IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.09.2021

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.16268 of 2005
and
WMP No.17696 of 2005

M/s.V.M.Constructions,
Rep. By its Partner Mrs.P.Dhanavandhini
New No.6 (Old No.4/140),
Thiagi Chockalingam Street,
Nazarathpeth,
Chennai - 602 103. .. Petitioner

Vs

The Checkpost Officer,
Hosur Inward Checkpost,
Hosur. .. Respondent

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, for a direction to the respondent not to detain the Hydraulic Excavator L & T Komatsu PC 200-6 to be transported by the petitioner and further direct the respondent not to demand Entry Tax in advance on the said commodity as held by this Hon'ble High Court in W.P.Nos.23832 to 23834/2003 dated 29.08.2003 and followed by this Hon'ble High Court in W.P.No.27814 of 2004 dated 29.09.2004.

For Petitioner : No Appearance.

For Respondent : Mr.V.Nanmaran
Government Advocate.

O R D E R

The relief sought for in the present writ petition is to direct the respondent not to detain the Excavator TATA HITACHI EX 200 LC to be transported by the petitioner and further direct the respondent not to demand Entry Tax in advance on the said commodity as held by this Court in W.P.Nos.23832 to 23834/2003 dated 29.08.2003.

2. The petitioner states that they are engaged in the business of civil works contract and using Hydraulic Excavators and Earth Movers in the course of such works contract and assessees on the files of the Deputy Commercial Tax Officer, Sriperumandur Assessment Circle. During the

course of the business, the petitioner company has placed order for purchase of “TATA HITACHI EX 200 LC” with M/s.L&T Komatsu Limited, Bangalore. With an apprehension that the respondent may levy entry tax and stating that the entry tax cannot be levied in advance, in respect of the vehicle purchased by the petitioner, the present writ petition has been filed.

3. The validity of levy of entry tax has already been upheld by the Hon'ble Supreme Court of India. However, whether the vehicle purchased by the petitioner falls within the definition of 'Motor Vehicle' under Section 2(28) of the Motor Vehicles Act, or not, is to be factually verified by the respondent. Further, if the vehicle is adaptable for the road usage, then it is to be construed as a Motor vehicle within the meaning of Section 2(28) of the Motor Vehicles Act.

4. However, the relief as such sought for to prevent the authorities from exercising their powers under the provisions of the Act, cannot be granted. Only if any order levying entry tax is passed, then alone, the petitioner would get a cause for filing a writ petition. Mere apprehension regarding the levy of tax, cannot be construed as a right for entertaining a writ petition under Article 226 of the Constitution of India.

5. Thus, the mandamus as such sought for to direct the respondent not to detain the vehicle and not to demand entry tax, cannot be granted. Furthermore, the writ petition was filed in the year 2005 and after a lapse of about 16 years, the relief sought has lost its relevance. Thus, the writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

The Checkpost Officer,
Hosur Inward Checkpost,
Hosur.

+1cc to the Government Pleader, S.R.No. 46500

WP No.16268 of 2005

PCH(CO)
GN(11/10/2021)