IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 30476 of 2006 (C)

PETITIONER :

PRINCY TRAVELS
REGD. OFFICE: NEAR TOWN HALL, ERNAKULAM NORTH
KOCHI-682018, REP. BY ITS MANAGING PARTNER
E.X.BABY THOMAS.

BY ADVS.SRI.GEORGE THOMAS (MEVADA)(SR.)
SRI.MANU GEORGE KURUVILLA
SRI.AMAL GEORGE

RESPONDENTS :

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1. STATE OF KERALA
REP. BY THE SECRETARY TO GOVERNMENT
PUBLIC WORKS & TRANSPORT DEPARTMENT
GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM.

2. THE TRANSPORT COMMISSIONER,
TRANSPORT COMMISSIONERATE, THIRUVANANTHAPURAM.

3. THE DEPUTY TRANSPORT COMMISSIONER,
ERNAKULAM.

4. THE JOINT REGIONAL TRANSPORT OFFICER,
MATTANCHERRY.

5. THE DEPUTY TAHSILDAR (R.R),
KANAYANNUR TALUK, ERNAKULAM, PIN-682 011.

ADDL.6TH RESPONDENT

6. THE PRINCIPAL, DELTA STUDY,
TOWER ROAD,
FORT KOCHI-682 011

R1 TO 5 BY GOVERNMENT PLEADER SRI.ABHIJETT LESSIL
ADDL.R6. BY ADV. SRI.S.RAJEEV

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 30476 of 2006 (C)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE CLEARANCE CERTIFICATE DATED 28.5.2001 ISSUED BY THE REGIONAL TRANSPORT OFFICER, ERNAKULAM, WITH RESPECT OF CONTRACT CARRIAGE BEARING REGISTRATION NO.KL-7/8411

EXT.P2 : COPY OF THE LETTER DATED 23.7.2004 OF THE 4TH RESPONDENT

EXT.P3 : COPY OF THE PETITIONER'S REPLY DATED 3.8.2004 TO EXHIBIT P2

EXT.P4 : COPY OF LETTER DATED 3.8.2004 OF THE PRINCIPAL, DELTA STUDY, FORT COCHIN, ADDRESSED TO THE 4TH RESPONDENT

EXT.P5 : COPY OF LETTER AND NOTICE DATED 13.1.2005 ISSUED BY THE 4TH RESPONDENT

EXT.P6 : COPY OF MEMORANDUM OF APPEAL DATED 18.1.2005 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT

EXT.P7 : COPY OF THE ORDER DATED 23.5.2005 OF THE 3RD RESPONDENT REJECTING EXHIBIT P6 APPEAL FILED BY THE PETITIONER

EXT.P8 : COPY OF THE MEMORANDUM OF REVISION PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 14.7.2005

EXT.P9 : COPY OF THE ORDER DATED 8.10.2005 OF THE 2ND RESPONDENT

EXT.P10 : COPY OF THE DEMAND NOTICE DATED 28.10.2005, ISSUED BY THE 5TH RESPONDENT, UNDER THE KERALA REVENUE RECOVERY ACT, 1968

EXT.P11 : COPY OF THE ORDER DATED 8.11.2005, OF THE 2ND RESPONDENT GRANTING STYA FOR A PERIOD OF ONE MONTH

EXT.P12 : COPY OF THE NOTICE DATED 2.12.2005 OF THE 2ND RESPONDENT REGARDING THE PERSONAL HEARING PROPOSED TO BE HELD ON 14.12.2005

EXT.P13 : COPY OF THE NOTICE DATED 9.11.2006 OF THE 2ND RESPONDENT REGARDING THE PERSONAL HEARING PROPOSED TO BE HELD ON 21.11.2006

EXT.P14 : COPY OF THE REPRESENTATION DATED 10.11.2006 SUBMITTED BEFORE THE DISTRICT COLLECTOR.

