BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.01.2018
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No. 19036 of 2017
and
W.M.P.(MD).No.15376 of 2017

D.Rajkumar .. Petitioner

Vs.

1.The Transport Commissioner,
Transport Department,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Regional Transport Officer,
JTC Enforcement Wing,
Srirangam – 620 009.
Trichy District.

3.The Regional Transport Officer,
Madurai (North),
Madurai.

4.The Motor Vehicles Inspector Gr.I,
Unit Officer,
Batalagundu,
Theni District.

5.The Motor Licencing Officer,
Regional Transport Office,
Tirunelveli. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings in No.A0735270, dated 07.09.2017 and in No.A2013839, dated 02.06.2016 and in No.A5947429, dated 03.04.2014 passed by the Respondent Nos. 2,4 and 3 respectively and quash the same and to consequently direct the respondents 2 to 4 to levy the tax for “Recovery Vehicle (Van) Non Transport” under class 6B of First Schedule of Tamil Nadu Motor Vehicle Taxation Act, 1974 and to direct the first respondent to monitor and instruct the Respondent Nos. 2 to 4 to levy the tax for “Recovery Vehicle (Van) Non-Transport” under Class 6B of Tamil Nadu Motor Vehicle Taxation Act, 1974.

For petitioner : Mr.V.Santhakumaresan
For respondents : Mrs.S.Srimathy
Special Government Pleader

ORDER

Heard Mr.V.Santhakumaresan, learned Counsel for the petitioner and Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondents.

2. The Writ Petitioner is the owner of the Recovery Van which carries the damaged vehicles from accident or breakdown sites to their respective destinations. As per the endorsement made by the Revenue Divisional Officer, they are classified as Recovery Vehicle (Non-Transport). All along they have been paying Road Tax as per Clause 6-B of First Schedule of Tamil Nadu Motor Vehicles Taxation Act, 1974 (hereinafter referred to as the Act). Vide G.O.(Ms). No.104, Law Department, dated 21.04.2012, the said Act was amended. Now Section 6-C has been introduced in the first Schedule. Clause 6 (B), Clause 6(C) refers to Construction equipment vehicle. The same has been defined in Section 2 (1) as follows:

"construction equipment vehicle" means rubber tyred (including pneumatic tyred), rubber padded or steel drum wheel mounted, self-propelled, excavator, loader, backhoe, compactor roller, dumper, motor grader, mobile crane, dozer, fork lift truck, self-loading concrete mixer, or any other construction equipment vehicle or combination thereof designed for off-highway operations in mining, industrial undertaking, irrigation and general construction but modified and manufactured with "on or off" or "on and off" highway capabilities.

Explanation—A construction equipment vehicle shall be a non-transport vehicle, the driving on the road of which is incidental to the main off-highway function and for a short duration at a speed not exceeding 50 kms per hour, but such vehicle does not include other purely off-highway construction equipment vehicle designed and adopted for use in any enclosed premises, factory or mine other than road network, not equipped to travel on public roads on their own power."

3. The stand of the authorities is that the Recovery Vehicles will have to be categorised as a Construction Equipment Vehicle and therefore Motor Vehicle Tax should be paid in terms of Section 6-C and not under Section 6-B.

4. When the writ petition was taken up for admission, it was directed that it would be advisable to obtain the opinion of an expert. The learned Special Government Pleader placed a copy of the Report dated 03.01.2018 submitted by the Regional Deputy Director, Government Automobile Workshop, Madurai-20. The said official had mentioned in his report that the Recovery Vehicles are equipped with a Tow bar, Boomber and the Lifting Rope. According to him these are similar to that of the equipments fitted with Construction equipment vehicle. He had also observed that the vehicle in question are not fitted with equipments like Rigs or Generator or Compressor. Therefore, he would opine that Clause 6-C of the

first Schedule of the said Act is applicable. Further, the learned Special Government Pleader would point out the amendment made in the current Act had not been challenged by the writ petitioner. He, therefore, seeks dismissal of the writ petition.

5. The omission of the writ petition to question the amended Tamil Nadu Motor Vehicles Taxation Act, 1974 cannot come into way of granting relief in this case. The question is not regarding the validity of Clause 6-C of the First Schedule of said Act. The question in this case is whether the recovery vehicles will fall within the category of Construction equipment vehicles.

6. It is beyond dispute that till recently the recovery vehicles were classified as falling within Clause 6-B of the first Schedule of said Act. The only question to be adjudicated is whether the recovery vehicle can be said to properly fall within the term 'construction equipment vehicles'. The definition has already been extracted above. The definition would apply only if the vehicle in question has been designed for off-highway operations in mining, industrial undertaking, irrigation and general construction.

7. In this case, the recovery vehicles are principally meant only for highway operations. They help to remove the damaged vehicles from the accident or breakdown site to the their respective destinations. One can apply common sense and come to the conclusion that they are not designed for off-highway operations in mining, industrial undertaking, irrigation and general construction. Therefore the said recovery vehicles cannot be considered as construction equipment vehicle. Hence, levy of Motor Vehicle Tax on the said recovery vehicle under Clause 6-C is clearly illegal. It should continued to be levied only in terms of Clause 6-B of Schedule 1 of the said Act.

8. This Writ petition is allowed accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To:

1.The Transport Commissioner,
Transport Department,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Regional Tansport Officer,
JTC Enforcement Wing,
Srirangam - 620 009.
Trichy District.

3.The Regional Transport Officer,
Madurai (North),
Madurai.

4.The Motor Vehicles Inspector Gr.I,
Unit Officer,
Batalagundu,
Theni District.

5.The Motor Licencing Officer,
Regional Transport Office,
Tirunelveli.

+1cc to M/S.V.Santhakumaresan, Advocate SR.No. 41849
+1cc to Special Government Pleader, SR.No. 41540

ORDER MADE IN
W.P. (MD) No. 19036 of 2017
09.01.2018

kmi
JM/SKN RSK/SAR 2/06.03.2018/4P/8C