IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No.15794 of 2014 (Y)

PETITIONER :

SMT.SHARAFENNISSA BEEGOM.M.S,
W/O.V.I.HARIS, PYARI MANZIL, PULLICHIRA P.O.,
KOLLAM.

BY ADVS.SRI.SIJU KAMALASANAN
SRI.PRATHEESH.P

RESPONDENTS :

----

1. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY,
   MOTOR VEHICLES DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM - 695 001.

2. TRANSPORT COMMISSIONER,
   TRANSPORT BHAVAN, THIRUVANANTHAPURAM - 695 001.

3. DEPUTY TRANSPORT COMMISSIONER,
   SOUTH ZONE, TRANSPORT BHAVAN,
   THIRUVANANTHAPURAM - 695 001.

4. REGIONAL TRANSPORT OFFICER,
   CIVIL STATION, KOLLAM - 691 013.

R1 -R4 BY SR.GOVERNMENT PLEADER SRI.S.SUDEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 15794 of 2014 (Y)

APPENDIX

PETITIONER'S EXHIBITS :-

EXT P1- THE COPY OF CERTIFICATE OF REGISTRATION OF THE VEHICLE BEARING NO. KL 02 AK 369.
EXT P2-THE COPY OF DISABILITY CERTIFICATE ISSUED BY THE MEDICAL BOARD, KOLLAM DATED 11.11.1994.
EXT P3-THE COPY OF RATION CARD IN THE NAME OF THE MOTHER IN LAW OF THE PETITIONER.
EXT P4-THE COPY OF ENDORSEMENT BY THE REGISTERING AUTHORITY IN THE CERTIFICATE OF REGISTRATION AND CERTIFICATE OF INSURANCE POLICY.
EXT P5-THE COPY OF ORDER DATED 27.11.2012 ISSUED BY THE REGIONAL TRANSPORT OFFICER, KOLLAM.
EXT P6-THE COPY OF ORDER DATED 4.2.2013 PASSED BY THE 3RD RESPONDENT.
EXT P7-THE COPY OF NOTIFICATION IN SRO NO. 301/1998.
EXT P8-THE COPY OF JUDGMENT IN WPC NO. 31808/2013 DATED 06/01/2014.
EXT P9-THE COPY OF ORDER DATED 26.03.2014 PASSED BY THE 2ND RESPONDENT IN REVISION BY VIDE NO. B1/2831/TC/2014.
EXT P10-THE COPY OF LETTER DATED 05.04.2014 SERVED ON THE PETITIONER ON 12.06.2014.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRAN, J.

W.P.(C)No.15794 of 2014

Dated this the 16th day of September, 2015

JUDGMENT

The petitioner, who is a physically handicapped person and registered owner of a Mahindra Xylo vehicle falling under the class of ‘Omini Bus for private use’, has filed this Writ Petition seeking a declaration that Ext.P7 notification, namely, S.R.O.No.301/1998 is arbitrary, illegal and against the mandate of Section 22 of the Kerala Motor Vehicles Taxation Act, 1978 (hereinafter referred to as the 'Act') and ultravires to the Constitution of India. She has also sought for a writ of certiorari to quash Exts.P5, P6, P9 and P10 and a writ of mandamus commanding the 1st respondent to include Motor Vehicles in the class of ‘Omni bus for private use’ in the class of vehicles entitled for tax exemption under Section 22 of the Kerala Motor Vehicles Taxation Act and a declaration that the respondents are not entitled to assess ₹59,800/- as one time tax in respect of her Mahindra Xylo vehicle bearing registration No.KL-02-AK-369.

2. Going by the averments in the Writ Petition, the petitioner is the registered owner of the vehicle in question covered

by Ext.P1 Certificate of Registration. She is a physically disabled person with 45% disability which is evident from Ext.P2 certificate dated 11.11.1994 issued by the Medical Board, Kollam. Relying on Ext.P3 ration card, the petitioner would contend that her family consists of six members including the servant. Since the petitioner is having 45% disability it is necessary to carry walking stick or other accessories along with her in long distance travels. It was in such circumstances, the petitioner purchased the present vehicle which is having seating capacity of 7 + 1 to accommodate the 6 members and her walking accessories.

3. At the time of registration of the vehicle the registering authority exempted it from tax, which is evident from the endorsement made on the registration certificate of the vehicle. Later, based on an audit enquiry conducted on 17.10.2012, it was noticed that as per S.R.O.No.301/98, as amended by S.R.O.No.46/2006, the Government exempted only 3 wheelers, invalid carriages, motor cycles and motor cars which are owned by physically handicapped persons for their own use. As such the vehicle in question does not come under the purview of the class of

vehicles mentioned in S.R.O.No.301/1998 and the exemption of tax granted is irregular, which resulted in non-levy of one time tax @ 8% of purchase value. It was in such circumstances, the petitioner was directed in Ext.P5 communication of the Regional Transport Officer, Kollam to pay an amount of ₹59,800/- as one time tax within a period of 7 days. Though the petitioner filed an appeal before the Deputy Transport Commissioner against the demand made in Ext.P5, the same ended in dismissal by Ext.P6.