EXT.P15 : COPY OF THE BANKER'S CHEQUE DATED 13.11.2006 FOR RS.3,00,000/- ACCEPTED BY THE 5TH RESPONDENT

EXT.P16 : COPY OF THE PETITIONER'S COVERING LETTER DATED 13.11.2006 ADDRESSED TO THE 5TH RESPONDENT

EXT.P17 : COPY OF THE HEARING NOTE DATED 21.11.2006 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT

EXT.P18 : COPY OF THE ORDER DATED 6.3.2007 OF THE 2ND RESPONDENT REJECTING EXHIBIT P8 REVISION FILED BY THE PETITIONER

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EXT.P19 : COPY OF REGISTRATION PARTICULARS OF VEHICLE BEARING NO.KL-7/8411 AND COPY OF RELEVANT PAGES OF THE REGISTRATION CERTIFICATE, ISSUED BY THE 4TH RESPONDENT

<u>RESPONDENTS' EXHIBITS</u> :

EXT.R4(A) : REPORT OF THE JOINT R.T.O. MATTANCHERRY DT.07/07/04

EXT.R4(B) : REPORT OF THE ASSISTANT MOTOR VEHICLE INSPECTOR DT.21.7.04

EXT.R4(C) : REPORT OF THE SENIOR DEPUTY TRANSPORT COMMISSIONER TAXATION THIRUVANANTHAPURAM DT.28.10.04

EXT.R4(D) : REPORT OF THE WATCHER CHANDRAN DT.12/8/04

/TRUE COPY/

P.A TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.30476 of 2006

Dated this the 26th day of February, 2015

<u>J U D G M E N T</u>

The petitioner, Managing Partner of a registered partnership firm engaged in the plying of contract carriages, has filed this writ petition challenging Ext.P18 order of the 2nd respondent dismissing a revision preferred by him.

2. The short facts of the case are the following. The petitioner was the registered owner of a 1989 model 53 seater contract carriage vehicle. The vehicle was transferred to the additional 6th respondent on 19.05.2001 after converting the same to an educational institution bus. Ext.P1 is the copy of the Clearance Certificate dated 28.05.2001 issued by the Regional Transport Officer, Ernakulam to the effect that, there was no tax liability in respect of the vehicle bearing Registration No.KL-7/8411. After the purchase of the vehicle by the 6th respondent as stated above, the registration particulars were transferred and the vehicle was being used by the additional 6th respondent as an educational institution bus. Later on, in the year 2004, the additional 6th respondent wanted to transfer the vehicle to another institution. At that time, according to the petitioner, as per Ext.P2 letter dated 23.07.2004, the 4th respondent alleged that the vehicle bearing Registration No.KL-7/8411 was owned and possessed by the petitioner and that, the same was used as a contract carriage. Therefore, an

amount of ₹4,69,585/- (Rupees Four lakh sixty nine thousand five hundred and eighty five only) was demanded as tax for the period from 01.06.2001 to 30.09.2004. The tax was demanded at the rate applicable to a contract carriage.

3. The petitioner replied to Ext.P3 pointing out that, the vehicle had already been transferred to the additional 6th respondent with effect from 19.05.2001 and that he had no connection with the vehicle. It was also pointed out in Ext.P3 that, the information given by the new Principal of the 6th respondent, on the basis of which the action was initiated was actually incorrect and that, the vehicle was actually being used for educational purposes by the school. The issue was further clarified by the Principal of the 6th respondent by issuing Ext.P4 letter. Therefore, it is contended that the demand of tax from the petitioner was unjustified. Since the vehicle was registered in the name of the 6th respondent, the tax of the vehicle was to be paid by the registered owner. However, without properly verifying the facts, by Ext.P5, the tax was again demanded from the petitioner.

4. The petitioner aggrieved by Ext.P5, preferred Ext.P6 appeal to the 3rd respondent. By Ext.P7, the appeal was rejected. Therefore, the petitioner preferred Ext.P8 revision to the 2nd respondent. However, the revision has also been rejected by Ext.P18 order of the 2nd respondent. The petitioner has filed this writ petition challenging the said order.

