

(2012) 08 MAD CK 0150

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 2833 of 2006 and W.P.M.P. (MD) No. 3100 of 2006

A. Logirajan

APPELLANT

Vs

Deputy Commercial Tax Officer

RESPONDENT

Date of Decision: Aug. 21, 2012

Acts Referred:

- Tamil Nadu General Sales Tax Act, 1959 - Section 42, 42(3)(b), 43, 44, 45(4)(a)

Citation: (2013) 62 VST 476

Hon'ble Judges: S. Manikumar, J

Bench: Single Bench

Advocate: A. Chandrasekaran for R. Mahadevan, for the Appellant; S. Kumar, Additional Government Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Manikumar, J.

Being aggrieved by the proceedings in O.R. No. 115/2005-2006, dated March 20, 2006, of the Deputy Commercial Tax Officer, (Roving Squad), Dindigul, the respondent herein, directing the petitioner to pay a tax of Rs. 5,36,250 or to furnish a security for a value of Rs. 18,00,000 in the form, prescribed under rule 35(4) of the Tamil Nadu General Sales Tax Rules, 1959 (hereinafter referred to as "the TNGST Rules") for not remitting the entry tax at 13 per cent u/s 3(1) of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990, before September 20, 2005, to the Commercial Tax Officer II, Theni, the petitioner has come forward with the present writ petition. It is the case of the petitioner that he is a contractor, engaged in small civil construction works. He has purchased an excavator, Hitachi Model 200 L.C. from Telco Construction Equipment Company Limited, Dharwad District, Karnataka, on August 19, 2005 with proper billing and used for civil construction works at Andipatty. The said excavator was consigned in vehicle bearing Registration No. TN-28-H-9185 from Andipatty to Thanjavur. On March 20, 2006, the

Deputy Commercial Tax Officer, (Roving Squad), Dindigul, the respondent herein, intercepted the vehicle and issued a goods detention notice u/s 42 of the TNGST Act, stating that the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990, payable for the excavator was unpaid by the petitioner.

2. According to the petitioner, the consignment was taken to the consignee's place with valid documents disclosing all the particulars as required u/s 44 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as, "the TNGST Act"). He also submitted that the first respondent has no power to detain a vehicle for non-payment of entry tax. The petitioner has contended that in response to the impugned notice, dated March 20, 2006, directing the petitioner to pay a sum of Rs. 5,36,250 u/s 42(3)(b) of the TNGST Act, a reply, dated March 20, 2006, was submitted to the Deputy Commercial Tax Officer, (Roving Squad), Dindigul, stating that the petitioner had purchased TATA Hitachi EX-200 LC model excavator from Telco Construction Equipment Company, Limited, Dharwad District, Karnataka on August 19, 2005 and that the said excavator was transported from Andipatty to Thanjavur for construction purposes in another vehicle bearing Registration No. TN-28-H-9185. It is the further submission of the petitioner that though, in the said representation, a decision of this court reported in [P.R.P. Granites Vs. Check-Post Officer/Assistant Commercial Tax Officer, Puzhal Check-Post \(Incoming\)](#), and another decision of the High Court of Kerala reported in [Ray Constructions Ltd. Vs. Intelligence Officer](#), were clearly mentioned, and brought to the notice of the Deputy Commercial Tax Officer, (Roving Squad), Dindigul, the respondent herein, stating that the Tamil Nadu Tax on Entry of Motor Vehicle into Local Areas Act, 1990 is not applicable to excavator, the Deputy Commercial Tax Officer, (Roving Squad), Dindigul, the respondent herein, did not release the excavator. In the said circumstances, the petitioner has filed the present writ petition for the aforesaid prayer.

3. In addition to the abovesaid pleadings, Mr. A. Chandrasekaran, learned counsel for the petitioner, submitted that section 42 of the TNGST Act has no application to the present case. According to him, the excavator has been purchased from Dharwad by paying Central sales tax. He submitted that when the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 is not applicable to excavator, the impugned notice is ex facie illegal. He relied on the decisions stated supra.

4. Record of proceeding shows that this court, vide order dated April 4, 2006, in W.P.M.P. No. 3100 of 2006, filed for the release of the vehicle, has passed the following interim order:

Interim direction as prayed for, subject to the condition that the petitioner shall not alienate the vehicle without prior permission from the respondent.

5. Though the writ petition is pending for nearly six years, no counter-affidavit is filed. However, taking this court to the statutory provision of section 44 of the TNGST Act, learned Additional Government Pleader submitted that at the time of

interception of the vehicle by the Deputy Commercial Tax Officer, (Roving Squad), Dindigul, no documents have been produced by the petitioner/contractor for payment of any tax for the purchase of the excavator. Therefore, he submitted that the respondent has rightly exercised his power u/s 42(3)(b) of the Act for imposition of tax. He has also given an option for compounding the offence. For the abovesaid reason, he prayed for dismissal of the writ petition.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. Before advertng to the facts of this case, this court deems it fit to refer the provisions of the TNGST Act and Rules, 1959, mentioned in the impugned notice:

Rule 36(1):

36(1)(i). For the purpose of sections 43 and 44, the owner or other, person in charge of a goods vehicle or boat shall carry with him a goods vehicle record, a trip sheet or a log book, as the case may be, and a bill of sale or a delivery note in form XX or XX-A in respect of the goods carried in the goods vehicle or boat. Such delivery note shall be necessary in respect of goods transported by dealers registered under the Act without a bill of sale and shall be obtained from the assessing authority or the registering authority, as the case may be.