4. Aggrieved by Ext.P6 order the petitioner approached this Court in W.P.(C)No.31808 of 2013, which was disposed of by Ext.P8 judgment directing the petitioner to avail statutory benefits provided under Section 24 of the Act by filing Revision Petition before the Transport Commissioner. Pursuant to the said judgment the petitioner filed a revision before the Transport Commissioner, which also ended in dismissal by Ext.P9 order. On the basis of Ext.P9 order the petitioner was issued with Ext.P10 communication of the Regional Transport Officer, Kollam by which she was asked to remit an amount of ₹59,800-/- as one time tax within 7 days and it was in such circumstances, the petitioner has approached this Court in this

Writ Petition seeking various reliefs.

5. A counter affidavit has been filed on behalf of the 4th respondent justifying the demand of one time tax. The 4th respondent would contend that, since the vehicle purchased by the petitioner does not fall under the class of vehicles mentioned in S.R.O.No.301/1998, as amended by S.R.O.No.46/2006, she is not entitled for exemption of payment of one time tax and as such the demand of ₹59,800/- is perfectly legal, which was rightly confirmed by the appellate and revisional authorities.

6. I heard the arguments of the learned counsel for the petitioner and also the learned Government Pleader appearing for the respondents.

7. The sole issue that arises for consideration is as to whether the vehicle purchased by the petitioner, which admittedly falls under the class 'Omni Bus for private use', is entitled for exemption of one time tax in view of S.R.O.No.301/1998, amended by S.R.O.No.46/2006.

8. Exemption from or reduction of motor vehicle tax is covered by Section 22 of the Act. As per Section 22, the

Government may, if they are satisfied that, it is necessary in the public interest so to do, by notification in the Gazetee make an exemption or reduction in the rate or order modification, either prospectively or retrospectively, in regard to the tax payable under this Act or under the Kerala Motor Vehicles Taxation Act, 1963 or the Kerala Motor Vehicles (Taxation of Passengers and Goods) Act, 1963, by any person or class of persons or in respect of any motor vehicle or class of motor vehicles, or in respect of any motor vehicle or class of motor vehicles using a specified route subject to such terms and conditions as they may deem fit. A reading of Section 22 of the Act makes it explicitly clear that the Government is empowered to exempt or reduce the rate of tax in respect of any class of motor vehicles by issuing appropriate notification in exercise of its powers under Section 22 of the Act.

9. It is in exercise of the powers under Section 22 of the Act, the Government issued S.R.O.No.301/1998, which is further amended by S.R.O.No.46/2006. Going by S.R.O.No.301/1998 the Government exempted three wheelers, invalid carriages, motor cycles and motor cars owned by physically handicapped persons for

their own use, whether driven by the handicapped persons, themselves or by others for the transport of such handicapped persons, from the tax payable under the Act with effect from 1.4.1998, permanently, subject to the production of a certificate from a medical officer not below the rank of a Civil Surgeon that the owner of the vehicle is a physically handicapped person having not less than 40% disability. A reading of Ext.P7 notification would show that the exemption granted is only in respect of the following class of motor vehicles, namely, three wheelers, invalid carriages, motor cycles and motor cars, which is also subject to the specific conditions stipulated in the aforesaid notification.

10. Admittedly, the vehicle in question does not fall under the class of motor cars. It is an 'Omni bus for personal use' which was later re-classified as 'private service vehicle'. When the notification issued by the Government in exercise of Section 22 of the Act does not find the class Omni Bus for private use, the petitioner who has purchased the vehicle in question cannot seek exemption from motor vehicles tax relying on Ext.P7 S.R.O. If that be so, the reasoning of the respondents in Exts.P5, P6, P9 and P10 that the

petitioner is liable to pay a sum of ₹59,800/- as one time tax in respect of the vehicle in question is perfectly legal. Therefore the reasoning of the respondents in the aforesaid orders cannot be termed either arbitrary or perverse warranting an interference of this Court under Article 226 of the Constitution of India.

11. The learned counsel for the petitioner would submit that, as on the date of issuance of Ext.P7 notification by the Government granting exemption to certain class of vehicles, the class 'the Omni bus for private use' or 'private service vehicle' were never contemplated under the Motor Vehicles Act. Therefore the learned counsel would submit that, it is for the Government to consider the question as to whether the vehicles falling under the aforesaid category should also be exempted from payment of motor vehicle tax subject to the fulfillment of the condition in S.R.O.No.301/1998, as amended by S.R.O.No.46/2006. If the petitioner is having any grievance in that regard, it is for her to make an appropriate representation before the Government and if any such representation is received within a period of three weeks from the date of receipt of a certified copy of this judgment, the 1st

respondent shall consider the same and pass appropriate orders thereon, strictly in accordance with law, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of such representation, with notice to the petitioner.

12. It is made clear that this Court has not expressed anything on the merits of the claim made by the petitioner for exemption from tax in respect of the vehicle covered by Ext.P1 certificate of registration and it is for the Government to take an appropriate decision strictly in accordance with law.

The writ petition is disposed of. No order as to costs.

Sd/-
ANIL K.NARENDRAN, JUDGE

skj

True copy

P.A to Judge