IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WA.No. 370 of 2015 () IN WP(C).3899/2013

AGAINST THE ORDER/JUDGMENT IN WP(C) 3899/2013 of HIGH COURT OF KERALA DATED 30-10-2014

APPELLANT(S):/PETITIONER

ABDUL BASHEER K
KULANGARA HOUSE, PATHEERAN KAVU P.O, KOZHIKODE.

BY ADV. SRI.G.PRABHAKARAN

RESPONDENT(S):/RESPONDENT

THE REGIONAL TRANSPORT OFFICER,
KOZHIKODE, PIN - 673 020.

BY DR.SEBASTIAN CHAMPAPPILLY,
SPL.GOVERNMENT PLEADER (TAXES)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

....

W.A.No.370 of 2015

....

Dated this the 24th day of March, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. We have heard the learned counsel for the appellant and the learned Special Government Pleader for the Department of Commercial Taxes.

2. Admitted. Heard finally, on consent of parties.

3. It appears that the writ petition which relates to a stage carriage happened to be tagged along with a bunch of cases relating to contract carriages, where the Rules governing seating capacity and consequential levy of tax under the Motor Vehicles Taxation Act, 1976 are quite different.

4. We do not see that the impugned judgment speaks anything about the issue raised by the appellant/petitioner in the writ

petition which related to stage carriages only. The primary contention is that the Department is not authorised to insist that the operator should increase the seating capacity from 30 to 31 and also that there could not be any retrospective levy of any balance tax from the date of initial registration of the vehicle. We think that these issues need to be deliberated upon in the writ petition. To pave way for this, the impugned judgment needs to be vacated and the matter needs to be remitted to the learned single Judge.

5. In the result, the impugned common judgment, insofar as it relates to WP(C) No.3899 of 2013, is vacated. That writ petition is remitted for consideration by the learned single Judge leaving open all issues arising for decision in the matter. It is clarified that we have not considered anything on the merits of the findings of the learned single Judge in relation to the taxation of contract carriages as dealt with in the impugned common judgment.

List WP(C) No.3899 of 2013 before the learned single Judge, as per roster. In the meanwhile, it is directed that the appropriate authority among the respondents will permit the appellant/petitioner to pay tax on the basis of the seating capacity being 30 and thereby enable the appellant/petitioner to operate the stage carriage, in accordance with law. This will be provisional and subject to the result of the writ petition. This writ appeal is ordered accordingly.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)

jg