BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.01.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.1126 of 2015
and
MP(MD)No.1 of 2015

Sree Infratech ... Petitioner

Vs.

The Commercial Tax Officer,
Aranthangi,
Pudukkottai District. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the entire records of the respondent in Entry Tax/2012-13 dated 12.12.2014 and quash the order passed therein and pass such or other orders as this Court may deem fit and proper.

For Petitioner : Mr.A.P.Srinivas
For Respondent : Ms.J.Padmavathi Devi, Special Government Pleader

O R D E R

Heard the learned counsel on either side.

2.The writ petitioner is a civil works contractor engaged in road laying contracts. He has also registered himself as a dealer under the Tamil Nadu Value Added Tax Act, 2006. The petitioner bought a Wet Mix Paver Finisher from M/s.Apollo Construction Equipments Ltd., Apollo Construction Equipments Ltd., Gujarat vide invoice No.455 dated 17.02.2013. The respondents by the impugned order levied Entry Tax on the same. Aggrieved by the same, this writ petition has been filed.

3.It is submitted by the learned counsel for the petitioner that the issue on hand is squarely covered by the order dated 27.06.2019 made in WP(MD)No.21 of 2016. It has been held in the said decision as follows :

> "4.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'.

5.Admittedly, in this case, the vehicle in question is an excavator fit on chains and does not run upon tyres. The purpose of an excavator is to run inside factory premises. 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)."

6. In the light of the aforesaid decision, the impugned order dated 28.09.2015 is quashed and this writ petition is allowed."

4.Since the Wet Mix Paver Finisher is not a motorable item and since it does not require registration under the Motor Vehicles Act, the question of levying Entry Tax does not arise at all. Respectfully following the aforesaid decision, I quash the order impugned in this writ petition. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Skm

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.

To

The Commercial Tax Officer,

Aranthangi, Pudukkottai District.

+1 CC to M/s.A.P.SRINIVAS, Advocate (SR-579[F] dated 08/01/2021)

+1 CC to SGP (SR-657[F] dated 08/01/2021)

W.P.(MD)No.1126 of 2015
07.01.2021

SMV(CO)
NR (04/02/2021) 3P : 4C