IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2016

Coram

The Hon'ble Mr. Justice **T.S.SIVAGNANAM**

W.P.No.14403 of 2015
&
M.P.Nos.1 & 2 of 2015

M/s.Koutham Blue Metals
Rep by its Proprietor – E.Anandraj
No.1/4, Pallath Theru Paguthi
Karasanur Village
Vanur Taluk – 605 104
Villupuram District. ... Petitioner

Vs

The Commercial Tax Officer
Tindivanam
Villupuram District ... Respondent

Prayer:-

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings made in TIN 33784723999/2012-13 ENTRY TAX ON GOODS VEHICLES dated 14.1.2015 and quash the same.

For petitioner .. Ms.R.Hemalatha

For Respondents .. Mr.Manokaran Sundaram, A.G.P.,

ORDER

Heard Ms.Hemalatha, learned counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondent and with the consent of either side, the writ petition itself is taken up for final disposal.

2. In this writ petition, the petitioner seeks for a issuance of writ of certiorari to quash the order passed by the respondent dated 14.01.2015. In the said notice, the petitioner has been directed to file his objection against the proposal made by the respondent for levy of entry tax on goods vehicles. The contention raised by the petitioner is that the vehicle in question is not a motor vehicle and it operates on chains and it cannot ply in the road. The learned counsel submitted that a similar issue was considered by the Hon'ble First Bench of this Court in the case of ***RDS Projects Ltd v. Commercial Tax Officer, Chennai*** reported in ***[2007] 8 VST 574(Mad)***.

3. The learned Additional Government Pleader appearing for the respondent by placing reliance on the counter affidavit filed by the

respondent submitted that the question of challenging the notice does not arise and the petitioner has to filed his objections before the authority.

4. The law with regard to the issue is no longer *res integra* and has been decided by the Hon'ble First Bench of this Court in the case of ***RDS Projects Ltd*** (supra). In the said case also, the petitioner had purchased certain machinery for carrying out sea protection works along the Ennore Expressway, Chennai. The question arose as to whether the petitioner therein was liable to pay entry tax as per the provisions of Tamil Nadu Tax on entry of Motor Vehicles Act, 1990.

5. The Hon'ble First Bench after taking into consideration the law and the subject pointed out that the question is whether the excavator not running on inflated tyres, but on iron chain plates such as a caterpillar vehicle or a military tank would be a motor vehicle coming within the meaning of Section 2(28) of the Motor Vehicles Act, 1988 read with section 2(i) of the Tamil Nadu Tax on Entry of Motor Vehicles Act, 1990. After taking note of the decisions of the Hon'ble Supreme Court in the case of ***Bolani Ores' case, AIR 1975 SC 17*** and ***Central Coal Fields Ltd. v. State of Orissa, AIR 1992 SC 1371***,

the Hon'ble First Bench of this Court has held as follows:

> *"13. The above decisions would categorically show that the apex Court has made a distinction between vehicles fitted with chain plates like caterpillars and military tanks and others. The excavator referred to in Bose Abraham's case [2001] 121 STC 614 (SC) was a motor vehicle fitted with inflated tyres and not chain plates like caterpillars or military tanks. The excavator in question in the present case is mounted on iron plates made into chain such as caterpillar vehicles or military tanks. Such an excavator is used for excavating the earth and loading in lorries and it cannot be used upon public roads, since the roads would get damaged by the chains. The excavator moves around only in work sites and it is not suitable or adapted for use in public roads. This position is also confirmed by the physical verification carried out by the respondent, as seen from his report extracted above. The Kerala High Court in the case of Intelligence Officer, Squad No. IV, Kozhikode v. Ray Constructions Ltd. [2006] 147 STC 438 while considering a similar issue has held that the excavators in question*

having regard to its distinguishing features from the other excavators has to be held as not "motor vehicle" falling under the definition of the term defined under Section 2(28) of the Motor Vehicles Act, 1988 and therefore, not liable for entry tax. It is relevant to note that the Volvo excavators purchased by the petitioner which is the subject-matter of levy of entry tax are exactly similar to the excavators which were the subject-matter in the above referred reported decision of the Kerala High Court."

Based on the above finding, the show cause notice which was issued in the said case was quashed by the Hon'ble First Bench.

6. Further, the learned counsel appearing for the petitioner has furnished a copy of the invoice from which it is seen that the petitioner has purchased JS140, HD dipper, 0.63 bkt with Preclar. The photographs of the vehicle in question has also been produced before this Court which shows that the vehicle operates on chains and does not operate on inflated tyres.

7. Therefore, the decision of the Hon'ble First Bench made in the case of ***RDS Projects Ltd*** (supra) will be squarely applicable to the

present case. This Court placing on record the original invoice and photographs of the vehicle in question has accepted the case of the petitioner and held that the impugned show cause notice is untenable.

8. Hence, for the above reasons, the writ petition is allowed and the impugned order is quashed. Consequently, connected miscellaneous petitions are closed. No costs.

06.06.2016

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To

The Commercial Tax Officer
Tindivanam
Villupuram District

T.S. SIVAGNANAM, J.

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