IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 31071 of 2013 (H)

PETITIONER :

BOBAN.K.G., AGED 47 YEARS,
S/O.K P GEORGE, CHETTUPADUKARA,
EDAPPALLY P. O., ERNAKULAM

BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.

RESPONDENTS :

THE REGIONAL TRANSPORT OFFICER,
COLLECTORATE, KAKKANAD, ERNAKULAM,
PIN-682011

BY SENIOR GOVERNMENT PLEADER SMT. M.T. SHEEBA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 31071 of 2013 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:- **TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE GOODS CARRIAGE NO KL7 AD 6673.**

P2:- **TRUE COPY OF THE NATIONAL PERMIT FOR THE VEHICLE NO KL 7 AD 6673.**

P3:- **TRUE COPY OF THE AUTHORIZATION FOR NATIONAL PERMIT ISSUED BY THE REGIONAL TRANSPORT AUTHORITY ON 25/4/2013.**

P4:- **TRUE COPY OF THE ORDER DTD 4/1/2013 PASSED IN REVISION PETITION NO 14/2012 BY THE TRANSPORT COMMISSIONER, THIRUVANANTHAPURAM.**

P5:- **TRUE COPY OF THE DEMAND NOTICE DTD 3/8/2013 ISSUED BY THE RESPONDENT.**

P6: **COPY OF THE ORDER NO.C20/10599/2013 DT 16/10/2013 SIGNED ON 13/01/2014.**

P7: **COPY OF THE COMMUNICATION DT 16/1/2014 ISSUED BY THE RESPONDENT COLLING THE PETITIONER FOR A HEARING.**

P8: **COPY OF THE AGREEMENT DT 30/3/2010 ENTERED INTO BETWEEN THE PETITIONER AND ONE PA SHAHUL.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 31071 of 2013

Dated this the 04th day of August, 2015

<u>JUDGMENT</u>

The petitioner, a registered owner of a goods carriage vehicle bearing registration No. KL07 AD 6673, has approached this Court challenging motor tax arrears liability.

2. The issue gained attention through various proceedings including the proceedings of the Transport Commissioner and the order dated 04.01.2013. The case of the petitioner is that the vehicle was dismantled during the month of December 2009 and he could not surrender the Registration Certificate which was entrusted with the private financier. The Regional Transport Commissioner as per Ext.P4 Order, directed the Regional Transport Officer to verify the service and whereabouts of the vehicle and ordered that if the vehicle is dismantled and is not in existence from December 2009 onwards, the demand of tax will not be legal.

3. Pursuant to the above order, the Regional Transport Officer issued Ext.P6. It is noted in Ext.P6 order that the vehicle was kept idle at Eloor near Popular Mega Motors due

to default of payment to the financier and during December 2010, the vehicle was removed to Kottayam. It is also noted that the present whereabouts of the vehicle is not known.

4. The learned counsel for the petitioner highlights that the vehicle is having national permit and cannot be used for any other purpose. Therefore, it was incumbent on the Regional Transport Officer to enquire about the whereabouts and service details of the vehicle. It is also submitted that without making any such enquiry, he could not have ordered payment of tax from 01.04.2010 onwards.

5. The issue, in this regard, is essentially about arrears of motor tax from 2008 onwards. The liability, first time was raised against the petitioner in the year 2010. The petitioner had earlier approached this Court in W.P(C).No. 34213/2010. This Court directed the petitioner to remit the amount in eight instalments. It appears that the petitioner, by virtue of above judgment, has paid the amount after March 2010.

6. As the fact now remains, the vehicle is not traceable. In such circumstances, this Court is of the view that in the absence of contrary finding that the vehicle is otherwise available, matter requires finality. This Court is of the view, since issue originated for arrears from 2008 onwards and the

petitioner has paid the amount under duress by the directions of this Court, the petitioner should be given the benefit of Circular No. 2/2015.

7. Considering the facts and circumstances, the following conditions are issued:

i) The petitioner shall file an affidavit before the respondent that the vehicle has been dismantled. This shall be accepted as a proof of dismantling the vehicle.

ii) Since the arrears are 2008 onwards, the same shall be calculated as a liability and the petitioner shall be permitted to settle the liability as one time settlement in terms of circular No. 2/2015. The payment already effected shall be given credit to the petitioner.

iii) If the petitioner has made an excess of the payment based on the payment already effected, no refund need be ordered. However, the amount already deposited is less than liability under the above Circular, the petitioner shall make further payment to discharge the liability under the OTS.

iv) Affidavit shall be filed within a period of two weeks from the date of receipt of a copy of this judgment.

v) Necessary orders shall be passed within a period of one month from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Sd/-
A. MUHAMED MUSTAQUE, JUDGE

bpr