IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :08.01.2019
CORAM
THE HON'BLE MR.JUSTICE R.MAHADEVAN
W.P.Nos.29997 to 30005 of 2008
and
M.P.Nos.1 to 1 of 2008

Magna Cranes (P) Limited,
represented by its Director,
G.Vasu,
No.176 North Usman Road,
T.Nagar,
Chennai 600 017.

..Petitioner in all W.Ps

vs

1.The Assistant Commissioner (CT)
T.Nagar (North) Assessment Circle,
46, Greenways Road,
Chennai - 600 028.

2.The Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai - 600 005.

.. Respondents in all W.Ps

Prayer in W.P.Nos.29997 to 30002 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the files of the first respondent herein in TIN/33561520404/08-09 (April, 2008), (May 2008), (June 2008), (July 2008), (August 2008), (September 2008), dated 08.12.2008 and to quash the same.

Prayer in W.P.Nos.30003 to 30004 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the files of the first respondent herein in TIN/33561520404/06-07 , 07-08, dated 08.12.2008 and to quash the same.

Prayer in W.P.No.30005 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the files of the first respondent herein in Lr.No. VAT. Cell/ 42192/2007

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(VCC) No.1168 ) dated 31.08.2007 and to quash the same.

For Petitioner : Mr.K.A.Parthasarathy in all W.Ps

For Respondents : Mr.Mohammed Shaffiq, Spl.GP In all W.Ps

COMMON ORDER

Challenging the provisional assessment orders passed by the first respondent for the periods from April 2008 to September 2008, W.P.Nos.29997 to 30002 of 2008 have been filed by the petitioner.

Questioning the orders passed by the first respondent for the assessment years 2006-07 and 2007-08, the petitioner has come up with W.P.Nos.30003 and 30004 of 2008.

W.P.No.30005 of 2008 has been filed to quash the clarification issued by the second respondent vide proceedings dated 31.08.2007.

2. When the matters were taken up for consideration, the learned counsel appearing for the petitioner submitted that the issue involved herein is squarely covered by the decision of this Court in M/s.Veesons Energy Systems (P) Ltd v. The Commissioner of Commercial Taxes, Chennai and another [ 2014-15 (20) TNCTJ 61], wherein, at paragraph nos.6 and 16, it was held as follows:

> "6. The petitioner herein is involved in the manufacturing of industrial boilers. Huge metals can only be carried by crane for manufacturing boilers. When the cranes are exclusively purchased by a dealer to be used for manufacturing activity, the same would definitely fall under the definition of capital goods. However, when the cranes purchased as rented out to others or used for any other purpose other than for manufacturing activity, the same cannot be treated as capital goods. Therefore, the classification of cranes would have to be dealt with on the facts of each case."
>
> "16.Therefore, from a conjoint reading of the above judgments and the provisions, it is clear that the first respondent had not powers to issue any circular or clarification. Further, Section 48 A was introduced with effect from 27.09.2011. Any order by the State Level Authority for Clarification and Advance Ruling under section 48 A can only be made regarding any clarification on rate of tax on an application by a dealer. Even there, the first

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respondent has not powers to individually or independently issue any clarification on rate of tax. It is also clear that the first respondent does not have any authority to issue circulars or clarifications on any other matters other than rate of tax. The first respondent cannot use the circulars or clarifications to overcome the provisions of the statute. Any interpretation which was not intended by the legislature also cannot be introduced by way of circulars or clarifications. Any change in the statute can be brought in only by way of amendment. The levy of tax must be within the four corners of law and must not be based on surmised and conjunctures. Any act contrary to the provisions of the taxing statute would be hit by Article 265 of the Constitution of India. Therefore, the impugned circular issued without authority to set aside. The petitioner is directed to submit their objections within four weeks from the date of receipt of a copy of this order and the second respondent shall consider the objections and pass orders independently sticking on to the provisions of the Act. In the result the Writ Petition is allowed. No costs."

The learned counsel further submitted that subsequent to the filing of these writ petitions, the second respondent authorities, in similar circumstances, passed an order vide proceedings in ACAAR No.40/2016-17 dated 13.04.2017, wherein, it is clarified as follows:

> "3.2 In a similar issue, it has already been clarified in ACAAR No.144-151/2013 (Acts Cell-II/9996/10003/2014) dated 10.07.2014 and ACAAR No.27/2014-15 (Acts Cell-II/17896/2014) dated 02.12.2014, that "Industrial EOT/Gantry Cranes" are capital goods of the Act. Accordingly, the mobile crane as claimed by the applicant is taxable at 5% as capital goods if sold within the State. Otherwise, it is taxable at 14.5% under Entry 69 of Part-C of the First Schedule to TNVAT Act 2006.
>
> 4.Therefore, it is clarified that the "Mobile Crane" are taxable at 5% as capital goods if sold within the State. Otherwise, it is taxable at 14.5% under Entry 69 of Part -C of the First Schedule to TNVAT Act 2006."

Therefore, the learned counsel prayed for a similar order in these writ petitions as well.

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3. The learned Special Government Pleader appearing for the respondents fairly conceded the submissions so made by the learned counsel for the petitioner. He has no serious objection in granting such relief to the petitioner.

4. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side and also following the aforesaid decision of this Court as well as the subsequent clarification order passed by the second respondent authorities, all these writ petitions stand allowed. The orders impugned herein are quashed and the matters are remitted back to the first respondent for passing fresh orders, as indicated above. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Commissioner (CT)
T.Nagar (North) Assessment Circle,
46, Greenways Road,
Chennai - 600 028.

2.The Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk, Chennai - 600 005.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.2109

+1cc to the Spl Government Pleader, S.R.No.2460

W.P.Nos.29997 to 30005 of 2008
and
M.P.Nos.1 to 1 of 2008

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GSP(14/02/2019)

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