(ii) The owner or other person in charge of a goods vehicle or boat shall carry with him the following documents as far as they are applicable to the case, namely:--

1. A bill of sale or a delivery note in the form prescribed (form XX or form XX-A) and a goods vehicle record or trip sheet or log book.

2. A certificate from the Village Administrative Officer when the goods under transport are claimed to be agricultural produce (other than sugarcane) grown in his own land or on a land in which he has interest or declaration in form XX-B signed by the agriculturist and by the registered dealer to whom the agricultural produce is transported.

(2A) A certificate from the Cane Inspector (Assistant Director of Agriculture) when the goods under transport are claimed to be sugarcane grown in his own land or on land in which he has interest or declaration in from XX-B signed by the agriculturist and by the registered dealer to whom the agricultural produce is transported.

3. . . .

4. A declaration in form XXVII when the goods are transported from one place of his business to another.

5. A declaration in form XXVII when the goods are transported towards the execution of works contracts which he is obliged to fulfill.

Section 42(3)(b):

42. Establishment of check-post or barrier and inspection of goods while in transit.--(1) to (3)(a). . .

(b)(i) that the tax if any, payable under this Act in respect of the sale or purchase of the goods carried, has not been paid; or

(ii) that the sale or purchase of the goods earned has, for the purpose of payment of tax under this Act, not been properly accounted for in the documents referred to in sub-section (5), and if the said officer is satisfied, after making such enquiry as he deems fit, that with a view to prevent the evasion of tax payable in respect of the sale or purchase of the goods carried, it is necessary to detain the goods, he shall detain the goods and direct the driver or any other person in charge of the goods vehicle or boat, or the consignor or the consignee,

(i) to pay such tax; or

(ii) to furnish adequate security in such form and in such manner and to such authority as may be prescribed, on behalf of the person liable to pay such tax.

Section 44:

44. Possession and submission of certain records by owners, etc., of goods vehicle.--The owner or other person in charge of a goods vehicle shall carry with him--

(i) Bill of sale or delivery note or such other documents as may be prescribed; and

(ii) Goods vehicle record or trip sheet, relating to the goods under transport and containing such particulars as may be prescribed and shall submit to such officer as may be prescribed, the documents aforesaid or copies thereof within such time as may be prescribed.

Section 45(4)(a):

45. Offences and penalties.--(1) to (3) . . .

(4) (a) Any owner or other person in charge of a boat or goods vehicle who fails to carry with him any of the records or documents specified in section 43 or section 44, as the case may be, shall on conviction, be liable to simple imprisonment which may extend to six months or a fine which may extend to two thousand rupees or both.

8. Perusal of the material on record shows that the Deputy Commercial Tax Officer, (Roving Squad), Dindigul, while intercepting the lorry bearing Registration No. TN-28-H-9185, on March 20, 2006, at 5.05 p.m., has noticed that no proper documents was in possession of the petitioner for transporting the excavator, Hitachi Model 200 L.C. worth Rs. 41,25,000. According to the respondent, the petitioner/contractor has contravened section 44 of the TNGST Act, 1959 read with rule 36(1) of the TNGST Rules, 1959. The authority has proceeded as if the petitioner had not paid entry tax u/s 3(1) of the Tamil Nadu Tax on Entry of Motor Vehicles into

Local Areas Act, 1990 and that the same ought to have been remitted to the Commercial Tax Officer II, Theni, before September 20, 2005 by the petitioner being the registered dealer. Therefore, the said authority was of the opinion that the petitioner, having contravened section 44 of the TNGST Act, has an option to compound the offence u/s 46 of the TNGST Act. In addition to the above, in exercise of power u/s 42(3)(b) of the TNGST Act, the Deputy Commercial Tax Officer, (Roving Squad), Dindigul, the respondent herein, has directed the petitioner to pay a sum of Rs. 5,36,250 or to furnish security for the value of Rs. 18,00,000.

9. It is well-settled that the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990, is not applicable to the excavator and therefore, the entry tax for excavator has not been paid. The contention of the petitioner that he had already paid Central sales tax at the time of purchase of the excavator from Dharwad, has not been disputed by the respondent by filing any counter-affidavit. The applicability of the decisions reported in [P.R.P. Granites Vs. Check-Post Officer/Assistant Commercial Tax Officer, Puzhal Check-Post \(Incoming\)](#), and [Ray Constructions Ltd. Vs. Intelligence Officer](#), to the case of the excavator is also not disputed by the learned counsel for the respondent. Reading of the notice, dated March 20, 2006, makes it clear that the impugned notice has been issued solely on the basis that entry tax at the rate of 13 per cent u/s 3(1) of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, has not been remitted before the Commercial Tax Officer II, Theni, September 20, 2005 and therefore, tax has been levied. As levy of entry tax is not applicable to the excavator, the impugned notice is liable to be set aside on the ground of jurisdiction and accordingly, set aside. The writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.