IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

WA.No. 1478 of 2014

AGAINST THE JUDGMENT DATED 23.09.2014 IN WP(C) 23203/2014
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APPELLANT(S)/PETITIONER:
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MANAGING TRUSTEE, MADHUVAN SAI VIDYASHRUM TRUST, MADHUVAN SAI VIDYASHRAM TRUST, MADHUVANAM, PULIYARAKONAM, TRIVANDRUM PIN - 695 573.

BY ADV. SRI.LIJIN THAMBAN

RESPONDENT(S)/RESPONDENTS:
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1. **THE SUB REGIONAL TRANSPORT OFFICER, SUB REGIONAL TRANSPORT OFFICE, NEYYATTINKARA, TRIVANDRUM DISTRICT, PIN - 695 121.**

2. **THE REGIONAL TRANSPORT OFFICER, REGIONAL TRANSPORT OFFICE, TRIVANDRUM DISTRICT PIN - 695 023.**

3. **THE TRANSPORT COMMISSIONER FOR STATE OF KERALA, TRIVANDRUM - 695 001.**

BY SENIOR GOVERNMENT PLEADER SMT.GIRIJA GOPAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 16-12-2014 THE COURT ON 09-01-2015, DELIVERED THE FOLLOWING:

msv/

WA.No. 1478 of 2014

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE A: CERTIFICATE ISSUED BY INCOME TAX DEPARTMENT DTD.13TH OCTOBER 2014.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

ASHOK BHUSHAN, Ag.CJ
& A.M.SHAFFIQUE, J.
* * * * * * * * * * * * * *
W.A.No.1478 of 2014

Dated this the 9th day of January 2015

J U D G M E N T

Shaffique,J

The writ petitioner is the appellant who challenges the judgment dated 23/09/2014 in W.P.C.No.23203/2014.

2. The short facts involved in the writ petition would disclose that the petitioner purchased a vehicle bearing Reg.No.KL-20-G-252, a Maruti Omni E MPI STD BSIV which was classified as LMV-private service vehicle as per certificate of registration issued by the competent authority. Petitioner submitted Ext.P4 application dated 14/08/2014 for re-classifying the description of the vehicle as "Omni Bus for private use". Since no action has been taken in the matter, he has approached this Court. Petitioner has relied upon the judgment of the learned Single Judge in **Fr.Pious v. Sub Regional Transport Officer** *[2002(3) KLT 965]* to contend that reclassification is possible.

3. The learned Single Judge, by the impugned judgment, dismissed the writ petition on a finding that such reclassification is not possible.

4. Impugning the above judgment, the learned counsel for the appellant submits that in so far as a private service vehicle comes within the description of transport vehicle, it needs permit to operate and there are certain other restrictions as well. The petitioner will also be under obligation to pay huge amount as insurance and tax. Reference is made to the definition of private service vehicle and it is contended that classifying the vehicle which is used for own purpose cannot be categorised as private service vehicle. It is contended that the appellant's vehicle is neither involved in any trade or business nor is used for transportation purpose. It is a charitable organisation and is not engaging in any activity for gain or livelihood.

5. On the other hand, learned Government Pleader submits that classification of a vehicle is made based on the the certificate issued by the manufacturer of the vehicle. As

far as motor vehicle taxation is concerned, the tax is levied under Section 3 of the Kerala Motor Vehicles Taxation Act, 1976 at the rates specified for such class of vehicle as mentioned in the schedule. The schedule gives different classification for vehicles which applies only for taxation purposes. As far as registration certificate is concerned, the entries are made based on the provisions of Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989. In so far as the certification of the vehicle by the manufacturer as evident from Ext.P1 sales certificate shows that it is a private service vehicle, no change in classification could be made in the certificate of registration. Section 2(33) defines Private service vehicle as under:

> "***Section 2(33)*** *: "private service vehicle" means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes;*

6. The definition clearly indicates that it should be a vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by the owner of such vehicle or on his behalf for the purpose of carrying persons, in connection with his trade or business other than for hire or reward. The actual use by the owner is not the question to be considered whereas it is the construction or adaptation and its ordinary use that matters. However, as far as the Motor Vehicles Act and the Rules are concerned, the guiding factor for classification is the certificate issued by the manufacturer. The said classification cannot be changed by the Registering Authority unless notified under Section 41(4) of the Motor Vehicles Act. As far as taxation is concerned, a separate classification may be possible, but that does not indicate change of classification in the registration certificate maintained under the Motor Vehicles Act and the rules framed thereunder. The judgment in Fr.Pious (supra) has no application to the facts of the case as rightly found by the

learned Single Judge.

7. The learned counsel also relied upon the judgment in **Jagan Thomas v. State of Kerala** *[2012(2) KLT 365]*. This judgment will not apply to the facts of the case as the petitioner did not seek the benefit of the notifications referred in the judgment at the time of registration of the vehicle.

8. In so far as the learned Single Judge had considered the entire matter and has rejected the claim of the petitioner, we do not find any error in the judgment which calls for a different view.

In the result, this Writ Appeal is dismissed.

(sd/-)
(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)

(sd/-)
(A.M.SHAFFIQUE, JUDGE)

jsr