



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) Nos.2165 & 2166 of 2019

and

WMP (MD) Nos.1721 & 1722 of 2019

1.M/s.MSP Velayutha Nadar

Rep.by its Partner R.Vijuntha

Main Road, pavoorchadram,

Tirunelveli District.

... Petitioner in W.P.2165/2019

2.M/s.M K V K Saw Mills

Rep.by its Partner Mr.R.Kalaiselvan

Main Road, pavoorchadram,

Tirunelveli District.

... Petitioner in W.P.2166/2019

Vs.

The Assistant Commissioner (ST) (FAC)

Tenkasi Assessment Circle,

Tenkasi.

... Respondent in both WPs.

PRAYER IN WP.No.2165 of 2019: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in his notice in TNGST No.5680597/2002-2003, dated 07.01.2019, quash the same insofar as the demand of penalty and further direct him to issue show cause notice afresh after affording an opportunity of being heard pursuant to the order of this Court in W.P.No.38249 of 2002, dated 23.01.2013.

PRAYER IN WP.No.2166 of 2019: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in his notice in TIN No.33435680951/2003-2004, dated 07.01.2019, quash the same insofar as the demand of penalty and further direct him to issue show cause notice afresh after affording an opportunity of being heard pursuant to the order of this Court in W.P.No.38249 of 2002, dated 23.01.2013.

For Petitioners : Mr.R.D.Ganesan
(in both Wps)

For Respondents : Mr. P.Thilakkumar
(in both Wps) Government Advocate



COMMON ORDER

The Writ Petitions have been filed challenging the impugned demand notice, dated 07.01.2019 of Entry Tax made against the petitioners, under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Area Act, 1990.

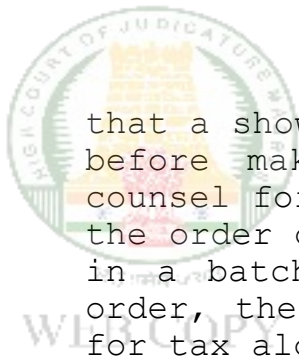
2. The case of the petitioners is that a 'mobile crane' is not a vehicle coming within the definition of 'Motor vehicle', under the Motor Vehicles Act and therefore, Entry Tax is not attracted under the provisions of the Act. It is also the case of the petitioners that no show cause notice was issued by the respondent prior to the impugned demand dated 07.01.2019.

3. Learned counsel for the petitioners drew the attention of this Court to the order passed by the learned Judge of this Court dated 23.01.2013 passed in W.P.Nos.38240 of 2007 and etc., batch. The learned Judge of this Court vide order dated 23.01.2013 had quashed the earlier demands for payment of Entry Tax from the petitioners as well as other parties who had filed the writ petitions, since the constitutional validity of the Act was pending decision by the Hon'ble Supreme Court. In the aforesaid batch of writ petitions, the learned Judge, while passing the orders granted liberty to the Department to make fresh demand for tax, if advised, after the Hon'ble Supreme Court decides the issue on merits.

4. Learned counsel for the petitioners fairly conceded that the Hon'ble Supreme Court, subsequent to the order dated 23.01.2013 passed by the learned Judge, has upheld the validity of the Act. After the validity of the Act was upheld by the Hon'ble Supreme Court, the respondent has raised the impugned demand dated 07.01.2019 against the petitioners calling upon them to pay the total sum of Rs.2,27,972/- and Rs.2,57,739/- respectively.

5. Learned counsel for the petitioners drew the attention of this Court to Section 15 of the Act and submitted that before levying penalty under the Act, sufficient opportunity will have to be given to the petitioners including the right of personal hearing. According to him, in the instant case, no such opportunity was given by the respondent, as per Section 15 of the Act. Further, he contended that the 'mobile cranes, which were used by the petitioners only within the factory premises and was never put on road and therefore, it does not come within the definition of motor vehicle, as defined under the Motor Vehicles Act.

6. Further, the learned counsel for the petitioners submitted that since the Act is not attracted, the petitioners have not filed any returns for the purpose of Assessment under Section 8 of the Act. According to him, having not filed the return due to the aforesaid reason, the learned counsel for the petitioners submitted



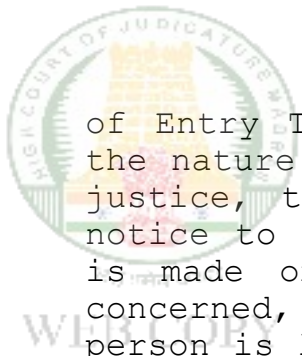
that a show cause notice ought to have been issued by the respondent before making the demand against the writ petitioners. Learned counsel for the petitioners also drew the attention of this Court to the order dated 23.01.2013 passed by the learned Judge of this Court in a batch of writ petitions and submitted that as per the said order, the respondent has been given liberty to make fresh notice for tax alone and not for penalty.

7. I have heard the learned counsel appearing for the petitioners and the learned Government Advocate appearing for the respondent and perused the materials available on record, including the counter affidavit filed by the respondent.

8. It is admitted by both the learned Counsels that the validity of the Act has been upheld by the Hon'ble Supreme Court. While the order dated 23.01.2013 was passed by the learned Judge of this Court in a batch of writ petitions namely W.P.Nos.38240, 38249 42808 of 2002 etc., batch, challenging the demand of entry tax, the validity of the Act was pending decision and under consideration by the Hon'ble Supreme Court. The learned Judge of this Court vide order dated 23.01.2013 in a batch of writ petitions has given liberty to the respondent to make fresh demand for tax if so advised after the Hon'ble Supreme Court decides the issue on merits regarding the validity of the Act. After the Act was upheld by the Hon'ble Supreme Court, the respondent has now raised the impugned demand for the payment of Entry Tax for the Assessment Year 2002-2003 and 2003-2004 respectively. In the impugned demand, the respondent has specifically mentioned about the earlier order passed by this Court dated 23.01.2013 in a batch of writ petitions.

