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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1039 of 2016**

- Sharat Kumar Barpanda, S/o Shri Kunjbihari Barpanda, Aged About 50 Years R/o Pikemall, Bargarh, Orrissa

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Transport, Indrawati Bhavan, Mantralaya, New Raipur District Raipur Chhattisgarh
2. State Transport Authority, Mahanadi Bhavan, New Raipur District Raipur Chhattisgarh
3. Secretary, State Transport Authority Chhattisgarh, Raipur, Mahandi Bhavan, New Raipur Chhattisgarh
4. Regional Transport Officer, Taxation Authority/ Registration Authority, Raipur Chhattisgarh
5. Office In Charge Transport Flying Squad, Raipur, District Raipur Chhattisgarh
6. Regional Transport Office, Bargarh Orissa

---- Respondents

For Petitioner	:	Shri Shailendra Kumar Bajpai, Advocate
For Respondents/State	:	Shri Shashank Thakur, GA

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****01/09/2016**

Petitioner is aggrieved by the demand raised by the Regional Transport Officer-cum-Taxation Authority, Raipur, directing him to make payment of motor vehicle tax at Rs.4, 63,320/-, penalty of Rs.4,16,130/- and interest amounting to Rs.1,68,168/- totalling Rs.10,47,618/- on the ground that the petitioner is plying a Deluxe service vehicle.

2. Indisputably, the petitioner is holding an inter State regular permit for the route Patnagarh to Raipur on his vehicle bearing registration No.OR-17-J-9244. The regular permit has been issued by the concerned authority of the State of Orissa and has been duly countersigned by the competent authority in the State of Chhattisgarh.

3. Admittedly, the petitioner has obtained a permit which is classified as Ordinary Stage Carriage services and not Express or Deluxe services.

4. On some complaint being made, the Traffic Inspector posted in the concerned route inspected the petitioner's vehicle and submitted a report Annexure R/2, to the effect that petitioner is plying a deluxe service, on the basis of which, the R.T.O. issued notice to the petitioner on 25.08.2015 and thereafter, the impugned demand notice has been issued.

5. It is argued that even accepting the inspection report as it is, the petitioner's vehicle would not fall within the classification of Deluxe Stage Carriage services, as provided under Rules 116 of the Rules of 1994, therefore, the petitioner is not liable to pay tax applicable to a Deluxe vehicle.

6. Per contra, learned State counsel would submit that the impugned demand has been raised after verification of the vehicle, which is a finding based on physical inspection and that the petitioner could not have submitted any reply, therefore, there was no necessity of fresh assessment for imposition of tax.

7. To consider as to whether the petitioner's vehicle would be assessable to tax as a Deluxe Stage Carriage services, provisions contained under the Rules of 1994, Central Motor Vehicle Rules, 1989 (Central Rules for brevity) and the Chhattisgarh Motor Vehicle Taxation Act, 1991 (for short 'the Taxation Act') need reference.

8. Under Rule 116 of the Chhattisgarh Motor Vehicles Rules 1994 (hereinafter referred to as 'the Rules of 1994'), Classification of Stage Carriage services is provided in the following manner:

“116. Classification of Stage Carriage Services --- (1) Stage carriage services shall be classified as Ordinary, Express and Deluxe. The Express and Deluxe services shall not ordinarily have stage at less than 50 Kms. apart unless the permit granting authority specifically allows otherwise.

(2) The State Transport Authority may, by general or special order, direct that vehicles plying as Express and Deluxe services shall be painted in such colours different from the colour of vehicles plying an ordinary service or may have such special markings, as the State Transport Authority may specify and no Motor Vehicle than those operating as Express or Deluxe service shall be painted or carry marking in the manners so specified.”

9. Rule 128 of the Central Rules provides for Tourist vehicles other than motor cabs. Sub-rule 10 (ii) thereof makes provision for seats and seating arrangements, which reads as under :-

“(10) Seats and seating arrangements.-----

(ii) Seating layout shall be [two and two or one and two or one and one] on either side, all seats facing forward, with a clear gangway of at least 355 millimetres width at the centre. Each passenger seat shall have a minimum area of 447 millimetres x 457 millimetres and an arm rest on both sides and seat back of full height. ”

10. Rule 158 of the Rules 1994 makes provision concerning the Seating Room. Sub-rule 2 thereof provides that the specifications for tourist vehicle, as provided for under Rule 128 of the Central Rules, shall apply to the Deluxe buses. Column – V of the table under sub-rule (3) of Rule 158 of the Rules 1994 provides that arrangement of seats in Express Vehicle shall be strictly in accordance with Rule 128 of the Central Rules by the registering authority. The rate of tax applicable to an Air-conditioned or Deluxe or Express services is provided under Entry No.IV (I) of the first schedule of the Taxation Act.

11. A conjoint reading of the above referred provisions would manifest that Stage Carriage services are either Ordinary or Express and Deluxe. The seating arrangement of a tourist vehicle provided under Rule 128 of the Central Rules applies to the Deluxe buses, i.e., Deluxe services by virtue of Rule 158 (2) of the Rules of 1994 and the rate of tax per seat in respect of such Deluxe services are provided in the first Schedule of the Taxation Act. Therefore, in order to make any permit holder liable to pay tax per seat applicable to a Deluxe bus, the vehicle has to provide for seating arrangement and other features in accordance with Rule 128 of the Central Rules and Rule 158 (2) & (3) of the Rules of 1994. However, on perusal of the Traffic Inspector's verification report, it would clearly appear like noon day that the petitioner's vehicle has seating capacity of 2 x 3 and not two and two or one and two or one and one on either side, as provided under Rule 128(10)(ii) of the Central Rules.

12. When the petitioner's permit is not issued for Deluxe service nor the vehicle is designed to have seating arrangement of a deluxe vehicle, the petitioner is not liable to pay tax for Deluxe services, therefore, the impugned demand deserves to be set aside.

13. It also requires notice that the impugned demand has been raised only on the basis that the petitioner's vehicle has push back seats or reclining seats, therefore, the vehicle falls within the definition of a Deluxe vehicle. I have examined the provisions quoted above to ascertain as to whether a service can be classified as Deluxe service only on the ground that the seats in the vehicle have push back or reclining facility. It appears, there is no such provision that only on such facility being available in a vehicle it can be classified as a Deluxe service. What Rule 128 (iii) of the Central Rules provides for is only one of the requirements of seating arrangement for a tourist vehicle and that is not the only requirement for classifying a vehicle as tourist vehicle.

14. Even otherwise, the impugned demand notice has been issued without making any assessment in accordance with the procedure prescribed under Rule 8-A of the Taxation Act.

15. For all the above stated reasons, the petition is allowed and the impugned demand notice is hereby set aside.

Sd/-

Judge

Prashant Kumar Mishra

Anjani