IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No. 5268 of 2015 (G)

PETITIONER(S):

K.K.MUSTHAFA, AGED 41 YEARS,
S/O.LATE KUNHAMMED, KARIMBANKUZHIYIL HOUSE,
P.O. MUTTANCHERRY, VIA. NARIKKUNI, KOZHIKODE.

BY ADV. SRI.K.V.GOPINATHAN NAIR

RESPONDENT(S):

1.THE JOINT REGIONAL TRANSPORT OFFICER,
KODUVALLY. (SECRETARY, REGIONAL TRANSPORT AUTHORITY, KOZHIKODE). PIN: 673 020.

2.THE DEPUTY TRANSPORT COMMISSIONER,
NORTH ZONE, KOZHIKODE. PIN. 673 020.

3.THE TRANSPORT COMMISSIONER, TRANS TOWER,
VAZHUTHACAUD, THIRUVANANTHAPURAM.PIN. 695 039.

R BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR.S.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE REGISTRATION PARTICULARS IN RESPECT OF KL-11/D 2493.

EXT.P2: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 19.4.2008.

EXT.P3: COPY OF THE OBJECTION FILED BY THE OBJECTOR BEFORE THE 1ST RESPONDENT DATED 30.4.2008.

EXT.P4: COPY OF THE LETTER DATED 16.9.2011 WITHDRAWING EXT.P3 OBJECTION.

EXT.P5: COPY OF THE MEMO ISSUED BY THE 1ST RESPONDENT DATED 8.11.2012.

EXT.P6: COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 7.12.2012.

EXT.P7: COPY OF THE MEMO ISSUED BY THE 1ST RESPONDENT DATED 6.2.2013.

EXT.P8: COPY OF THE APPEAL FILED BY THE PETITIONER BEFRORE THE 2ND RESPONDENT DATED 17.4.2013.

EXT.P9: COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 23.9.2013.

EXT.P10: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN W.P.(C). NO.29204/2013 DATED 27.11.2013.

EXT.P11: COPY OF THE DEMAND DRAFT SUBMITTED BY THE PETITIONER IN COMPLIANCE WITH EXHIBIT P10 JUDGMENT DATED 10.12.2013.

EXT.P12: COPY OF THE REVISION MEMORANDUM FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 9.12.2013.

EXT.P13: COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DATED 23.7.2014.

EXT.P14: COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 8.8.2013 WHICH IS SIGNED ON 21.8.2014.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.5268 OF 2015 (G)

Dated this the 19th day of February, 2015

J U D G M E N T

The petitioner, who is the registered owner of a goods carriage vehicle bearing registration No.KL-11/D 2493, had approached the respondent with a petition claiming exemption from payment of motor vehicle tax on the ground that the certificate of fitness, as well as the permit, had not been granted to the petitioner, and hence, he was not liable to pay the motor vehicle tax in respect of the vehicle. In the alternative, it was contended that even if there was a liability to pay tax, the said tax could be only at the rate applicable to non-transport vehicles, and not as applicable to transport vehicles. The contentions of the petitioner were rejected by the 1st respondent at first instance, and subsequently by the 2nd and 3rd respondents in further proceedings that were pursued by the petitioner in terms of the Kerala Motor Vehicles Taxation Act. Ext.P14 is the order passed by the 3rd respondent, wherein the revision filed by the petitioner has been rejected by holding that the petitioner is not entitled for the exemption claimed since he had not complied with the statutory procedure of filing 'G' Forms as a precondition for the grant of exemption. In the writ petition, the petitioner contends that the authorities have not considered the alternative prayer of the petitioner for payment of the motor vehicle tax at the rates applicable to non-transport vehicles. It is for this reason that Ext.P14 order, into which the orders passed by the 1st and 2nd respondents have merged, is impugned in the present writ petition.

2. I have heard Sri.K.V.Gopinathan Nair, the learned counsel appearing for the petitioner as also Sri.Sudheesh Kumar.S., the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that in Ext.P14 order passed by the 3rd respondent, he has correctly appreciated the legal position with regard to the preconditions for the grant of exemption under Section 5 of the Kerala Motor Vehicles Taxation Act. In the absence of 'G' Form, it was correctly held that the petitioner was not entitled to the exemption claimed. I note, however, that in Ext.P14 order, the 3rd respondent has not considered the alternate

plea of the petitioner for payment of tax at the non-transport vehicle rates. This, in my view, is an aspect that has to be considered by the 3rd respondent so as to enable the petitioner to pay tax at the rate applicable under the Kerala Motor Vehicles Taxation Act. I therefore direct the 3rd respondent to consider the issue as to the applicable rate of tax, at which the petitioner has to pay tax in respect of the vehicle in question, within a period of two months from the date of receipt of a copy of this judgment. I make it clear that I am not interfering with Ext.P14 order in respect of what it has decided therein, namely, the claim of the petitioner for exemption from payment of tax under the Kerala Motor Vehicles Taxation Act. The 3rd respondent shall pass orders as directed in this judgment, after hearing the petitioner. The petitioner shall appear before the 3rd respondent at 11 a.m. on 27.2.2015.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp