BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.11.2022**

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THE HON'BLE MR JUSTICE M.S. RAMESH
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

REV.APLC.(MD)Nos.58 & 59 of 2008
and
M.P.(MD)Nos.1 & 1 of 2008

M/s.Bhageeratha Engineering Limited,
Represented by its Chief of Project,
Mr.Col. (Rtd.) M.Marcus,
National Highways Project,
Post Box No.4, Kalakkadu,
Tirunelveli District. ... Petitioner / Appellant in Both Review Applications

/Vs./

Deputy Commercial Tax Officer,
Nanguneri,
Tirunelveli District. ... Respondent / Respondent in Both Review Applications

COMMON PRAYER: Petitions filed under Order 47 Rules 1 & 2 r/w Section 114 of the Civil Procedure Code, to review the order passed by this Court dated 07.07.2008 made in WA(MD)Nos.446 & 447 of 2008 and allow the Writ Appeals.

For Petitioner : Mr.K.Vadivelu (in both Reviews)

For Respondent : Mr.D.Sasikumar
Additional Government Pleader (in both Reviews)

COMMON ORDER

(Order of the Court was made by **M.S.RAMESH, J.**)

The levy of entry tax for the assessment years, 2002-2003 and 2003-2004 for purchase of Transit Mixer / Paver Finisher, through order dated 13.07.2005 was put under challenge before this Court in WP(MD)Nos.8194 & 8195 of 2005. The learned Single Judge had rejected the prayer, in view of the alternative remedy of appeal before the appellate authority. This order of the learned Single Judge of this Court came to be confirmed by a Co-ordinate Bench of this Court in WA(MD)Nos.446 & 447 of 2008, dated 07.07.2008. The present Review Applications have been filed predominantly on the ground that since the Transit Mixer / Paver Finisher cannot be recorded as a 'Motor Vehicle' as defined under

Section 2 (28) of the Motor Vehicles Act, 1988, the levy of entry tax will not be attracted.

2. The learned counsel appearing for the petitioner placed reliance on the decision of the Hon'ble Division Bench of Kerala High Court, in the case of **Sales Tax Inspector, Sales Tax Check-Post, Amaravila vs. M.P.Ittoop**, dated **26.11.2003**, wherein levy of entry tax to a Paver Finisher was exempted in the following manner:

> "*12. Mr. Raju Joseph contends that a road roller and an excavator have been held to be motor vehicles in Bose Abraham's case [2001] 121 STC 614 (SC); 2001 AIR SCW 466. We have perused the judgment. A perusal of the observations in paragraph 7 shows that the appellants before their Lordships of the Supreme Court had admitted before the High Court that an "an excavator and a road roller are suitable for use on roads". It was also found by their Lord ships that the machinery was registered under the Act. In the present case both the requirements are not fulfilled. The pavar can be used for making a road and not on the road. In fact, it has to be carried on a lorry from one place to another where the road has to be made or laid. It has not been registered till today. No such order has been passed. Thus, it is clear that the goods imported by the*

respondent would fall within entry 21-"other machinery". It was exempted from the levy of tax vide notification dated June 3, 1998, which was given retrospective effect from May 10, 1998. Thus, the goods as imported by the respondent were exempted from the levy of entry tax on the date of import as well as the levy of tax."

3. The Co-ordinate Bench of this Court had also followed the aforesaid decision of the Kerala High Court, in the case of **RDS Projects Ltd., vs. Commercial Tax Officer, Chennai,** reported in **2007 (8) VST 574W (Mad)**.

4. When the entry tax for the purchase of Transit Mixer / Paver Finisher has been held to be exempted by the Hon'ble Division Benches in the aforesaid decisions, directing the petitioner to approach the appellant authority would be a futile exercise. As such, we are inclined to entertain the present Review Applications.

5. Accordingly, the impugned order in WP(MD)Nos.8194 & 8195 of 2005, dated 13.07.2005 passed by the respondent is hereby quashed. The Judgment, dated 07.07.2008 passed in WA(MD)Nos.446 & 447 of 2008, is rejected and accordingly, the Review Applications stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(M.S.R.,J.) (N.A.V.,J.)
10.11.2022

Index : Yes/No
Internet : Yes
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<u>TO:</u>

The Deputy Commercial Tax Officer,
Nanguneri,
Tirunelveli District.

M.S. RAMESH, J.

and

N. ANAND VENKATESH, J.

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Common Order made in
REV.APLC.(MD)Nos.58 & 59 of 2008

Dated
10.11.2022