HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.5495 of 2000

ORAL ORDER: *(Per Hon'ble Sri Justice S.V.Bhatt)*

The petitioners pray for Writ of Certiorari to call for the records leading up to and inclusive of Memo No.39636/D2/95 dated 12.03.1999 of the 3rd respondent and proceedings R.No.6178/A2/93 dated 01.08.1994 of the 2nd respondent and demand notice No.2084/B1/93 dated 06.09.1993 of the 1st respondent, demanding Rs.43,760/- towards difference of tax between mofussil service route and town service route for the year 1991-92, and quash the same, as illegal and without jurisdiction.

From the prayer, it is evident that the 1st respondent through demand notice No.2084/B1/93 dated 06.09.1993 levied and demanded from the petitioner difference of tax of Rs.43,760/- allegedly due to classification of mofussil service route as town service route. The premise for issuing the impugned demand is that the subject permit is one of mofussil route but not a town service route.

Before adverting to the submissions of learned counsel made at Bar, we deem it proper to refer to the permit which is subject matter of the writ petition. The 1st respondent through permit dated 06.02.1990 granted stage carriage permit under Rule 174(i) of the Andhra Pradesh Motor Vehicles Rules, 1989 to operate stage carriage trips from Secunderabad Station to Bibinagar (Uppal, Ghatkesar, Aushapur) and as it is, the permit does not appear to be a mofussil permit.

The learned Government Pleader, at the time of hearing, fairly states that the very reading of the permit shows that the permit is a town service permit and it is difficult to demonstrate how the instant permit can be treated as mofussil permit.

The learned counsel appearing for the petitioners places strong reliance upon the decision in **L.ROYAL REDDY AND OTHERS V. GOVERNMENT OF A.P., AND OTHERS** and the order dated 23.02.2012 in W.P.No.10031 of 2000. to contend that the demand of difference of tax is held in similar circumstances, as illegal and without jurisdiction. It is his submission that the case on hand levies difference of tax treating the permit as mofussil permit and there is no authority to collect such difference of tax by the respondents.

The short point for consideration is whether the 1st respondent is right in treating the permit dated 06.02.1990 as a mofussil service permit and demand difference of tax from the petitioners.

The learned Government Pleader was fair enough to state that a bare reading of permit dated 06.02.1990 shows that the subject permit is a mofussil permit. Once the very basis of the permit is accepted by the learned Government Pleader as a town service permit, on the fact situation of this case, the writ petition is ordered by setting aside the impugned proceedings. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date: 11.06.2015

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