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W.A. No.1030 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.04.2024

Pronounced on : 17.05.2024

CORAM

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.A. No.1030 of 2024
and
C.M.P. No.7360 of 2024**

The Assistant Commissioner (CT),
Perundurai Assessment Circle,
Perundurai.

...Appellant

v.

Tvl.Rason Earth Movers,
Represented by its Partner,
A.Arumugam,
No.3/109, Morattupalayam,
Uthukuli-638 051.

...Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order in W.P.No.30360 of 2016 dated 31.08.2016.

For Appellant : Mr.Haja Naziruddeen, AAG
Assisted by Mr.M.Venkateswaran
Special Government Pleader

For Respondent : Mrs.R.Hemalatha



JUDGMENT

MOHAMMED SHAFFIQ, J.

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Heard both sides and perused the records.

2. This writ appeal is filed challenging the order of the learned Judge whereby the impugned order of assessment dated 07.07.2016 passed under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 (hereinafter referred to as the "Entry Tax Act") was found to be without jurisdiction and thus set-aside.

3. The respondent had effected purchase of JCB vehicle from JCB India Limited, Pune. They had not filed any return nor paid any taxes under the Entry Tax Act. A notice dated 08.01.2016 was issued on the premise that the entry of the JCB vehicle purchased from Pune into Tamil Nadu would attract the levy of Entry Tax in terms of Section 3(1) read with Section 4(2) of the Entry Tax Act. The respondent submitted its reply *vide* letter dated 02.03.2016 *inter alia* stating that the JCB vehicle which was imported from Pune into Tamil Nadu is used for loading purposes and registration under the Motor Vehicles Act is not required, and thus, the import of JCB from Pune would not attract the levy under the Entry Tax Act. The order of assessment dated 07.07.2016 came to be passed rejecting the objections filed by the respondent and confirming the levy of tax and penalty under Section 15(1) of



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the Entry Tax Act at 200% of the Entry Tax due.

4. Aggrieved, the respondent preferred a writ petition challenging the above order of assessment dated 07.07.2016 on the premise that there is no provision to make an assessment of an importer who failed to furnish returns under Section 7 of the Entry Tax Act. In support thereof, reliance was placed on the Division Bench judgment of this Court in the case of *Sri Balakrishna Transport vs. CTO [(2010) 28 VST 356 (Mad)]* which was followed by a Single Judge in the case of *Vishnu Enterprises vs. Commercial Tax Officer, Chennai*, in W.P.No.13631 of 2005 dated 27.07.2016, wherein it was held that though Section 7 of the Entry Tax Act requires every person liable to pay tax under the Entry Tax Act file a return, however, there is no specific provision to assess a person who had failed to furnish a return. The learned Judge had followed the decision of the Division Bench in *Sri Balakrishna Transport* and the order in *Vishnu Enterprises*, and held that the impugned order of assessment is without jurisdiction, while allowing the writ petition. The present writ appeal is filed by the Revenue challenging the above order of the learned Judge.

5. Before proceeding further, it may be useful to extract the relevant portions of the order impugned herein, which reads as under:



"4. At this stage, it would be useful to refer to the operative portion of the order, which reads thus:

"....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."

"....The Entry Tax Act provides time-limit for making a best judge assessments, as well as reassessment. 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 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 Entry Tax Act. However there is no such provision which enables the authority to make an assessment for the purpose of recovery of entry tax...."

6. The Revenue had challenged the above order of the learned Judge



inter alia on the following grounds viz.,

a. The judgment of the Division Bench in *Sri Balakrishna* and the order in *Vishnu Enterprises* are inapplicable to the facts of the present case.

b. The respondent is liable for Entry Tax on the import of JCB from Pune and thus, ought to have filed its monthly returns in Form I, however, the monthly returns were not filed in violation of the provisions of the Entry Tax Act.

c. Pre-assessment notices were issued and final orders were passed on the basis of extract received from the interstate Investigation Cell of Commercial Taxes Department as the respondent had not filed any return.

7. To the contrary, the learned counsel for the respondent would submit that the impugned order of assessment is an original assessment under Section 8 of the Entry Tax Act and thus, the limitation stipulated under sub-section (5) to Section 8 of the Entry Tax Act would apply, and if so, the order of assessment dated 07.07.2016 is barred by limitation and thus, a nullity.

8. To appreciate the above contention, it may be relevant to extract sub-section (5) to Section 8 of the Entry Tax Act, which reads as under:

"8. Assessment:



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.....
(5) No order of assessment under sub-section (3) or (4) shall be made after the expiry of three years from the last date prescribed for filing of returns of the particular period. If for any reason such order is not made within the period aforesaid then the return so filed shall be deemed to have been accepted as correct and complete for assessing the tax due from such person."

8.1. From a reading of the above provision, it would be clear that any assessment ought to be made within 3 years from the last date prescribed for filing of returns of the particular period. Rule 3(2) of the Tamil Nadu Tax on Entry of Goods into Local Areas Rules, 2001, provides that if the importer is a dealer in motor vehicles, the importer ought to file its return on a monthly basis on or before 20th of the succeeding month while an importer other than a dealer in motor vehicles, shall file quarterly returns on or before last day of the month immediately succeeding the quarter. The impugned assessment relates to the Assessment Year 2010-11. Thus, the assessment ought to have been made within 3 years from the last date prescribed for filing of returns i.e., 30.06.2014 inasmuch as the respondent is not a dealer in motor vehicles. However, the notice for assessment was issued only on 29.09.2015 and the impugned order of assessment was made on 07.07.2016 which is beyond the period prescribed for original assessment in terms of Section 8(5) of the Entry Tax Act and thus, beyond the limitation stipulated under Section 8(5) of the Entry Tax Act and hence, barred by limitation. The impugned order of



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assessment being without jurisdiction, is liable to be set aside*. Accordingly, the learned Judge rightly set aside the order of assessment and allowed the writ petition filed by the respondent.

8.2. In view of the above finding, we do not propose to examine the other aspects.

9. In the result, this Writ Appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
17.05.2024

Speaking (or) Non-speaking order
Neutral Citation: Yes/No
Index: Yes/No
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To
The Assistant Commissioner (CT),
Perundurai Assessment Circle,
Perundurai.

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

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* *CIT v. Alagendran Finance Ltd.*, (2007) 7 SCC 215,



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