

(2013) 08 AP CK 0080

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10383 of 2013 and WPMP No. 12882 of 2013

SREI Equipment Finance Private Limited

APPELLANT

Vs

Assistant Commissioner (CT-IV), Nampally

RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Citation : (2013) 66 VST 68

Hon'ble Judges : G. Rohini, J; Challa Kodanda Ram, J

Bench : Division Bench

Advocate : S.R. Ashok, for Vinod Kumar Tadakamalla, for the Appellant; P. Balaji Varma, Special Standing Counsel for CT, for the Respondent

Judgement

Challa Kodanda Ram, J.—The petitioner is a company registered under the Companies Act incorporated in the business of financing and leasing for purchase of equipment and other infrastructure, machinery to his customers. In the regular course of business they had entered into an agreement dated May 8, 2008 with one M/s. V.P.R. Mining Infrastructure Private Limited for giving equipment and operating on lease to the said mining industries private limited whose registered office is based at Calcutta. Under the agreement, the petitioner to provide the dump trucks on lease, from its registered office at Calcutta to its customers. The grievance in the present writ petition is with respect to assessment order dated March 22, 2010 for the year 2008-09 whereunder a tax of Rs. 1,19,20,389 has been demanded under the Andhra Pradesh Tax on Entry of Motor Vehicles Into Local Areas Act, 1996 (for short, "the Act"). The contention of the petitioner is that though they are the owners of the three dumpers they are not exigible to the tax under the Act. Inasmuch as it is their customer who had brought the said dumpers into the State of Andhra Pradesh and merely because they continued to be the owners on account of the financial arrangement and contract entered into between their company and the customer they cannot be visited with the liability under the Act. The petitioner further claimed that the transaction is of the year 2008-09 and as such the assessment

and demand is barred by limitation u/s 8(5) of the Act. The petitioner further submits that he is not a dealer registered under the Act and he has no obligation to file any return under the Act. As a matter of fact, in response to the show-cause notice dated February 13, 2013, the petitioner had filed its objections on March 15, 2013 and also appeared before the assessing authority/the respondent on March 20, 2013 raising specific objections stating that the petitioner is not to be assessed to pay tax u/s 3(4) of the Act and at any rate even assuming without conceding that the petitioner is liable to be assessed under the Act, the assessment order now presently passed is barred by limitation.

2. In the assessment order the respondent rejected the contention of the petitioner that they are not liable to pay the tax under the Act. The petitioner being the owner of the vehicles which were brought into the State of Andhra Pradesh would satisfy the definition of "importer" as defined in section 2(1)(g) of the Act and in the circumstances the petitioner would be liable to be assessed and pay the tax under the Act. The contention with regard to limitation was also rejected stating that the provisions of limitation would apply only to the importer/dealers who had complied with section 7(1) of the Act read with rule 3 of the Andhra Pradesh Tax on Entry of Motor Vehicles Into Local Areas Rules, 1996 (for short, "the Rules") and the same is not applicable to the petitioner as the petitioner defaulted in filing the returns under the Act.

3. Heard Sri S.R. Ashok, learned Senior Counsel assisted by Sri T. Vinod Kumar, appearing on behalf of the petitioner and Sri P. Balaji Varma, learned Special Government Pleader for the respondent. Section 3(1) of the Act specifies the taxing and section 3(3) and 3(4) of the Act specifies the persons from whom the tax is to be collected.

4. For the purpose of resolving the issue, it may be necessary to refer to certain provisions of the Act so far as they are relevant.

S. 2(1)(g) "Importer" means a person who brings a motor vehicle into a local area from any place outside the State for use or sale therein or who owns the vehicle at the time of its entry into the local area.

...

S. 3 Levy of tax.--(1) Subject to the provisions of this Act, there shall be levied and collected tax on the entry of any motor vehicle into any local area for use or sale therein which is liable for registration in the State under the Motor Vehicles Act, 1988 (Central Act 59 of 1988). The tax levied shall be at such rate or rates as may be fixed by the Government, by notification, on the purchase value of the motor vehicle but not exceeding the rates specified for motor vehicles in the First Schedule to the General Sales Tax Act, 1957:

Provided that no tax shall be levied and collected in respect of any motor vehicle which was registered in any Union Territory or any other State under the provisions of the Motor Vehicles Act, 1988, prior to period of fifteen months or

more from the date on which, it is registered in the State:

Provided further that no tax shall be levied and collected in respect of any motor vehicle, which is owned by Central Government and is used exclusively for the purposes relating to the Defence of India.

(2) The tax shall be payable by the importer in such manner and within such time as may be prescribed.

(3) Where the motor vehicle is taken delivery of, on its entry into a local area or brought into a local area by a person other than an importer, the importer who takes delivery of the motor vehicle from such person shall be deemed to have brought or caused to have brought the motor vehicle into the local area.

...

S. 7 Returns.--Every importer who is a dealer liable to pay tax under this Act shall furnish returns in such form, for such period, by such dates and to such authority, as may be prescribed.

S. 8 Assessment.--(1) The amount of tax due from a person liable to pay tax under this Act, shall be assessed separately for such period as may be prescribed.

(2) If the assessing authority is satisfied that the return furnished by a person liable to pay tax is correct and complete, he shall assess the amount of tax due from the person on the basis of such return.