5. According to Sri.George Thomas Mevada, the learned Senior Counsel who appears for the petitioner, there is absolutely no evidence or material to justify a conclusion that the petitioner had been operating the vehicle during the relevant period of time. The records show that the vehicle had been transferred to the additional 6th respondent. The additional 6th respondent being the registered owner of the vehicle is the person liable for payment of the tax. In the absence of any evidence to connect the petitioner to the vehicle, it is contended that he has no liability to pay the tax demanded. The learned Senior Counsel further points out that, there is no check report evidencing that the vehicle had been operated by the petitioner at any time. The vehicle was an old one, a 1989 model, and there was no scope for the same to be operated as a contract carriage. For the only reason that the vehicle was not garaged within the premises of the school, there cannot be any presumption that the vehicle was being used by the petitioner and a further presumption that the vehicle was being used as a contract carriage. A decision of this Court reported in ***Standard Motor Union (P) Ltd. v. RTO, Kottayam and Others*** [***1972 KHC 220]*** is also pressed into service, to drive home the point that, the tax liability of the vehicle is squarely on the registered owner. The fact that there was absolutely no evidence to mulct the petitioner with the tax liability has not been taken note of by the authorities in Exts.P7 or P18. Therefore, it is contended that the said proceedings

are all liable to be set aside.

6. Separate counter affidavits have been filed by respondents 3 and 4. According to the counter affidavit of the 4th respondent, the vehicle was transferred to the name of the Principal, Delta Study, Fort Kochi, on 19.05.2001 and altered as an Educational Institution Bus with effect from 01.06.2001. On 28.06.2004, the Principal of the 6th respondent had applied for an Educational Institution Bus permit. The application was allowed. A permit was sanctioned and proceedings were issued to the 6th respondent to produce the current records within one month. In the meanwhile, an enquiry was conducted by the Motor Vehicles Inspector, Mattanchery, whereupon it was reported that, the vehicle bearing Registration No.KL-7/8411 was not operated by the 6th respondent. Therefore, a notice of hearing was issued to the Principal. In reply to the said notice, the Principal submitted Ext.R4(a) letter informing that the vehicle was owned by the petitioner's establishment and that, the same was hired by the school for transportation of the students for the year 2000-01 and 2001-03. It was also noted that the vehicle was not with the school at its premises. Based on the enquiry conducted, the Assistant Motor Vehicles Inspector submitted Ext.R4(b) report. On the basis of the report, proceedings were issued to the petitioner to remit the tax in respect of the period in question. It is also stated that, an enquiry had been conducted by the Senior Deputy Transport Commissioner (Taxation). The report of the enquiry is Ext.R4

(c). The statement of the watchman of the school was also produced, which is Ext.R4(d). Therefore, it is contended that, it was clear from the records produced that the vehicle was actually being operated by the petitioner herein.

7. According to the counter affidavit filed by the 3rd respondent, the vehicle was neither garaged in the school nor maintained by the School. The vehicle was garaged in the office of the petitioner's establishment. Therefore, the transaction was intended only to evade tax. The learned Government Pleader appears for the respondents.

8. Heard. It is no doubt true that, the vehicle was transferred to the additional 6th respondent as admitted by the respondents also. The registration of the vehicle was also transferred to the additional 6th respondent on 19.05.2001. The vehicle was altered to an Educational Institutional Bus with effect from 01.06.2001. On 28.06.2004 when the Principal of the 6th respondent submitted an application for the issue of an Educational Institution permit, she was directed to produce the current records for the purpose of issuing the same. While so, by Ext.R4(b), the enquiry report dated 21.07.2004 it was reported by the Assistant Motor Vehicles Inspector that the vehicle in question was not operated by the additional 6th respondent. Therefore, a notice was issued to the said respondent. Ext.R4(a) is the letter issued by the Principal of the additional 6th respondent. It is stated that, the vehicle in question was owned by the establishment of the petitioner and was

