IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 3221 of 2005 (H)

PETITIONER(S):

VIJAYA BANK,REP. BY ITS CHIEF MANAGER,
REGIONAL OFFICE, M.G.ROAD, ERNAKULAM
KOCHI-16.

BY ADVS.SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARI SHARMA
SRI.T.PELDHOSE

RESPONDENT(S):
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1. THE TRANSPORT COMMISSIONER,
THIRUVANANTHAPURAM.

2. THE DEPUTY TRANSPORT COMMISSIONER,
(SOUTH ZONE), THIRUVANANTHAPURAM.

3. THE REGIONAL TRANSPORT OFFICER,
ALAPPUZHA.

4. THE REGIONAL TRANSPORT OFFICER,
THIRUVANANTHAPURAM.

5. SHIBU S.,ARACKALCHIRAYIL HOUSE,
CHERTHALA P.O., ALAPPUZHA DISTRICT.

R1-R4 BY ADV. SUDHEESH KUMAR, SENIOR GOVERNMENT PLEADER
R5 BY ADV. SRI.P.DEEPAK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-08-2015, ALONGWITH WPC 23444/2004, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.3221/2005

APPENDIX

PETITIONER'S EXHIBITS:

P1: COPY OF HT EREPORT DATED 28.08.2002 OF THE ASST. MOTOR VEHICLE INSPECTOR, TRIPUNITHURA

P2: COPY OF THE REPORT DATED 05.06.2003 OF THE ASST. MOTOR VEHICLE INSPECTOR, TRIPUNITHURA

P3: COPY OF THE ORDER DATED 04.06.2003 NO.C4/6037/2003/A OF THE 3RD RESPONDENT

P4: COPY OF ORDER DATED 12.11.2003 O.C/1453/SZ/03 OF THE 2ND RESPONDENT

P5: COPY OF MEMORANDUM OF REVISION DATED 31.01.2004FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT

P6: COPY OF ORDER DATED 08.10.2004 NO.B1-331/TC/2004 OF THE 1ST RESPONDENT

P7: COPY OF ORDER DATED 18.08.2004 IN WPC NO.23444/04

P8: OPY OF JUDGMENT DATED 15.09.2004 IN WA 1712/2004 OF THIS HONOURABLE COURT

P9: COPY OF ORDER DATED 06.01.2005 IN MA 15567/2004 IN WPC NO.23444/04 OF THIS HONOURABLE COURT

P10: COPY OF MEMO DATED 25.12.2004 NO.C4-KL.12A/1211/04 ISSUED BY THE 4TH RESPONDENT

P11: COPY OF NOTIE BEARING NO.D1/37/MVT/05-06 DATED 28.01.2006 ISSUED BY THE DEPUTY TAHSILDAR, REVENUE RECOVERY, TALUK OFFICE, VYTHIRI

P12: COPY OF NOTICE BEARING NO.D1/37/MVT/05-06 DATED 28.01.2006 ISSUED BY THE DEPUTY TAHSILDAR, REVENUE RECOVERY, TALUK OFFICE, VYTHIRI

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C). Nos.3221 of 2005
&
23444 of 2004
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Dated this the 4th day of August, 2015

JUDGMENT

W.P.(C). No.3221/2005

The petitioner has filed this writ petition seeking a writ of certiorari to quash Exts.P3, P4, P6 and P10 with an alternative prayer directing respondents 1 to 3 to pass fresh orders, altering the period of demand and also the nature of demand for tax in respect of stage carriage bearing No.KL-12/A-1211 at the rate for non transport vehicle, instead at the rate for stage carriage.

2. Going by the averments in the writ petition, the petitioner Bank granted credit facility to a partnership concern by name M/s.Nizam Road Lines at Meppadi for the purpose of purchasing an Ashok Layland vehicle. The said vehicle was registered with Registration No.KL-12/A-1211, in the name of one of the partners of the firm, namely, A.Yousuf. When default was committed in repaying the loan amount, the petitioner Bank repossessed the vehicle invoking the provisions contained in the

deed of hypothecation.

