BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2019

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P(MD).No.21 of 2016
and W.M.P(MD)No.15 of 2016

M/s.R.P.N.Tiles
Represented by its Proprietor
P.Natesan ...Petitioner

Vs.

The Commercial Tax Officer,
Commercial Tax Building,
Nanguner. ...Respondent

Prayer : Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records in Tin 33635602562/2010-11 dated 28.09.2015 and quash the same as arbitrary, illegal and against the provisions of Tamilnadu Tax on Entry of Motor Vehicles Into Local Areas Act, 1990 and against the judgment of this Court reported in 2007(8) VST 563 (Mad).

For petitioner : Mr.S.Karunakar
For Respondent : Mr.J.Padmavathy Devi.
Special Government Pleader

O R D E R

Heard Mr.S.Karunakar, learned counsel appearing for the petitioner and Mrs.J.Padmavathy Devi, learned Special Government pleader appearing on behalf of the respondent.

2.No counter has been filed in the matter. However, learned Special Government Pleader is ready to proceed with the matter on instructions.

3. The petitioner is a manufacture of tiles and challenges the assessment made under the provisions of Tamilnadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 (in short 'Act') levying entry tax on a JCB (JSI 40 Excavator with 0.72 bucket) purchased from M/s. JCB India Limited on 29.07.2010.

4. The issue that arises is whether that vehicle comes within the description of 'Motor Vehicle' in terms of Section 2(1) of the Act which in turn refers one to the definition of 'Vehicle' in Section 28(2) of the Motor Vehicles Act, 1988. The definition is

extracted hereunder:

'Motor Vehicle or vehicle means any mechanically propelled vehicle adopted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than 4 wheels fitted with engine capacity of not exceeding 26 cubic centimeters'.

5. Admittedly, in this case, the vehicle in question is an excavator fit on chains and does not run upon tyres. The purpose of an excavator is to run inside factory premises. This question has been settled by the First Bench of this Court in *RDS Project Limited Vs. Commercial Tax Officer, Chennai*, reported in *2007(8) VST 574 (Mad)*, wherein the Bench holds in paragraph Nos. 8 to 10 as follows:

8. The short question that falls for our consideration is whether an excavator not running on inflated tyres, but on iron chain plates such as a caterpillar vehicle or a military tank would be a motor vehicle coming within the meaning of Section 2(28) of the Motor Vehicles Act, 1988 read with Section 2(i) of the Tamil Nadu Tax on Entry of Motor Vehicles Act, 1990 and is, therefore, liable to tax under Section 3 of the Tamil Nadu Tax on Entry of Motor Vehicles Act, 1990.

9. The term "vehicle" has been defined in Section 2(i) of the Tamil Nadu Tax on Entry of Motor Vehicles Act, 1990 as follows:

'Motor vehicle' means a motor vehicle as defined in Clause (28) of Section 2 of the Motor Vehicles Act, 1988.

10. Thus, it could be seen that the State Legislature has adopted the definition of "motor vehicle" as defined under Sub-section (28) of Section 2 of the Motor Vehicles Act, 1988, which reads as follows:

'Motor vehicle' or 'vehicle' means any mechanically propelled vehicle adapted for use upon roads, whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer ; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a

vehicle having less than four wheels fitted with engine capacity not exceeding (twenty five cubic centimetres).

6. In the light of the aforesaid decision, the impugned order dated 28.09.2015 is quashed and this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P AND A)

// True Copy //

Sub Assistant Registrar(CS)

To,
The Commercial Tax Officer,
Commercial Tax Building,
Nanguner.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-71940[F] dated 27/06/2019)

W.P(MD).No.21 of 2016
and W.M.P(MD)No.15 of 2016
27.06.2019

KK/SAR/07.08.2019/3P-3C/