(3) If the assessing authority is of the opinion that the return furnished by a person liable to pay tax is not correct and complete, he shall serve on such person, in the prescribed manner a notice requiring him to attend on a date and at a place specified therein, and produce or cause to be produced all evidence on which the said person relies in support of his return or to produce such evidence as specified in the notice and on the date specified in the notice, and as soon as may be, thereafter, the assessing authority shall after considering all the evidence which may be produced, assess the amount of tax due from the person.

(4) If a person fails to comply with the requirements of any notice issued under sub-section (3), the assessing authority shall determine the purchase value of the motor vehicle under the proviso to clause (n) of section 2 to the best of his judgment and assess the amount of tax due from him and may direct the importer to pay in addition to the tax so assessed penalty as specified in sub-section (1) of section 18.

(5) No order of assessment under sub-section (3) or sub-section (4) or any period shall be made after the expiry of three years from the last date prescribed for filing of returns for that period. If, for any reason such order is not made within the period aforesaid, then the return so filed shall be deemed to have been accepted as correct and complete for assessing the tax due from such person.

5. A careful analysis of section 3 of the Act would reveal that

(i) The tax under the Act is liable to be levied and collected on the entry of any motor vehicle into any local area for use or sale therein which is liable for registration in the State under the Motor Vehicles Act, 1988.

(ii) The tax shall be payable by the importer.

(iii) In cases where delivery of the motor vehicle is taken outside the local area by any person not being an importer who takes delivery of the vehicle from such person shall be deemed to have brought or caused to have brought the motor vehicle into the local area.

6. The learned Special Government Pleader had placed on record the judgments as follows:

(1 Purshotam H. Jadve and Others Vs. V.B. Potdar,

(2) Maa Sharda Wine Traders Vs. Union of India (UOI) and Others,

7. In section 2 of the Act, definition starts with.--"In this Act, unless the context otherwise requires,..." and goes on to define various expressions. In other words, while considering an expression occurring in an Act normally the meaning that is required to be given as defined in the statute. However, if the context requires otherwise the meaning that would make the statute workable based on the scheme of the Act is the one which has to be given.

8. In the present case in section 3(2) of the Act, the tax is payable by the importer and it is the duty of the court to discover who is the importer for the purpose of section 3 of the Act. Section 3(3) of the Act elucidates that a person who causes the entry of the vehicle into the local area for use or sale especially deemed to be the importer who is liable to pay the tax. In other words merely because an owner of the vehicle satisfied the definition as importer in the context of section 3 of the Act the "word" importer need not necessarily be the owner and in the context the importer has to be considered to be the person who is responsible or who causes the entry of the motor vehicle into any local area for use or sale.

9. In the present case, the categorical assertion of the petitioner in para No. 4 of the affidavit "it is also submitted that the customer, who took the delivery of the motor vehicles and caused its entry in the State of A.P. had also furnished declaration in form C issued by the Commercial Tax Department in the State of A.P. to the petitioner at Calcutta, having regard to the inter-State nature of transaction was not denied." In other words, it was the lessee of the petitioner, viz., M/s. VPR Mining Infrastructure Private Limited who had brought the dumpers in question into the local area situated within the State for use and utilization. Applying section 3(3) of the Act to the facts of the case though the petitioner being the owner of the dumpers may satisfy the definition of "importer" yet for the purpose of section 3(3) of the Act, the liability to pay tax

arises on the entry of the dumpers into the State and the liability gets fastened on the person who brings the same for use or sale into the State. In this case, the customer of the petitioner, M/s. VPR Mining Infrastructure Private Limited, was also satisfied the definition of "importer" inasmuch as the customer is the one which having taken the delivery of the dumpers in Chennai has caused the vehicles to move to the local area of the State for the purpose of use in its works and thus became liable to pay the tax.

10. The argument of the learned counsel for the respondent supporting the assessment year to the effect that the petitioner being the owner and satisfying the definition of "importer" is the one who is liable to pay the tax cannot be accepted in view of the interpretation placed by us on section 3 of the Act which is the charging section. It is well to remember the purpose of definition is limited and only to illustrate what is being defined. The definition by itself does not fasten the liability especially in the taxing statute. The expressions which is used occurring in the main text of the statute in the context of the section has to be interpreted to find the true meaning. This aspect is well settled and in the context a reference was made in the decisions of the Supreme Court reported *Purshotam H. Jadye and Others Vs. V.B. Potdar*, and *Maa Sharda Wine Traders Vs. Union of India (UOI) and Others*,

11. In the light of the conclusion arrived by us with respect to obligation and liability of the petitioner under the entry tax, we do not feel it necessary for us to enter into arena with respect to the assessment of the petitioner being barred by limitation. In that view of the matter, we do not consider the need of dealing with the judgments relied on by the learned Special Government Pleader. Especially in view of section 7 of the Act whereunder obligation is placed on filing of returns only on an importer/dealer who is liable to pay tax under the Act. Inasmuch as the very assessment and demand being made on the petitioner being incompetent and not being liable to be assessed, we do not find the petitioner need to be relegated to avail of the alternative remedy of appeal under the statute and hence we reject the arguments of the learned counsel for the respondent on that count. In the circumstances, the writ petition is allowed setting aside the impugned proceedings bearing A.O. No. 18790/2008-09 dated March 22, 2013 of the respondent. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.