult job sites and its Maximum Drive Speed is less than 2 km/h. No life time tax is collectable on the said machine.

6. Per contra, learned Government Pleader for Transport appearing for the respondents while stating the very same features of the vehicle, which are undisputed, *inter alia* contended that the subject vehicle is a motor vehicle and that levy of life time tax on construction equipment vehicles is in accordance with provisions of law and that the present vehicle is not excluded from levy of tax merely because it is meant for a specified purpose and it is

alleged that its navigation on road is incidental to the main Off-High Way function and that every vehicle adapted for use upon roads is a motor vehicle and that any such vehicle like the subject vehicle even if it is not driven on public roads or in a public place it is a motor vehicle as the vehicle is suitable for use on the roads and that the said vehicle, which is self propelled and which is having the steering system, lights, direction indicators, brakes, parking brakes etcetera shall be considered as a motor vehicle liable for payment of life time tax.

7. He placed reliance on a decision in Khader Basha and others v. Regional Transport Officer, Chittoor & others[1] in support of his contentions.

8. I have given earnest consideration to the facts & submissions. I have carefully perused all the material documents including the check report, representation of the petitioner, impugned notice, the brochure of the subject vehicle containing details and specifications about it.

9. There is no dispute about the features and specifications of the vehicle. Though learned counsel for the petitioner vehemently submitted that the vehicle in question is not a motor vehicle attracting life time tax, having regard to the features and specifications of the subject vehicle and the legal position obtaining, this Court finds that the said contention and the allied contentions of the petitioner, which are referred to supra, are devoid of merit and need no countenance. It is to be noted that in the afore-stated decision, the facts reflect that the petitioner company purchased cranes from a company of East Honkong and brought them to the State of Maharashtra and got them temporarily registered and entered into a contract with ONGC for supplying/giving on hire the said cranes for a period of three years and wanted to bring the same from Maharashtra to Rajahmundry and at that time, the Andhra Pradesh Motor Vehicles Taxation Act, 1963, as amended was enacted

[1] 2013 (3) ALD 416 (DB)

enabling the Government to levy life time tax on the construction equipment vehicles (CEVs) including road rollers at the rates specified in IV schedule, which was inserted. Therefore, the petitioner company therein contended that levy of life tax on CEVs is unconstitutional and alternatively submitted that construction equipment vehicles cannot be considered as motor vehicles. This Court, in the cited decision, prescribed the general tests that may be applied to decide whether a vehicle is a motor vehicle within the meaning of Section 2(28) of the M.V.Act. The tests are as follows:

> (i) Every vehicle adapted for use upon roads is a motor vehicle;
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> (ii) If any vehicle is registered under Chapter VI of the MV Act, and is required to obtain approvals and fitness certificates there under, it would lead to an inference that it is a motor vehicle;
>
> (iii) When a vehicle is adapted for use upon roads even though it is not driven on the public roads or in a public place and it cannot be driven without obtaining license - it is certainly a motor vehicle;
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> (iv) The word 'adapted' in Section 2(28) of the MV Act has to be read as 'suitable for use on the roads'. The mere fact that they are such which do not move on the roads by reason of their weight or slow movement, does not mean that they are not suitable for use on roads. Whether or not it moves on the roads, if it is suitable to move on the roads, it is a motor vehicle; and
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> (v) Merely because a motor vehicle is put to a specific use, such as being confined to enclosed premises will not render the same to be a different kind of vehicle. The steering system, rear lights, direction indicators, rear view mirror, front screen viper, horns, brakes, parking brakes etc are some of the factors which may have to be considered before drawing appropriate inferences.

This Court further held as follows:

> (z) Rules, made in conformity with the provisions of the parent statute, form part of the statute and have to be interpreted as the provisions of the statute. Rule 2(ca) of the Central Rules defining "CEV" is to be treated as part of the MV Act.

(za) As Section 2(j) of the Taxation Act, for the purpose of the definitions of words and expressions used therein, adopts the meaning assigned to them in the M.V. Act, Rule 2(ca) of the Central Rules defining "CEV" shall have to be read into Section 2(j) of the Taxation Act. "CEVs" are "motor vehicles" within the meaning of Section 2(28) of the MV Act read with Section 2(j) of the Taxation Act.

(zb) The provisions of the MV Act have been incorporated by reference. Any amendment made to the MV Act, 1939 or the MV Act, 1988 would have to be read as part of the Taxation Act by reason of Section 2(j) thereof.

(zc) Section 2(j) of the Taxation Act does not bodily lift and incorporate the dictionary clause or the definition of motor vehicle as in the MV Act. It only makes a reference indisputably to the MV Act, 1939. By reason of Section 18 of the Andhra Pradesh General Clauses Act, 1891, the repeal of the MV Act, 1939 does not affect Section 2(j) of the Taxation Act and it has to be construed as referring to the MV Act, 1988. Section 2(j) of the Taxation Act defines 'motor vehicle' by reference, and all relevant amendments to the MV Act, 1988 shall have to be made applicable to the Taxation Act.

(zd) Mere exclusive use of a motor vehicle within a factory or enclosed premises would not, by itself, exclude such vehicles from the levy of tax. It is only when such vehicles are specially adapted and specially designed, do those vehicles go out of the purview of the Taxation Act. Even if these vehicles are of "off highway" capabilities, as they are fitted with rubber tyres or pneumatic tyres or rubber padded, they are, "motor vehicles" liable to tax. In case of any doubt the RTA/Transport Commissioner has the power to determine this question.

(ze) "Dumpers", "Cranes", "Road Rollers", "Excavators", "Rockers", "JCBs" and "Poclains" are CEVs and are liable to tax under the third proviso to Section 3(2) of the Taxation Act.

(zf) "JCB" and "Poclain" are names often used to describe a CEV with multiple capabilities, either as "Excavator" or "Loader" or "Driller". They are capable of performing multi-fold functions depending on the requirements. All of them are fitted with tyres, and are "Motor vehicles" and fall within the definition of "CEV" under Rule 2(ca) of the Central Rules.

(zg) If any of the CEVs are designed for use solely in mining industry, or for agricultural operations, they have to pay life tax, and seek exemption under Section 10 of the Taxation Act. The owners of the vehicles, which are designed and are being used solely in mining and agricultural operations, are entitled for refund after obtaining exemption.

In view of the admitted and undisputed facts and the legal position obtaining, this Court is of the considered view that the contentions of the petitioner that the subject vehicle is not a motor vehicle and that the life time tax is not payable on the said vehicle are untenable and devoid of merit and that therefore, the writ petition is liable to be dismissed.

10. In the result, the writ petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M.Seetharama Murti, J

11.12.2017

Note:- Issue CC by 18.12.2017
(B/o)
RAR