BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.07.2019
CORAM
THE HONOURABLE DR.JUSTICE ANITA SUMANTH
W.P(MD)No.8176 of 2007
and M.P.(MD)No. 2 of 2007

Manimuthar Special Grade Town Panchayat
represented by its
Executive Officer,
Ambasamudram Taluk,
Tirunelveli District. ... Petitioner

Vs.

1.The Principal Commissioner and
Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai 5.

2.The Deputy Commercial Tax Officer,
Ambasamudram,
Tirunelveli District.

3.The Joint Commissioner,
Office of the Commissioner of
Commercial Tax, Chepauk,
Chennai 600 005.

4.Assistant Commissioner,
(Commercial Taxes),
Tirunelveli. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the records relating to the Order dated 10.09.2007 passed by the second respondent in ROC 2852/2000/A-3 confirming the orders passed by the fourth respondent in Ref.No.14206/2000 dated 13.12.2000 read with Order dated 12.08.2006 passed by the third respondent in R.P.No. JJ2/Mv/ 26/2001 and quash the same in so far as they relate to payment of penalty as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.T.Antony Arulraj
For Respondents : Mrs.J.Padmavathy Devi
Special Government Pleader

O R D E R

The petitioner, Manimuthar Special Town Panchyat, had purchased a Diesel Road Roller from Calcutta. In sofaras the vehicle was purchased in public interest, the petitioner states that it was under the impression that it was exempted from payment of Entry Tax. While this is so, an inspection had taken place in the premises of the Panchayat, pursuant to which entry tax of Rs.975 was paid by the petitioner. The liability of the petitioner to entry tax is not under dispute.

2. While this is so, proceedings for levy of penalty were initiated by the Assessing Authority culminating in an order dated 31.10.2000. The aforesaid order is cryptic which states that entry tax at the rate of 20% on the purchased turn over of the road roller is proposed not recording the position that the tax has been paid by the petitioner. This fact is however admitted in counter filed by the respondents at paragraph No. 5 wherein they state that entry tax was paid on 10.07.2000. Order dated 31.10.2000 proceeds thereafter to refer to the proposal dated 20.09.2000 calling upon the petitioner to show cause why penalty not be levied.

3.The reply of the petitioner is to the effect that the delay in payment of entry tax was caused on account of the necessity to obtain permission from the Audit which was itself delayed. It was only thereafter that it could confirm the proposal levying penalty under Section 15(1)of the Act. The petitioner filed a revision petition before the Principal Commissioner and the Commissioner of Commercial Taxes, who by his order dated 12.08.2006 rejected the petition as non-maintainable citing the reason that the tax and penalty had not been pre-deposited by the assessee prior to filing of the appeal. It is as against this order that the petitioner has filed the present writ petition.

4. Mr.T.Antony Arulraj, learned counsel appearing for the petitioner states that the entry tax levied as per the provisions of the Tamilnadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 (in short 'Act') has admittedly been paid on 10.07.2000. At the time when the entry tax has paid, no proceedings were initiated for payment of penalty. The provisions of Section 15 of the Entry Tax Act provide for levy of penalty only on the basis of entry tax remaining unpaid. Since in the present case tax has been paid in full, the question of imposition of penalty does not arise. He relies on a Judgment of the learned single Judge of this Court in the case of *Maurya Motors, Chennai-17 Vs. The Commercial Tax Officer, Chennai -20* (W.P Nos. 10713 and 10714 of 2006) dated 10.11.2017.

5. Per contra, Mrs.J.Padmavathy Devi, learned Special Government Pleader appearing for the respondents states that the entry tax was admittedly paid belatedly and hence, the provisions of Section 15 of the Act are attracted in the present case.

6. Having heard both the learned counsels, I am of the view that this writ petition deserves to be allowed.

7. *The provisions of Section 15 of the Act are extracted below:*

15. Penalty:--Where any person liable to pay tax under the Act fails to comply with any of the provisions of this Act, then the Assessing authority may, after giving such person a reasonable opportunity of being heard, by order in writing impose on him in addition to any tax payable, a sum by way of penalty not exceeding twice the amount of tax.

2) If the person does not, without reasonable cause pay the tax within the time he is required, by or under the provisions of this Act to pay it, the assessing authority may, after giving such person a reasonable opportunity of being heard, by order in writing , impose upon him by way of penalty, in addition to the amount of tax and penalty under sub-section (1) a sum equal to, ---

(a) one and one half per cent, of the amount of tax for each month for the first three months, after the last date by which the person should have paid the tax, and (b) two per cent, of the amount of tax for each month thereafter during the time the person continues to make default in the payment of tax.

8. Section 15(1) of the Act imposes a penalty simultaneous with levy of tax and Section 15(2) provides for a penalty where the assessee has not paid the tax payable without establishing a reasonable cause for the same. In the present case, the order has been passed in terms of Section 15(1) of the Act and thus, it is mandatory for such levy to have been simultaneous with the imposition of tax. This condition is not satisfied in the present case as the impugned order levies penalty alone. The admitted position is that the tax has been paid by the assessee even as early as on 10.07.2000 prior to the impugned imposition of penalty. In the light of the aforesaid, the impugned order is quashed.

9. This writ petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

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3. The Joint Commissioner,
   Office of the Commissioner of
   Commercial Tax, Chepauk,Chennai 600 005.

4. Assistant Commissioner,(Commercial Taxes),
   Tirunelveli.

+1 CC to SPL GP (SR-75731[F] dated 17/07/2019)
+1 CC to Mr.T.ANTONY ARUL RAJ, Advocate (SR-75784[F] dated 17/07/2019)

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