THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

W.A.No.2006 of 2017

JUDGMENT : **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.40439 of 2017 dated 11.12.2017. The appellant herein filed the writ petition questioning the action of the 3rd respondent in seizing the Vermeer Navigator, and the consequential proceedings issued by the 2nd respondent dated 18.11.2017 imposing life tax and penalty for a sum of Rs.5,97,510/-, as arbitrary, illegal and contrary to the provisions of the Motor Vehicles Act, 1988 (for short "the Act") and the Central Motor Vehicles Rules, 1989 (for short "the Rules'). A consequential direction is sought to the 2nd respondent to release the Vermeer Navigator in favour of the appellant-writ petitioner.

In the order under appeal, the Learned Single Judge relied on a Division Bench judgment of this Court in **Khader Basha vs. Regional Transport Officer**[1] to hold that the subject vehicle was a motor vehicle. The Learned Single Judge referred to the tests for determining a motor vehicle under Section 2(28) of the Act, and the parameters prescribed by the Division Bench; and then concluded that the appellant-writ petitioner's contention, that the subject vehicle was not a motor vehicle, was untenable.

Sri V.R.Reddy Kovvuri, learned counsel for the appellant-writ petitioner, would draw our attention to the photographs, filed along with the writ petition, to submit that the vehicle does not have a steering; it is chain mounted and is not wheel mounted; and, consequently, it cannot be treated as a motor vehicle liable to tax under

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

the Act and the Motor Vehicles Taxation Act. He would also draw our attention to the letter issued by Vermeer Asia Pacific PTE Ltd whereby it was clarified that these machines, equipped with ground drive tracks, are not considered to be motor vehicles in any of the countries where they are sold and distributed.

A show cause notice was issued to the appellant-writ petitioner on 20.10.2017 calling upon them to pay life time tax with penalty as per the Rules, and the Circular issued by the Transport Commissioner, Hyderabad dated 17.05.2010. The appellant-writ petitioner was asked to show cause why life tax with penalty, besides compounding fee, should not be collected from them for plying the motor vehicle on the road without payment of life tax.

In reply thereto, the appellant-writ petitioner, vide letter dated 02.11.2017, informed the 2nd respondent that the subject machine was not liable to life tax in view of Clause (6) of the Circular issued by the Transport Commissioner dated 17.05.2010 which stipulated that any chain mounted vehicle was not covered by the definition of a motor vehicle and, hence, need not be registered and was not liable to pay tax. That even wheel mounted vehicles would fall within the ambit of a motor vehicle is evident from the order of the Division Bench of this Court in **Khader Basha**[1] (an order passed long after the circular dated 17.05.2010) wherein it is held that even dumpers, cranes, road rollers, excavators, rockers, JCBs and proclains were motor vehicles. The mere fact that they are chain mounted and not wheel mounted, by itself, would not bring it outside the ambit of a motor vehicle liable to life tax under the Act.

Learned Government Pleader for Transport would draw our attention to the affidavit filed in support of the writ petition, wherein the appellant-writ petitioner themselves admitted that they had purchased a Construction Equipment Vehicle (CEV) which is to be used for horizontal direction drilling for laying optic fiber cables, to submit that the petitioner had, themselves, admitted that the subject vehicle is a Construction Equipment Vehicle, and it is not, therefore, open to them to now contend to the contrary, and claim that the subject vehicle is not a motor vehicle.

While Sri V.R.Reddy Kovvuri, learned counsel for the appellant-writ petitioner, would seek to place reliance on certain photographs to contend that the parameters laid down in **Khader Basha**[1] are not fulfilled, for the subject vehicle to be called a motor vehicle, it would be wholly inappropriate for this Court, more so while exercising jurisdiction under Clause 15 of the Letters Patent, to examine the appellant-writ petitioner's contention on merits. The only contention urged, in reply to the show cause notice, is that the subject vehicle is not a motor vehicle in view of Clause (6) of the Circular of the Transport Commissioner dated 17.05.2010. The mere fact that it is not chain mounted would not take the subject vehicle outside the ambit of a motor vehicle as long as it is capable of being used on roads. The jurisdiction which this Court exercises in an intra-court appeal, under Clause 15 of the Letters patent, is extremely limited, and save cases where the order under appeal suffers a patent illegality, no interference is called for. We find no such infirmity in the order under appeal.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(GUDISEVA SHYAM PRASAD, J)

02nd January, 2018
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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

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Date: 02.01.2018

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