IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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W.P. No.15545 of 2009

Between:

G.Munawar … Petitioner

And

The Deputy Transport Commissioner,

And Secretary, Regional Transport Authority,

Chittoor. … Respondent

JUDGMENT PRONOUNCED ON 28.09.2015

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THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers

may be allowed to see the Judgments? :

2. Whether the copies of judgment may be

marked to Law Reporters/Journals. :

3. Whether their Ladyship/Lordship wish to

see the fair copy of the Judgment? :

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

W.P. No.15545 of 2009

ORDER: (Per the Hon'ble Sri CKR, J)

This writ petition has been filed questioning the demand notice in R.No.26305/A2/2009, dated 27.09.2009 wherein demanded to pay difference of tax of Rs.2,05,800/- for Q.E., 30.09.2009 for the vehicle bearing No.TN24X0627.

At the time of hearing, it is brought to our notice about the judgment of this Court reported in the case of **K.SRINIVAS v. GOVERNMENT OF ANDHRA PRADESH AND OTHERS** wherein it is held at para No.41 as follows:

> "Item 4(v) of the Schedule prescribes, under clauses (a) and (aa), the rate of quarterly tax of Rs.3,675/- for contract carriage vehicles plying under All India Tourist Permit and interstate routes, Under clauses (b) to (e) of item 4(v), for contract carriages plying on intra-State routes, within the home district and one contiguous district, idle contract carriages *etc.,* the rate of quarterly tax ranges between Rs.2,675/- to Rs.630/-. Explanation VI(iv) cannot be so read as to widen the scope of item 4(v) of the Schedule to the Act. An Explanation is not a substantive provision and cannot interfere with or change the enactment or any part thereof. Explanation VI, even after introduction of clause (iv) by Para 4 of G.O. Ms. No.180 dated 17.9.2006, is only to explain item 4(v) of the Schedule. Neither can the Explanation run counter to item 4(v) of the Schedule nor can it travel beyond the scope of Section 3-A of the Act. On a conjoint reading of Section 3-A and its proviso, where a vehicle is misused as a vehicle in another category,
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> it is only the difference, between the tax already levied and collected and the tax which is leviable in respect of such a vehicle falling in another category, which can be levied as additional tax. While the additional tax which can be levied under Section 3-A is the differential tax, clause (iv) of Explanation VI to item 4(v), as inserted by Para 4 of G.O. Ms. No.180 dated 27.9.2006, prescribes the rate of tax of Rs.3,675/-, and not the differential tax. Explanation VI(iv) travels beyond the scope of and is *ultra vires* Section 3-A of the Act and is liable to be quashed."

It is clear from the above, that this Court had declared that explanation VI(iv) is *ultra vires* of Section 3-A of the Act. Further,

a direction was issued at para 61 of the aforesaid judgment to the effect that the *State Government and its officials shall forbear from taking action to levy and collect additional tax under Section 3-A of the Act till a notification is issued in accordance therewith and a machinery is provided by law not only for its adjudication but also for its collection. The amounts, if any, paid by the petitioners pursuant to the interim orders of this Court shall be refunded to them.*

It is stated by the learned counsel that even as on today,

the direction issued at para 61 of the aforesaid judgment has not been complied with by issuing any of the notification.

In that view of the matter, this writ petition is allowed in terms of the judgment referred to hereinabove and thereby the impugned demand is quashed. Consequently, if any amount had already been paid, pursuant to the interim order passed by this Court, shall be refunded.

As a sequel, miscellaneous petitions, if any, stands closed. There shall be no order as to costs.

JUSTICE G.CHANDRAIAH

JUSTICE CHALLA KODANDA RAM

Date: 28.09.2015

LSK