IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2021

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.2567 of 2021
and C.M.P.No.16716 of 2021

M/s.Hari & Co.,
No.133, G.C.Road,
Tuticorin - 1. ... Appellant

-vs-

1.The State of Tamil Nadu,
Rep. by its Secretary,
Commercial Taxes Department,
Fort St. George, Chennai - 600 009.

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

3.The Commercial Tax Officer II (FAC)
Office of Commercial Tax Officer,
Tuticorin. ... Respondents

Appeal under Clause 15 of Letters Patent against the order dated 10.11.2020 in W.P.No.7740 of 2006 and set aside the same.

Prayer in W.P.No.7740 of 2006:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 3rd respondent relating to its proceedings Entry Tax No.5840523/05-06 dated 23.2.2006 and quash the same.

For Appellant : Mr.V.Sundareswaran

For Respondents: Mr. M.Venkateswaran
Government Counsel

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal by the writ petitioner is directed against the order dated 10.11.2020 in W.P.No.7740 of 2006.

2.By the said order, a demand for payment of entry tax under the provisions of the Tamil Nadu Tax on Entry of Motor Vehicles to Local Areas Act, 1990 ['the Act' for brevity] was made on the appellant together with twice the amount of tax as penalty. The writ petition was filed in the year 2006 and the same was entertained and an order of interim stay was granted. The writ petition was finally heard during November 2020 and we find that no counter affidavit had been filed by the respondents. The learned Single Bench dismissed the writ petition on two grounds. Firstly, on the ground that the writ petition should have been filed before the Madurai Bench of this Court and not in the Principal Seat as the order which was put to challenge was passed by the third respondent who is within the jurisdiction of the Madurai Bench. The second reason for dismissing the writ petition is that the appellant without exhausting the alternative remedy could not have filed the writ petition. The correctness of the order is being questioned in this appeal.

3.We have heard Mr.V.Sundareswaran, learned counsel appearing for the appellant and Mr.M.Venkateswaran, learned Government Counsel appearing for the respondents.

4.It may be true that the writ petition had been filed challenging an order passed by the third respondent, who is admittedly within the jurisdiction of the Madurai Bench of this Court. However, in the grounds raised in the writ petition, the appellant has questioned the jurisdiction of the authority, namely, the third respondent, classifying the equipment as Motor Vehicle. The third respondent had relied on a Government Order in G.O.Ms.No.443, Home [Tr.V] Department dated 30.04.2001 to justify the demand of entry tax. Furthermore, the third respondent has referred to and relied upon a clarification issued by the second respondent under Section 28A of the Act. Therefore, the respondents while filing a counter affidavit will have to take a stand as regards the applicability of G.O.Ms.443, Home [Tr.V] Department dated 30.04.2001 and the effect of the Circular issued by the second respondent. Therefore, a specific stand was required to be taken by the first and second respondents and not only by the third respondent. As pointed out earlier, none of the respondents had filed counter affidavit in the writ petition though the same was pending from the year 2006. That apart, the petitioner had also filed a representation to the second respondent under Section 28A of the Act requesting for clarification and the charges which was stipulated had also been remitted. The said request for clarification dated 26.01.2006 submitted by the appellant through their counsel was not taken up for consideration. All the above factors put together will go to show that the writ petition can be entertained by the Principal Seat.

5.Having steered clear of this issue, we consider as to the correctness of the other ground on which the writ petition was dismissed, namely, on the ground on not availing alternative remedy provided under the provisions of the Act. The appellant has challenged the order passed by the third respondent as being without jurisdiction and in violation of the principles of natural justices and ab initio void. If such was the contention raised, the respondents are duty bound to define the matter by placing materials before the Court and if the appellant is able to satisfy the Court that the demand raised by the third respondent is without jurisdiction or there has been violation of principles of natural justice, then the writ petition is maintainable. Having said so, we have examined the order dated 23.02.2006 which is an assessment order under Section 8/9 of the Act which was impugned in the writ petition. Though the third respondent states that the appellant had filed additional objections on 21.02.2006, the third respondent has recorded a finding that no fresh grounds have been pointed out by the appellant. On going through the second objection dated 21.02.2006, we find that the additional grounds have been raised by the appellant, more particularly on the issue whether a Reach Stacker is a heavy capacity mobile crane or a construction equipment. Therefore, the third respondent is not correct in observing that no additional grounds have been raised by the appellant. That apart, the levy of penalty twice the amount of tax has also been questioned by the appellant on the ground that unless and until the third respondent has specifically recorded a finding of wilful disobedience of any of the statutory provisions, penalty cannot be levied. Admittedly, the appellant has filed the return under Section 7 of the Act. Thus, the question would be whether levy of penalty was justified or not.

6.That apart, the third respondent while passing the assessment order has relied upon a Government Order in G.O.Ms.No.443 dated 30.04.2001 with regard to the classification of the equipment. We find that the appellant did not have adequate opportunity to putforth their objections as there was no such proposal made by the third respondent before the impugned order was passed. Further, the appellant has raised a specific plea that the equipment would not fall within the definition of Motor Vehicle as defined under Section 2(28) of the Motor Vehicles Act and that the equipment which was purchased by the appellant is not adopted for use of public roads and therefore, the provisions with the Act itself would not be attracted. These issues required to be considered in an appropriate manner after adequate opportunity to the appellant which we find has not been provided. For the above reasons, we are inclined to interfere with the assessment order and remand the matter to the third respondent for fresh consideration.

7.In the result, the writ appeal is allowed, the order passed in the writ petition is set aside. Consequently, the writ petition is allowed and the assessment order dated 23.02.2006 is set aside and the matter is remanded to the third respondent for fresh consideration. The appellant is at liberty to file additional objections to the pre-assessment notice within fifteen days from the date of receipt of a copy of this judgment. Thereafter, the third respondent shall afford an opportunity of personal hearing to the authorized representative of the appellant and consider all the materials that may be placed before him and re-do the assessment in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cse
To

1.The Secretary,
Commercial Taxes Department,
Fort St. George, Chennai - 600 009.

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

3.The Commercial Tax Officer II (FAC)
Office of Commercial Tax Officer,
Tuticorin.

+1cc to the Special Government Pleader Sr.52470
+1cc to Mr.V.Sundareswaran, Advocate Sr.52144

W.A.No.2567 of 2021

spd[co]
srg 26/10/2021