3. According to the petitioner, the vehicle was seized on 12.04.2002 and kept at a place called Panimoottil Yard near the Railway Gate at Tripunithura. Exts.P1 and P2 would show that the Assistant Motor Vehicle Inspector concerned had inspected the vehicle and reported that it was garaged and not used with effect from 12.04.2002. The vehicle was later put up for sale in the public auction held on 21.06.2002, in which the 5th respondent bid the vehicle for an amount of Rupees Two lakhs. After the auction, the vehicle was delivered over to the 5th respondent on 21.06.2003.

4. The 3rd respondent issued Ext.P3 order dated 04.06.2002 requiring the petitioner Bank to remit arrears of tax in respect of the vehicle in question at the rate of tax applicable to stage carriage. Ext.P3 order passed by the 3rd respondent was under challenge before the 2nd respondent. But the said appeal ended in dismissal by Ext.P4 order. The said order was under challenge in Ext.P5 revision filed before the Government. But the same also ended in dismissal by Ext.P6 order dated 08.10.2004.

5. The 5th respondent has approached this Court in

W.P.(C). No.23444/2004 seeking reliefs in the matter of payment of tax, which resulted in Exts.P7, P8 and P9 orders passed by this Court. In the meantime, the 4th respondent issued Ext.P10 memo dated 25.12.2004 asking the Branch Manager of Meppadi Branch of the petitioner Bank to remit Rs.1,02,420/- towards arrears of tax. It was in such circumstances, the petitioner Bank has approached this Court in this writ petition seeking various reliefs.

6. Today, when the case was taken up for final hearing, the learned Standing Counsel for the Bank would submit that, the petitioner Bank would be satisfied if the Regional Tranport Officer, Alappuzha, the 3rd respondent herein is directed to consider its claim for refund of tax in terms of Section 6(1) of the Motor Vehicles Taxation Act, 1976.

7. I heard the arguments of the learned Standing Counsel for the petitioner and also the learned Government Pleader appearing for respondents 1 to 4.

8. The learned Government Pleader would submit that if the petitioner makes an application for refund, after remitting the amount demanded in Ext.P10, the request for refund of tax shall be considered by the 3rd respondent in accordance with the

provisions under Section 6(1) of the Act.

9. In such circumstances, W.P.(C). No.3221/2005 is disposed of as follows:

If the petitioner is remitting the amount demanded in Ext.P10 within a period of one month from the date of receipt of a certified copy of this judgment and making an application for refund tax under Section 6(1) of the Motor Vehicles Taxation Act, 1976 before the 3rd respondent within a period of two weeks thereafter, the same shall be considered by the 3rd respondent, strictly in accordance with law, with notice to the petitioner, and pass appropriate orders thereon, as expeditiously as possible, at any rate, within a period of three months thereafter.

The petitioner shall produce a copy of the writ petition alongwith a certified copy of this judgment before the 3rd respondent for compliance.

<u>W.P.(C). No.23444/2004</u>

This is a writ petition filed by the 5th respondent in W.P.(C). No.3221/2005 seeking appropriate orders on his application for transfer of ownership of stage carriage No.KL-12/A-1211 without insisting for clearance certificate relating to remittance of tax arrears for the period during which the vehicle was under the custody of the petitioner Bank in W.P.(C). No.3221/2005, and for other consequential reliefs.

On 18.08.2004, this Court passed the following order:

> "There will be an interim direction to register the vehicle in the name of the petitioner, if tax arrears are cleared. The petitioner may clear the arrears without prejudice to his contentions."

Later, on 06.01.2005, this Court passed the following order in I.A.No.15567/2004"

> "There will be an interim direction to the first respondent to receive motor vehicles tax from the petitioner in respect of stage carriage KL-12/A-1211 for the financial quarter ending 31.03.2005 provisionally, and on the basis of such remittance, the petitioner will be entitled to seek further reliefs before the statutory authorities."

In view of the judgment in WP(C) No.3221/2005, this writ petition is disposed of making the above interim orders absolute.

SD/-

ANIL K. NARENDRAN,

JUDGE

JV