

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 16139 of 2012

and

M.P. No. 1 of 201

Gem Tech Engineers,
Represented by its Partner,
P.Kanagaraj,
10/3 Athipalayam Road,
Gopalakrishnapuram,
Coimbatore - 641 006.

...Petitioner

-vs-

1. The Assistant Commissioner (CT) FAC,
Ganapathi Circle,
Chinnavedanpatti,
Coimbatore.

2. The Appellate Deputy Commissioner (CT) Main (FAC),
Coimbatore.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the Second Respondent herein in his AP No. 10/2011 dated 30.04.2012 and to quash the impugned order and direct the Second Respondent herein to re-hear the appeal and to pass orders as per the principles stated in 148 STC 419.

For Petitioner : Mr. K.A.Parthasarathy

For Respondents : Mrs. G.Dhana Madhri,
Government Advocate (Taxes)

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O R D E R
(through video conference)

Heard Mr. K.A.Parthasarathy, Learned Counsel for the Petitioner and Mrs. G.Dhana Madhri, Learned Government Advocate (Taxes) for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Order in Appeal No. 10/2011 dated 30.04.2012 passed by the Second Respondent, in which the electrically operated traveling (EOT) cranes and their spares sold by the Petitioner to its purchasers in the year 2005-2006 have been levied sales tax at the rate of 12% in terms of Entry 40 of Part - D of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as the 'TNGST Act' for short), rejecting the claim of the Petitioner that the said goods would be taxable at 3% under Section 3(5) of the TNGST Act read with Entry 3 of the Eighth Schedule to the TNGST Act. It is, however, accepted by the Second Respondent in the impugned order that the EOT cranes have not been specifically enumerated under any of the other entries in the First Schedule to the TNGST Act.

3. In order to understand the dispute that arisen for consideration, it would be necessary to refer to Entry 40 of Part - D of the First Schedule and Entry 3 of the Eighth Schedule to the TNGST Act, which are extracted below:-

THE FIRST SCHEDULE

GOODS IN RESPECT OF WHICH SINGLE POINT TAX IS LEVIABLE
UNDER SUB-SECTION (2) OF SECTION 3.

PART - D

Goods which are taxable at the rate of 12 per cent

S.N o. (1)	Description of the goods (2)	Point of levy in the State (3)
40.	All other goods not specified elsewhere in any of the Schedules	First sale

THE EIGHTH SCHEDULE
[See Section 3(5).]

Serial Number (1)	Description of the goods (2)
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3.	Machineries of all kinds (other than those specifically mentioned in the First Schedule) worked by (i) Electricity (ii) Nuclear power (iii) Hydro-dynamic and steam power (iv) Diesel or petrol (v) Furnace oil (vi) Kerosene (vii) Coal including coke and charcoal or (viii) any other form of fuel or power (excluding human or animal labour) (ix) parts and accessories of machineries and tools used with the machineries mentioned in sub-item (i) to (viii) above.
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On a conspectus of the aforesaid statutory provisions, it is apparent that Entry 3 of the Eighth Schedule relates to machineries of all kinds other than those specifically mentioned in the First Schedule worked by electricity, while Entry 40 of Part - D of the First Schedule is a residuary clause for all other goods not specified elsewhere in any of the Schedules. The rule of harmonious construction in interpretation of statute requires that the Courts have to adhere to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute as held by the Hon'ble Supreme Court of India in Gurudevdatla Vksss Maryadit -vs- State of Maharashtra [(2001) 4 SCC 534]. Viewed from that perspective, if the interpretation made by the Second Respondent in the impugned order is accepted, it would lead to absurd consequences that the benefit under Entry 3 of the Eighth Schedule to the TNGST Act in terms of Section 3(5) of the TNGST Act, would not be available for any goods, which could not have been the legislative intent. As such, it has to be held that if the conditions prescribed in Section 3(5) of the TNGST Act are factually satisfied for availing the benefit of Entry 3 of the Eighth Schedule to the TNGST Act, the Petitioner would be entitled for concessional levy of tax at the rate of 3% prescribed in that regard and in the absence thereof, tax would have to be levied at the rate of 12% in terms of Entry 40 of Part - D of the First Schedule to the TNGST Act.

4. There is yet another aspect of the matter on which considerable stress has been made by the Learned Counsel for the Petitioner by pointing out that Section 3(5) of the TNGST Act expressly requires a declaration from the purchasers for the use of the goods for industrial purpose and taking that into consideration, this Court in a series of decisions has held that whenever the Taxing Authority comes to the conclusion that a declaration was not acceptable, it is the purchaser who would have to bear the liability for paying the differential amount of tax due. The rulings of this Court in State of Tamil Nadu -vs- Madras Petro Chem Ltd. [(1993) 1989 STC 438], Maruthi Handling Equipments -vs- Deputy Commercial Tax Officer, Coimbatore [(2007) 7 VST 261], Sree Murugan Engineering Products -vs- Commercial Tax Officer, Coimbatore [(2006) 148 STC 419] and Magna Cranes (P) Limited -vs- Assistant Commissioner (CT), Chennai (Order dated 08.01.2019 in W.P. No. 29997 of 2008) have been cited in support of this proposition of law.

5. The result of the foregoing discussion is that the impugned order in A.P. No. 10/2011 dated 30.04.2012 passed by the Second Respondent, which cannot be sustained, is set aside and the matter is remitted for fresh consideration in the light of the aforesaid conclusions arrived by this Court. It is incumbent upon the Second Respondent, after issuing notices and affording full opportunity of personal hearing to the Petitioner and the purchasers to whom the EOT cranes have been sold, to determine the liability for tax with reference to the satisfaction of the conditions for that benefit and pass reasoned orders on merits in accordance with law and communicate the decision taken to the parties concerned under written acknowledgment.

6. In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vjt/msm

To

1. The Assistant Commissioner (CT) FAC,
Ganapathi Circle,
Chinnavedanpatti,
Coimbatore.

2. The Appellate Deputy Commissioner (CT) Main (FAC),
Coimbatore.

+1cc to M/s.N.Inbarajan, Advocate, S.R.No.35391
+1cc to the Government Pleader, S.R.No.35575

W.P. No. 16139 of 2012

MJB (CO)
KKV/29/12/2020



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