IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18717 of 2015

Date of Decision: 7.9.2015

DCM Textiles, Hisar

....Petitioner.

Versus

Union of India and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. D.V. Sharma, Senior Advocate with
Ms. Shivani Sharma, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus declaring the notification dated 5.11.2004 (Annexure P-2) to the extent it declares 'Private Service Vehicle' to be a transport vehicle if it is not registered in the name of an individual and if declared to be used by him solely for personal purpose having no objects sought to be achieved; for issuance of a writ in the nature of certiorari for quashing the memos dated 14.9.2004 (Annexure P-1) and dated 10.6.2015 (Annexure P-3) and for issuance of a writ of mandamus directing respondents No.2 to 4 to renew the registration of the vehicle and treat the vehicles of the petitioner as 'Private Service Vehicle' as defined under Section 2(33) of the Motor Vehicles Act, 1988 (in short "the Act") and not to charge the passenger tax and to refund the

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passenger tax already charged amounting to ₹ 2,21,687/- and the excess road tax of ₹ 73,225/- along with interest @ 18%.

2. The petitioner owns and operates a Textile Mill under the name and style of DCM Textiles, Hisar. It had purchased three vehicles, i.e. two Mahindra Bolero and one Eicher 10.90L bearing registration No. HR-39C-3573. The said vehicles are being used as a welfare measure for its employees for use between their residences and the Textile Mill and no hire or reward is being charged from them. The vehicles are not used for any commercial purpose and, therefore, are covered under the definition of "Private Service Vehicle" under Section 2(33) of the Act. When the petitioner registered the said vehicles with R.T.O. Hisar, it was informed that the vehicles would be registered as "transport vehicles" and not as "Private Service Vehicles" and in this way, the petitioner was forced to pay the passenger tax of ₹ 2,21,687/-. Respondent No.4 issued a memo dated 14.9.2014 (Annexure P-1) regarding registration of vehicle as a private vehicle. As per the said memo, the vehicles having seating capacity more than 7 persons including the driver intended to be registered in the name of the company are to be registered as a transport vehicle and the remaining vehicles intended to be registered in the name of individuals can be got registered either transport vehicle or non-transport vehicle depending upon the end use of vehicle as declared by the person. The Central Government vide notification dated 5.11.2004 (Annexure P-2) issued under Section 41(4) of the Act specified the type of motor vehicles as mentioned in columns (1) and (2) of the table given in the notification. According to the petitioner, the said notification is contrary to the Act. At the time of renewal of the registration of the vehicles owned by the petitioner, the RTO, Hisar

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informed that the registration of the vehicles can be renewed as transport vehicles and not as private service vehicles in terms of the circular dated 10.6.2015 (Annexure P-3). The petitioner moved a representation dated 22.7.2015 (Annexure P-4) to respondent No.5 that the vehicles in question are not being used for commercial purpose and fall within the definition of Section 2(33) of the Act which defines private service vehicles, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has sent a representation dated 22.7.2015 (Annexure P-4) to respondent No.5, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.5 to decide the representation dated 22.7.2015 (Annexure P-4), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

September 7, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**

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