BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.04.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.5691 and 5694 of 2021
and
W.M.P(MD)Nos.4494 & 4496 of 2021

K.Deivendran ... Petitioner in both W.Ps

Vs.

The State Tax Officer,
Melur Assessment Circle,
Madurai – 20 ... Respondent in both W.Ps

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in Roc : 192/2021/B3(1) & Roc : 192/2021/B3(2) TIN 33614942003, respectively dated 05.03.2021 demanding Entry Tax and Penalty and to quash the same as illegal, arbitrary and non-speaking and further direct the respondent to consider the objections, dated 01.03.2021.

in both Wps:
For Petitioner : Mr.B.Prasanna Vinoth
for S.Karunakar
For Respondent : Mr.G.Arjunan,
Government Advocate

COMMON ORDER

These Writ Petitions have been filed by the petitioner praying to quash the orders of the respondent in Roc:192/2021/B3(1) & Roc: 192/2021/B3(2) TIN 33614942003, respectively dated 05.03.2021 demanding Entry Tax and Penalty, as illegal, arbitrary and non-speaking.

2. Heard Mr.B.Prasanna Vinoth, learned counsel appearing for the petitioner and Mrs.G.Arjunan, learned Government Advocate appearing on behalf of the respondent.

3.When the matter is taken up for hearing, it was fairly submitted by the learned counsel appearing for the petitioner and the learned Government Advocate for the respondent that this issue was squarely covered by the decision of this Court made in W.P.(MD) No.21 of 2016, dated 27.06.2019.

4. The learned counsel appearing for the petitioner would submit that the petitioner is having valid granite quarrying lease granted by the Industries Department, the Government of Tamil Nadu, under Rule, 19-A of the Tamil Nadu Minor Mineral Concession Rules, 1959. The petitioner purchased an WB Tipper (Dumper) on 26.03.2011 from M/s.Ashok Leyland Limited, Bangalore. The said vehicle is registered under the category of class of vehicle as Earth Moving Equipment (MMV) under the direction by the Regional Transport Officer, Madurai North.

5. 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'.

6. Admittedly, in this case, the vehicle in question is 'Earth Moving Equipment'. The purchase and use of WB Tipper (dumper) in the petitioner granite quarry is machinery within the meaning of Rule 2 (ca) of the Central Motor Vehicles Rules, 1989. 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).

7. In the light of the aforesaid decision, the impugned orders of the respondent in Roc:192/2021/B3(1) and Roc: 192/2021/B3(2) TIN 33614942003, respectively dated 05.03.2021, are quashed and the Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MPK

Note:(i) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The State Tax Officer,
Melur Assessment Circle,
Madurai - 20

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-15874[F] dated 15/04/2021)

+1 CC to M/s.SPL GP (SR-16020[F] dated 16/04/2021)

Order made in

W.P(MD)Nos.5691 and 5694 of 2021

15.04.2021

CN(19.05.2021) 4P 4C