IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2024

CORAM :

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

W.P.No.11437 of 2001
and
W.M.P.Nos. 16566 & 16567 of 2001

B.Suguna .. Petitioner

vs

1.The State of Tamil Nadu
Rep. by its Secretary to Government,
Commercial Taxes and Religious Endowments Department,
Fort St.George, Chennai – 600 009.

2.The Commercial Tax Officer,
Palakkarai Assessment Circle,
Trichirapalli. .. Respondents

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 second respondent in his proceedings Proc.No.1285/2001/A1 dated 21.05.2001 and quash the same.

For Petitioner : Mr.S.Ramanathan

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

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

The petitioner challenges an order of assessment passed under the provisions of the Tamil Nadu Tax of Entry on Motor Vehicles into Local Areas Act, 1990, (in short, 'Act').

2. The petitioner had imported a Excavator Loader Escorts / JCB/ 3D on 29.10.1998 from M/s. Escorts JCB Limited, Haryana. Though, she had expressed her concurrence to remit tax, if any, under the Act, the Commercial Tax Officer appears to have been of the view that the item imported comprised machinery which would not attract levy under the Act. A certificate to aforesaid effect has been issued on 19.09.1999. The non-filing of a return under the Act would thus stand justified on the basis of the aforesaid admitted position.

3. Thereafter, there appears to have a change of heart on the part of the respondents and the incumbent assessing officer issued notice on 21.05.2001 disavowing the certificate issued earlier and calling for payment of tax. Despite objections, impugned order of assessment dated 21.05.2001 has come to be passed imposing tax as well as penalty.

4. The petitioner has paid the tax in full pursuant to the receipt of the assessment order. He only pursues the component of penalty for the reason that the challenge to the vires of the Act and the applicability of the same to a transaction of import has been upheld by a batch of writ petitions in the case of *V.Krishnamurthy vs State of Tamil Nadu & others*

only on 29.01.2019.

5. The liability to tax is undisputed. However, we find merit in the submissions considering the levy of penalty. There were several challenges to the applicability of the Act to imports from outside India, that were ultimately decided only on 29.01.2019. That apart, even on the facts of this case, the second respondent has itself taken the view initially that the item imported constituted machinery and there would be no liability to tax. A subsequent officer differed. Clearly therefore, there is a lack of clarity and coherence on this aspect and there could be no penalty attracted in such circumstances.

6. For the aforesaid reasons, the order of assessment, insofar as it relates to penalty, is set aside and this writ petition is partly allowed. No costs. Connected miscellaneous petitions are closed.

[A.S.M., J] [G.A.M., J]
16.08.2024

Index:Yes/No
Neutral Citation:Yes
ssm

To

1.The Secretary to Government,
Commercial Taxes and Religious Endowments Department,
Fort St.George, Chennai – 600 009.

2.The Commercial Tax Officer,
Palakkarai Assessment Circle,
Trichirapalli.

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

ssm

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