hired by the school for transportation of students during 2000-01 and 2001-02. It has also been intimated that, since the vehicle was not being used by the school for the past two years, they may be exempted from appearing for personal hearing. The stand adopted by the additional 6th respondent in Ext.R4(a) is seen retracted in Ext.P4. What is stated in Ext.P4 is that, on verification of the concerned file of the school it is seen that the vehicle originally belonged to the petitioner but that, the same was transferred to the school with effect from 19.05.2001 and that, the registered owner of the vehicle is the Principal of the additional 6th respondent. Necessary entries have also been made in the RC Book of the vehicle and taxes also paid. However, after 2001-02, due to shortage of students, the vehicle was not being used. It is stated that the Principal being new to the school had written the earlier letter without realising the actual facts. The letter is seen written after almost a month of the issue of Ext.R4(a).

9. According to the learned Senior Counsel for the petitioner, the statements in Ext.R4(a) cannot be taken at face value for the reason that, the Principal had retracted from the said statement. However, a reading of Ext.R4(a) shows that, the Principal was very categoric in her statement that, the vehicle was owned by the petitioner's establishment and that, the same was hired by the school for transportation of students for the year 2000-01 and 2001-02. The said information could not have been obtained other than from the records

maintained by the school especially considering the fact that the Principal was, according to her, new to the school. She very well knew that she was responding to a notice of hearing issued by a statutory authority like the Joint Regional Transport Officer, Mattanchery. It is further stated in Ext.R4(a) that, the 6th respondent had been approached by the petitioner's establishment with a request to transfer the ownership of the said vehicle from the name of the school. It is stated that the school is willing to do so. It is further stated in Ext.R4 (a) that, the school was not using the vehicle for the past two years and that, they were not interested in using the bus again during the future years. Therefore, she has also requested for being exempted from personal appearance. It is too difficult to believe that all the above statements had been made on a mere misconception of the facts. On the contrary, the probability is for Ext.P4 to be the result of an afterthought or an attempt, to cover up the actual state of affairs.

10. Apart from the above, it is worth noticing that, the Assistant Motor Vehicles Inspector had conducted an enquiry and found that the vehicle bearing Registration No.KL-7/8411 was not being plied within the jurisdiction of the Sub RTO, Mattanchery. It was also ascertained that the vehicle was at Aluva. Though strong exception is taken to the statement in Ext.R4(b), I do not find it unnatural for the authorities to have conducted an investigation and ascertained the location of the vehicle especially when it is possible for the same to be identified in

relation to the petitioner, who is admittedly a contract carriage operator. The statement of the watchman Ext.R4(d) is another item of evidence that has been gathered by the authorities. The watchman says that, he was working in the 6th respondent school from the year 2001 onwards. According to him, the school does not have a bus of its own and that the students were being transported by the establishment of the petitioner in the bus bearing Registration No.KL-7/8411. The watchman is the competent person who should be in the know of the state of affairs spoken to by him. It is also worth noticing that, his statement corroborates the statement of the Principal in Ext.R4(a). It is stated by the Principal in Ext.R4(a) letter that the vehicle was being provided by the establishment of the petitioner on contract basis for transportation of the students and teachers. The above statement has been corroborated by the watchman of the school also. Therefore, the conclusion of the 3rd respondent that the vehicle was being used as contract carriage during the relevant period cannot be found fault with. In view of the above, I do not find any infirmity in the conclusion drawn by the 3rd respondent that this was a case in which the vehicle was in fact being operated by the petitioner, even though it stood transferred to the name of the additional 6th respondent.

11. It is true that the vehicle has not been found to be actually engaged in transportation of the students in a check report, as in the

case of other vehicles in Ext.R4(c). However, it is an undisputed fact the vehicle was not being used since 2001-02 and that the same was remaining garaged somewhere else. Ext.R4(c) is of the year 2004. The learned Senior Counsel for the petitioner has placed reliance on a letter issued by the President of the School, Ext.P20, supporting the statements in Ext.P4. However, for the reasons already noticed above, I am not prepared to accept the same.

For the above reasons, I do not find any grounds to interfere with Ext.P18 or to grant any of the reliefs sought for in this writ petition. This writ petition fails and the same is accordingly dismissed.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV