

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.6.2007

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Writ Petition No.21088 of 2007
and M.P.No.1 of 2007

Tvl.Essen Earth Movers,
Rep. By its partner,
A.Anand Kumar,
No.30, First Street, Anjugam Nagar,
Chennai-600 083. □ Petitioner

Vs.

Commercial Tax Officer,
Saidapet Assessment Circle,
No.3, Tank Square Street,
Saidapet, Chennai600 015. □ Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the impugned proceedings dated 23.2.2007 of the respondent passed in TNGST/6221564/2000-2001 (Entry Tax) under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act 1990 and quash the same.

For petitioner : Mr.N.Murali

For respondents : Mr.R.Mahadevan, Addl.Govt.Pleader
Mr.A.C.Manibharathi, G.A.

O R D E R

The petitioner has challenged the order of assessment dated 23.2.2007 passed in TNGST/6221564/2000-2001(Entry Tax) under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act 1990.

2. The facts leading to the writ petition are:-

The petitioner is a partnership firm providing for earth moving machinery services, They are also civil works contractors and registered as a dealer under the Tamil Nadu General Sales Tax Act 1959 and they are not registered dealers under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act 1990. The petitioner has further stated that they have purchased a TATA-HITACHI make Excavator mounted on iron plates made into chain link from Tvl.Telco Construction Equipment Company Ltd, Puducherry(Pondy) through Finance arrangement with Tvl.Ashok Leyland Finance Ltd., Puducherry in the year 2000 through invoice No.50177 dated 14.7.2000 and the machinery is used for excavating the earth and loading in lorries in the Union Territory of Puducherry.

3. It is the case of the petitioner that in response to pre-assessment notice dated 4.6.2001, issued under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act 1990, the petitioner has submitted its reply on 28.6.2001 stating that the Excavator machinery cannot be defined as a "Motor Vehicle" as per sub-section 28 of section 2 of the Motor Vehicles Act 1988. The petitioner has further submitted that though the objection dated 28.06.2001 was submitted along with the copy of the Operator Instruction Manual to substantiate that the machinery does not fall under the definition of "Motor Vehicle", the respondent, after five years, once again sent another notice dated 29.9.2006, calling upon the petitioner to submit his objections. The petitioner has further stated that the vehicle fitted with inflated tyres alone can fall under the definition of "Motor Vehicle" and not the machinery mounted on iron plates made into chain plate links, would levy tax under the Entry Tax.

4. Learned counsel for the petitioner submitted that the first respondent has failed to consider the objections of the petitioner dated 28.06.2001 and their further reply on 02.02.2007, and proceeded to issue the impugned assessment order, as if the petitioner has failed to submit their objections till the date of passing of the order.

5. Learned counsel for the petitioner placed reliance on the Division Bench Judgment of this court in W.A.No.1219 of 2006 dated 2.11.2006 and submitted that the Excavator Machinery mounted on iron plate made into chain links would not fall under the category of "Motor Vehicle" for which tax can be levied. He further submitted that the facts of the Division Bench Judgment in W.A.No.1219 of 2006 squarely applies to the present case and therefore the impugned order has to be set aside.

6. Mr.R.Mahadevan, learned Additional Government Pleader was put on notice and heard. He submitted that as per the decision rendered by the Division Bench, the respondent may be directed to carry out an inspection of the machinery and if on physical verification of the machine, if it is found that the Excavator Machinery is mounted on iron plate made into chain links, then the petitioner would be entitled to the benefit of Division Bench Judgment and appropriate orders would be passed.

7. Considering the averments made in the writ petition and the submissions of the learned counsel appearing for the parties, and to meet the interest of justice, the respondent is directed to carry out the physical examination of the Excavator Machinery and find out as to whether the machinery falls under the category of "Motor Vehicle" as defined under sub section 28 of Section 2 of the Motor Vehicles Act, 1988. The petitioner shall make necessary arrangements for the physical examination of the machinery and upon physical examination, the respondent shall decide as per the terms of the Division Bench as to whether the vehicle would fall under the category of Motor Vehicles Act or not and pass appropriate orders.

8. It is evident that the petitioner has offered his objections as early as on 2001 and the same has not been considered by the respondent in the proper perspective. Following the Division bench Judgment, the assessment order is set aside, the matter is remitted back to the respondent to proceed in accordance with law as per the directions contained earlier. The writ petition is disposed of accordingly. No costs. Consequently, connected M.P.No.1 of 2007 is also closed.

nvsri Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar
To

The Commercial Tax Officer,
Saidapet Assessment Circle,
No.3, Tank Square Street,
Saidapet, Chennai 600 015.

+ 2 ccs to Mr. N. Murali, Advocate SR No. 38918
+ 1 cc to the Government Pleader, SR No.38311

W.P.No.21088 of 2007
and M.P.No.1 of 2007
SMV(CO)
SR/5.7.2007