

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30/09/2003

Coram

The Honourable Mr. Justice P.K. MISRA

Writ Petition No.39034 of 2002

M/s. Sri Balakrishna Transport  
Rep. by its partner D. Bhaskaran,  
No.8/25, Police Station Road,  
Pallavaram,  
Chennai - 600 043. .. Petitioner

-Vs-

The Commercial Tax Officer,  
Tambaram I Assessment Circle,  
Chennai. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorari as stated therein.

For petitioner: Mr. S. Narayanan

For respondent:Ms. Saraswathi Sivarama Iyer  
Special Government Pleader (Taxes)

:O R D E R

Heard the learned counsel appearing for the parties.

2. In this writ petition, the petitioner has

prayed for quashing the order passed by the respondent imposing penalty under section 15 (1) of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990. This is being challenged by the petitioner on the ground that at the time when the excavator was purchased in 1995, such vehicles had not been registered by the RTO, apparently, because such vehicles were not being considered as motor vehicles within the meaning of the expression contained in the Motor Vehicles Act. It is the specific case of the petitioner that, at that stage the petitioner had enquired in the office of the RTO for getting the vehicle registered but he was informed that there was no instruction to register such vehicle. The petitioner has contended that for the first time in a decision, reported in (2001)121 STC 614 (Bose Abraham v. State of Kerala), by the Hon'ble Supreme Court that the excavator would also come within the meaning of expression motor vehicle as defined under

Section 2(28) of the Motor Vehicles Act 1988 (Central Act 59 of 1988), and as such, would attract levy under Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990. Only after such decision was rendered, the liability to pay the tax arose and therefore, there was no deliberate evasion by the petitioner and the penalty should not have been imposed. It is further submitted that in the absence of without issuing notice as contemplated under Section 15(2), this penalty has been imposed.

3. The learned counsel for the respondent has submitted that the petitioner had not filed return and therefore, penalty has been levied justifiably.

4. Section 3 (1) of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 is to the following effect:

"(1) Subject to the provisions of this Act, there shall be levied and collected a tax on the entry of any motor vehicles into any local area for use or sale therein which is liable for registration, or for the assignment of a new registration mark, in the State under the Motor Vehicles Act, 1988 (Central Act 59 of 1988). The rate of tax shall be at such rate of rates, not exceeding twenty per cent, as may be fixed by the Government, by notification, on the purchase value of the motor vehicles".

5. A perusal of Section 3(1) of the Act makes it clear that tax is levied on the entry of any motor vehicles entered which is liable for registration or for the assignment of a new registration mark.

6. It is the contention of the petitioner that since excavator was not considered as motor vehicle, it was not liable for registration before the clarification was made by the Hon'ble Supreme Court. As a matter of fact, the petitioner had been told that no such registration was necessary and hence, there was no question of paying the tax at that stage. It has been further stated that in such view of the matter, the liability to file return under Section 7 had not arisen at that stage. It has been further submitted that the direction to pay penalty without affording an opportunity of being heard is illegal

7. The contention of the petitioner that levy of tax without following the procedure under Section 15 of Act is illegal and invalid has to be accepted. Section 15 (1) specifically contemplates that such a person must be heard. In the present case, the notice which was issued did not indicate that there was any proposal to levy penalty. The only question was relating to payability of the tax at that stage. Since no notice had been issued, the question of levying penalty did not arise and on this consideration alone, the writ petition is bound to be allowed.

8. The next aspect to be considered is whether the question relating to penalty of tax should be reconsidered afresh. In the present case, the explanation of the petitioner that such vehicle, i.e. excavators were not being considered as motor vehicle within the meaning of Section 2(28)

of the Motor Vehicles Act and no registration was necessary appears to be correct, and only after Supreme Court's decision, it has been clarified that such vehicles are required to be registered and taxes are required to be paid. In such view of the matter, it is evident that the petitioner did not have any intention to flout the provisions contained in the Act and the non-payment of tax was not intentional and therefore, it would not be proper to direct any further enquiry in the matter. It is further made clear that the petitioner is liable to pay the tax. Only the imposition of penalty is being quashed.

9. The writ petition is allowed to the extent indicated above. No costs. Consequently, WPMP No.58235 of 2002 is closed.

Index: yes  
Internet: yes

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To  
The Commercial Tax Officer,  
Tambaram I Assessment Circle,  
Chennai.

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