BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.04.2022
(Reserved on 06.04.2022)
CORAM :
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A(MD)No.332 of 2007

M/s.Sree Pandeeswari Timbers & Saw Mill,
No.18-A, Shencottai Road,
Tenkasi. ... Appellant/Petitioner

vs.

The Commercial Tax Officer (FAC),
Sales Tax Office,
Tenkasi. ... Respondent/Respondent

Appeal filed under Clause 15 of Letters Patent, against the order dated 21.06.2007 in W.P(MD)No.3643 of 2005.

Prayer in WP(MD). 3643 of 2005 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in Entry Tax Asst. No.9/04-05 RC No.A5/1010/05 dated 31.3.2005 quash the impugned proceedings dated 31.3.2005 and further direct the respondent not to impose, collect, or recover any entry tax on the entry of Escorts Hydraulics Mobile Crane into the State of Tamil Nadu under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990.

For Appellant : Mr.R.D.Ganesan
For Respondent : Mr.V.Nirmal Kumar
Government Advocate

JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

Challenge in this writ appeal is to the order of the learned single Judge made in W.P(MD)No.3643 of 2005, dated 21.06.2007, in and by which, the writ petition filed by the appellant/writ petitioner questioning a notice issued by the respondent demanding entry tax and penalty, was dismissed.

2. The appellant is a Timber merchant and for the purposes of its business, it had purchased an Escorts Mobile Crane for

Rs.10,43,536/- from M/s.Escort Construction Equipments Ltd., on 26.02.2001. The appellant had also challenged the provisions of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990. The challenge failed. Simultaneously, the appellant/petitioner launched the present proceedings seeking to quash the demand notice. The Writ Court had dismissed the writ petition on the ground of availability of alternative remedy. Hence, this writ appeal.

3. We have heard Mr.R.D.Ganesan, learned counsel appearing for the appellant/petitioner and Mr.V.Nirmal Kumar, learned Government Advocate appearing for the respondent.

4. Mr.R.D.Ganesan learned counsel appearing for the appellant would submit that the issue that has been raised in the writ petition is covered by a decision of the Division Bench of this Court in **Sri Balakrishna Transport vs. Commercial Tax Officer, Tambaram I Assessment Circle, Chennai**, reported in **[2010] 28 VST 356 (Mad)**. According to the learned counsel, the authority has no right to issue a notice under Section 8 of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990, in the absence of a return filed by the appellant. He would further contend that the vehicle in question is not a motor vehicle as defined under Section 2(28) of the Motor Vehicles Act, 1988, since it is a vehicle which is adopted for usage within an enclosed area.

5. Contending contra, Mr.V.Nirmal Kumar, learned Government Advocate appearing for the respondent would submit that the Writ Court has dismissed the writ petition on the ground of availability of alternative remedy and we should also follow suit. He would further point out that whether the vehicle in question namely, mobile crane is a motor vehicle or not is no longer *res integra* and various High Courts have held that a mobile crane which is adopted for usage on roads, would be a motor vehicle as defined under Sub-Section 28 of Section 2 of the Motor Vehicles Act, 1988. The learned counsel would also contend that the demand is justified in view of the fact that the provisions of the Act have been upheld by the Hon'ble Supreme Court.

6. We have considered the submissions of the counsel on either side.

7. We do not think it will be proper for us now to relegate the appellant to the alternative remedy available under the Act. No doubt, the Writ Court had dismissed the writ petition directing the appellant/petitioner to avail the alternative remedy, but this writ appeal has been entertained by this Court and it has been pending for nearly 15 years. Hence, we do not think we will be justified in relegating the appellant/petitioner to the alternative remedy under the Act. The Division Bench in **Sri Balakrishna Transport's case**

(referred to supra) had held that there is no provision in the Entry Tax Act, for assessing a person who fails to furnish a return under Section 7 of the Act. The appellant has admittedly not filed a return as required under Section 7 of the Act, on the ground that the mobile crane is not a motor vehicle as defined under Section 2 (28) of the Motor Vehicles Act, 1988. The vehicle was imported in the year 2001 and the notice impugned was issued in the year 2005.

8. The Division Bench in Sri **Balakrishna Transport's case** (referred to supra), dealing with a similar situation, had observed as follows:-

> ''7. Though section 7 requires every person liable to pay tax under the Entry Tax Act to file a return to the designated authority, there is no specific provision in the Entry Tax Act for assessing a person who has failed to furnish the return. Section 8 of the Act provides for assessment on the basis of the return furnished by a person liable to pay tax and the related proceedings for passing the assessment order on best judgment basis. When the Act does not make a specific provision for assessment of an importer, who failed to furnish the return under section 7, it was not within the powers of the assessing authority to assess the importer long after the import made by him, by making use of the details furnished by such importer consequent to the notice of demand made by the assessing authority.
>
> ''8. ... When there is no specific provision in the Entry Tax Act for assessing a person who fails to furnish returns, the respondent was not entitled to make an assessment after a considerable point of time. It is trite that in case the words used in a taxation statute are plain and unambiguous they have to be interpreted in such a manner so as to give full effect to the wording of the statute. It is not permissible for including something in a taxing statute so as to give it a different meaning. In the absence of a provision enabling the tax collector to levy tax, it would be impermissible to levy tax, even if equity is in favour of the State. Therefore there should be an express provision authorising the assessing authority to collect tax from an importer, who failed to file returns as provided under section 7 of the Act. However, there is no such provision which enables the authority to make an assessment for the purpose of recovery of entry tax.
>
> 9. Therefore, we are of the opinion that the respondent was not justified in demanding entry tax from the appellant. ....''

9. This judgment of the Division Bench was followed by this Court in W.P.No.13631 of 2005, dated 27.07.2016 wherein, the Hon'ble Mr.Justice T.S.SIVAGNANAM, held that the assessing authority has no power to assess and demand tax in the absence of a return being filed by an importer. In view of the abovesaid conclusion, we do

not deem it necessary to go into the question whether the mobile crane is a motor vehicle as defined under Section 2(28) of the Motor Vehicles Act, 1988.

10. In view of the above categoric pronouncement of this Court, the Writ Appeal succeeds and the same is, therefore, allowed. The order of the learned Single Judge made in W.P(MD)No.3643 of 2005, dated 21.06.2007, dismissing the writ petition directing the appellant to take recourse to the alternative remedy available under the enactment, is set aside. The writ petition will stand allowed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

The Commercial Tax Officer (FAC),
Sales Tax Office,
Tenkasi.

+1 CC to M/s.R.D. GANESAN, Advocate (SR-17995[F] dated 12/04/2022)

+1 CC to M/s.SPL.GP. (SR-18376[F] dated 12/04/2022)

W.A(MD)No.332 of 2007
DATED : 12.04.2022

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