9. As seen from Section 8 of the Act, a party who is liable to pay Entry Tax under the Act will have to submit his returns and only thereafter, the respondent shall access the payment of Entry Tax. In the instant case, it is the case of the petitioners that they are not liable to pay Entry Tax since a 'mobile crane' does not come within the definition of 'motor vehicle', as defined under the Motor Vehicles Act, as according to the petitioners, 'mobile crane' was used by the petitioners only within the factory premises and was never put on road.

10. It is also the case of the petitioners that for a 'mobile crane', no registration is required. Since this issue will have to be decided as a preliminary issue, in the interest of justice the respondent will have to give a show cause notice, before making a demand for payment of Entry Tax under the Act. The respondent will have to first adjudicate whether a 'mobile crane' will fall within the definition of a motor vehicle, as defined under the Motor Vehicles Act and only thereafter, a decision can be made as to whether the petitioners are liable to pay tax and penalty under the Act. Even though no requirement for show cause notice for the levy



of Entry Tax is specifically mentioned under the Act, considering the nature of defence raised by the petitioners, in the interest of justice, this Court directs the respondent to issue a show cause notice to the petitioners before a demand for payment of Entry Tax is made on the petitioners. Insofar as the levy of penalty is concerned, Section 15 of the Act specifically says that when a person is liable to pay tax under the Act, fails to comply with any of the provisions of this Act, then, the assessing authority may, after giving such person a reasonable opportunity of being heard, by order in writing impose on him in addition to any tax payable, a sum by way of penalty not exceeding twice the amount of tax. Section 15 of the Act reads as follows:-

"15 Penalty:

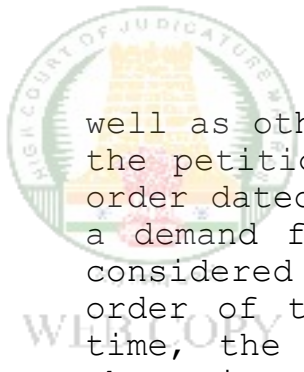
(1) Where any person liable to pay tax under this Act falls to comply with any of the provisions of this Act, then the assessing authority may, after giving such person a reasonable opportunity of being heard, by order in writing impose on him in addition to any tax payable, a sum by way of penalty not exceeding twice the amount of tax.

(2) If the person does not, without reasonable cause, pay the tax within the time he is required, by or under the provisions of this Act to pay the assessing authority may, after giving such person a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty, in addition to the amount of tax and penalty under sub-section(1) a sum equal to.-

a) one and one half per cent, of the amount of tax for each month for the first three months, after the last date by which the person should have paid that tax, and

(b) two per cent, of the amount of tax for each month thereafter during the time the person continues to make default in the payment of tax.?

11. In the batch of writ petitions decided by the learned Judge on 23.01.2013 (*cited supra*), the petitioners have submitted that they are not liable to pay the Entry Tax. The petitioners having taken a consistent stand that they are not liable to pay Entry Tax, the respondent ought to have given the petitioners sufficient opportunity before making the impugned demand. In the instant case, no such opportunity was given to the petitioners by the respondent. Further, the learned Judge of this Court vide his order dated 23.01.2013 in the batch of writ petitions has given the liberty to the respondent to make a fresh demand for tax from the petitioner as



well as other writ petitioners. Eventhough, the learned Counsel for the petitioners submitted that the learned Judge by the aforesaid order dated 23.01.2013, has given liberty to the respondent to raise a demand for tax alone and not for penalty, this Court is of the considered view that the demand for penalty is implied in the said order of the learned Judge. Only when the tax is not paid on time, the question of payment of penalty will arise. Therefore, there is no bar for the respondent to raise a demand for penalty from the petitioners. Whether the petitioners are liable to pay the tax and the penalty will have to be adjudicated by the respondent in accordance with law.

12. Considering all the above mentioned factors, this Court is of the considered view, that the impugned demand made by the respondent without giving sufficient opportunity to the petitioners to raise all the defences available to them including the applicability of the Act has to be set aside.

13. In the result the impugned demand notice dated 07.01.2019 passed by the respondent is hereby quashed. However, the respondent is given liberty to issue a fresh show cause notice within a period of one week from the date of receipt of this order, calling upon the petitioners to pay the Entry Tax as well as the penalty. The petitioners are also given liberty to send a reply within three months from the date of receipt of the show cause notice and raise all defences available to them, including the non-attraction of the provisions of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Area Act, 1990, to the subject transaction. On receipt of the said reply from the petitioners, the respondent shall pass final orders, after affording sufficient opportunity including the right of personal hearing, in accordance with law, within a period of three weeks thereafter.

14. With the above directions, the Writ Petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

MPK

Note: 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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

The Assistant Commissioner (ST) (FAC)
Tenkasi Assessment Circle,
Tenkasi.

WEB COPY

+1 CC to M/s.R.D.GANESAN, Advocate (SR-24514[F] dated 29/07/2021)

+1 CC to M/s.SPL GP (SR-24396[F] dated 29/07/2021)

**W.P (MD) Nos.2165 & 2166 of 2019
28.07.2021**

RK (01.09.2021) 6P 4C