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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **04.07.2018**

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

W.P.(MD)No.13912 of 2018

and

W.M.P.(MD)No.12631 of 2018

Tvl.K.P.S.Crusher,
Rep. by its Proprietor,
P.Saravanan : Petitioner

Vs.

The Commercial Tax Officer (Main) (FAC),
Pudukkottai II Assessment Circle,
Pudukkottai. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the respondent in TIN No.33114121852/2013-2014, dated 18.04.2018 and quash the same as illegal, arbitrary and against the provisions of the Act.

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For Petitioner : Mr.K.Soundararajan
For Respondent : Mr.B.Bhagavathi,
Government Advocate

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ORDER

The petitioner is running a Crusher Unit and for that purpose, he purchased an Excavator. The Excavator is running on the chain mounted wheel and not one running on tyre. Therefore, the motor vehicle registration is not required and it cannot be construed as a motor vehicle. The Hon'ble Division Bench of this Court in the judgment reported in **2007(8) VST 574(Mad) [Rds Projected Ltd. v. Commercial Tax Officer, Chennai]** has held that the Excavator moving on chain is not a motor vehicle and no entry tax is liable on the same. In spite of the judgment, the respondent has issued the assessment notice dated 26.02.2018 followed by a reminder dated 26.03.2018. The petitioner has not filed any objection with regard to the same and, therefore, the proposal was confirmed and the assessment order dated 18.04.2018 was passed. Challenging the assessment order on the ground that it is passed without jurisdiction, the petitioner is before this Court.

सत्यमेव जयते

2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent.

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3. On perusal of the judgment of the Hon'ble Division Bench, it is seen that the show cause notice demanding tax itself is quashed by this Court on the ground that the Excavator cannot be treated as motor vehicle following the definition of Section 2(28) of the Motor Vehicles Act, 1988 and it is not liable for entry tax. While the matter stood thus, the

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demand on vehicle which is not liable for entry tax itself is without jurisdiction. Apart from this, it is expected from the Assessing Authority to afford an opportunity of personal hearing before passing final orders. In the instant case, no personal hearing date was fixed by the respondent. Without fixing the date for personal hearing and without communicating the date of personal hearing, the final order came to be passed. Therefore, the final order passed by the respondent is in violation of principles of natural justice. In such circumstances, this Court is inclined to set aside the impugned order dated 18.04.2018 as one violative of principles of natural justice.

4. In fine, the Writ Petition is allowed and the impugned order dated 18.04.2018 is set aside and the matter is remanded back to the respondent for fresh consideration. The respondent shall inspect the vehicle and thereafter, come to a conclusion as to whether he should issue demand notice or not, in the light of the judgment reported in **2007(8) VST 574(Mad) [Rds Projected Ltd. v. Commercial Tax Officer, Chennai]** and in the event of issuing demand notice, call for objections and pass orders, after affording an opportunity of personal hearing. No costs. Consequently, the connected miscellaneous petition is closed.

04.07.2018

Index : Yes / No
Internet : Yes / No
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M.GOVINDARAJ, J.

SML

To
The Commercial Tax Officer (Main) (FAC),
Pudukkottai II Assessment Circle,
Pudukkottai.

Order made in
W.P(MD)No.13912 of 2018

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Dated: 04.07.2018

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