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intelligence Officer Vs. Ray Constructions Ltd.

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Court : Kerala

Decided On : Feb-27-2006

Reported in : IV(2006)ACC751; 2006(2)KLT80; [2006]147STC438(Ker)

Judge : K.S. Radhakrishnan and; K.T. Sankaran, JJ.

Acts : Motor Vehicles Act, 1988 - Sections 2(18) and 2(28); Kerala Tax on Entry of Goods into Local Areas Act, 1994 - Sections 2(1) and 3

Appeal No. : W.A. No. 2665 of 2005

Appellant : intelligence Officer

Respondent : Ray Constructions Ltd.

Advocate for Def. : Arikkat Vijayan Menon,; Harisankar V. Menon and; Meera V

Advocate for Pet/Ap. : Raju Joseph, Spl. Government Pleader

Disposition : Appeal dismissed

Judgement :

K.S. Radhakrishnan, J.

1. The short question that arises for consideration in this case is whether an 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 within the meaning of

Section 2(28) of the Motor Vehicles Act, 1988 read with Section 2(1)(j) of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 and therefore would fall under Entry 1 of the Schedule to the Kerala Tax on Entry of Goods into Local Areas Act, 1994 and is liable to tax under Section 3 of the said Act.

2. Original Petition was preferred by the respondent herein seeking a writ of certiorari to quash Ext.P8 order passed by the third respondent holding that the excavator owned by the petitioner is a motor vehicle and liable to pay entry tax as per Kerala Tax on Entry of Goods into Local Areas Act, 1994. Learned single Judge allowed the writ petition Reported in : 2005(2)KLT436 - Raj Constructions Ltd. v. Intelligence Officer holding that the excavator in question is not a motor vehicle within the meaning of Section 2(28) of the Motor Vehicles Act due to its distinguishing features compared to other types of escavators. Aggrieved by the same this appeal has been preferred by the State.

3. Sri. Raju Joseph, Special Govt. Pleader (Taxes) referred to Section2(1)(j) of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 and submitted that a reading of the definition would clearly show that there is no requirement as per the definition that a motor vehicle should have inflated tyres. Counsel submitted question as to whether excavator is moving on chain as in the case of military tank or caterpillar is of no consequence since such a vehicle is also a motor vehicle adapted for use on public roads. Counsel referred to the decision of this Court in Baiju Joseph v. State of Kerala and Anr. 1997 (1) KLT 671 : (1998) 6 KTR 1 and submitted that the court held that excavators and road rollers are liable to entry tax and the said decision was affirmed by the apex court in Bose Abraham v. State of Kerala and Anr. 2001 (1) KLT 730 (SC) : (2001) 9 KTR 336. Counsel submitted, it is common knowledge that road rollers are not used for carrying passengers or luggage, still the apex court has taken the view that road rollers are motor vehicles and there is no justification in excluding excavators.

4. Counsel appearing for the assessee Smt. Meera V. Menon on the other hand, tried to distinguish the decision in Bose Abraham's case. Counsel submitted, in Bose Abraham's case apex court was dealing with the case of a different type of excavator running on inflated tyres. Counsel also referred to the decision of the

Apex Court in Bolani Ores Ltd. v. State of Orissa : [1975]2SCR138 and submitted that a vehicle which merely moves from one place to another need not necessarily be a motor vehicle within the meaning of Section 2(28) of the Act. Counsel referred to Ext.P5 photograph of the Hydraulic Excavator and submitted that it is not meant for use on road. Counsel submitted because of the chain mounting, it cannot be moved on road like excavator fitted with inflated tyres. Normally excavators fitted with military type of chain are brought by vehicle to the work site. Consequently, it cannot be said that it is a motor vehicle within the meaning of Sub-section (28) of Section 2 of the Motor Vehicles Act read with Section 2(1)(j) of the Kerala Tax on Entry of Goods into Local Areas Act, 1994.

5. The scope of Sub-section (28) of Section 2 of the Motor Vehicles Act and also Section 2(1)(j) of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 was considered by this Court and apex court on several occasions which requires no further reiteration. Apex Court in Bose Abraham's case also has taken the view that excavators and road rollers are motor vehicles within the meaning of Sub-section (28) of Section 2 read with Section 2(1)(j) of the Kerala Tax on Entry of Goods into Local Areas Act, 1994. The excavator in question is mounted on iron plates made into chain such as caterpillar vehicle or a military tank. Such an excavator is used for excavating the earth and loading in lorries. They cannot be used upon public roads since roads would get damaged by the chains. Further the excavator can gain only a speed of 1.5 km. per hour. The excavator moves around only in the works site and that it is not suitable or adapted for use in public roads. We have referred to the decision of the Supreme Court in Bolani Ores Ltd. v. State of Orissa. We may extract a portion of the judgment which reads as follows:

The question would then arise, are dumpers, rockers and tractors suitable or fit for use on roads? It is not denied, that these vehicles are on pheumatic wheels and can be moved about from place to place with mechanical power. The word 'vehicle' itself connotes that it is a contrivance which moves a vehicle which merely moves from one place to another need not necessarily be a motor vehicle within the meaning of Section 2(18) of the Act. It may move on iron flats made into a chain such as a caterpillar vehicle or a military tank. Both move from one place to another but are not suitable for use on roads. It is not that they cannot move on

the roads but they are not adapted, made fit or suitable for use on roads. They would, if used, dig and damage the roads.

Reference may also be made to the decision of the Apex Court in Central Coal Field Ltd. v. State of Orissa : [1992]2SCR982 wherein the apex court held as follows:

Pictures of various types of Dumpers have also been sent to us which indicate prominently one factor that these Dumpers run on tyres, in marked contrast to chain plates like cater pillers or military tanks. By the use of rubber tyres it is evident that they have been adapted for use on roads, which means they are suitable for being used on public roads.

The above decisions would categorically show that apex court itself had made a distinction between vehicles fitted with chain plates like caterpillars and military tank and others. The excavator referred to in Bose Abraham's case was a motor vehicle fitted with inflated tyres and not chain plates like caterpillars or military tank.

6. Under the above mentioned circumstances we are in agreement with the learned single Judge that the excavators fitted with chain plates like caterpillars like military tanks are not motor vehicles within the meaning of Sub-section (28) of Section 2 of the Motor Vehicles Act read with Section 2(1)(j) of the Kerala Tax on Entry of Goods into Local Areas Act, 1994.

Appeal therefore lacks merit and the same would stand dismissed.

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