IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2024

CORAM :

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR.JUSTICE G. ARUL MURUGAN**

W.P.No. 26656 of 2007
and M.P.No.1 of 2007

M/s.Iqra Exports,
No.14, Venkatnarayana Road,
T.Nagar, Chennai – 600 017.
.. Petitioner

Vs

The Commercial Tax Officer,
Nandanam Assessment Circle,
Chennai. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the respondent in his proceedings in TNGST/1581336/2005-06 (Entry Tax), quash the notice dated 28.06.2007 issued therein.

For Petitioner	:	Mr.C.Subramanian for Mr.K.J.Chandran
For Respondent	:	Mr.C.Harsha Raj Additional Government Pleader

ORDER

(Order of the Court was made by Dr.ANITA SUMANTH.,J)

The petitioner has purchased a Swaraj Diesel Forklift Truck, Model FD-20 from Punjab Tractors Limited. The assessing authority had thus issued a notice on 28.06.2007 proposing levy of tax under the provisions of the Tamil Nadu Tax of Entry on Motor Vehicles into Local Areas Act, 1990, (in short, 'Entry Tax Act') and penalty under Section 15 of the aforesaid Act for failure to file a return and to pay entry tax on the aforesaid purchase.

2. The petitioner has not chosen to file objections to the impugned notice and has instead filed the present Writ Petition. Mr.C.Subramanian, learned counsel appearing on behalf of Mr.K.J.Chandran, learned counsel on record for the petitioner would submit that a forklift truck would not satisfy the definition of 'motor vehicle' under Section 2(28) of the Motor Vehicles Act, 1988.

3. He points out that a vehicle, which is of a special type adapted for use only in factory or in an enclosed premises, stands excluded from the purview of the definition 'motor vehicle'. He would emphasise that the petitioner intends to use the forklift truck only within enclosed premises.

4. On the aspect of penalty, he would submit that the failure to file return was premised on the bonafide belief that there was no liability to

tax and hence, the proposal to levy penalty should, in any event, be set aside.

5. Mr.Harsha Raj, learned Additional Government Pleader appearing for the respondent would submit that the question of whether the forklift truck is a 'motor vehicle' for the purpose of levy of tax under the Entry Tax Act is a question of fact, as the exact nature of the vehicle is to be determined only by the authorities.

6. Having heard both learned counsel, we are of the view that the present Writ Petition is pre-mature. The challenge is only to a notice to which the assessing authority has himself granted time for filing of objections.

7. In *Bose Abraham Vs. State of Kerala and another* (121 STC 614), the Hon'ble Supreme Court was concerned with whether Excavators and Road rollers would comprise motor vehicles for the purpose of Entry Tax. The question has been answered in favour of the revenue to state that the import of Excavators and Road rollers would attract liability under the Entry Tax Act, even if they were intended for use only in enclosed premises by the concerned importer.

8. Hence, it is for the assessee to establish before the authorities the nature of the vehicle and it is for the authorities to come to a decision on

whether such vehicle would come within the contours of 'motor vehicle' for the purposes of the Entry Tax Act.

9. We hence dismiss the challenge to impugned notice dated 28.06.2007 and instead grant liberty to the petitioner to make its objections in that regard. It is open to the petitioner also to approach the concerned authorities under the Motor Vehicles Act to obtain a certificate in regard to the nature and classification of the vehicle forklift truck.

10. Objections if filed by the petitioner within four (4) weeks from date of receipt of a copy of this order, will be adjudicated upon by the assessing authority, the petitioner heard and speaking orders of assessment passed in accordance with law, within a period of four (4) weeks from date of personal hearing.

11. This Writ Petition is dismissed though with liberty as aforesaid. No costs. Connected miscellaneous petition is closed.

[A.S.M., J] [G.A.M., J]
18.09.2024

sl
Index:Yes/No
Neutral Citation:Yes
speaking order

To

The Commercial Tax Officer,

Nandanam Assessment Circle,
Chennai.

DR. ANITA SUMANTH,J.
and
G. ARUL MURUGAN.,J

sl

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