THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.20424 of 2016

ORDER:

The petitioner is a company registered under the Companies Act, 1956 engaged in the business of transport of coal and Gypsum having a unit in S.R. Puram Village, Vadamalpet Mandal, Chittoor District, Andhra Pradesh.

2. The petitioner owns heavy goods vehicles, some of which are registered in Tamilnadu and others in Telangana State. The vehicles registered in Telangana State have national permits, and they are twelve in number and vehicles registered in Tamilnadu are covered by counter-signature permits of Andhra Pradesh.

3. The petitioner used to transport Gypsum and Coal from Ennur Port of Tamilnadu State to Kadapa, Anantapur and Kurnool Districts in Andhra Pradesh State. But recently, the said minerals were being imported from Krishna Patnam Port in Nellore District of Andhra Pradesh since there was shortage of berths at Ennur Port, Tamilnadu. The petitioner therefore needs to transport the said minerals from Krishna Patnam Port to Kurnool, Kadapa and Anantapur districts all of which are within the State of Andhra Pradesh. This according to petitioner is a temporary need and is a seasonal business and involves making intra-State trips within the State of Andhra Pradesh, since both loading and unloading points are in the State of Andhra Pradesh.

4. Since all its vehicles are registered either in Tamilnadu or Telangana State covered by counter-signature permits of Andhra Pradesh or national permits and do not enable petitioner to do intra-State transportation business, the petitioner sought issuance of temporary permits under Section 87 of the Motor Vehicles Act, 1988 **[for short, 'the Act']**, invoking Clause (b) thereof, by making applications to 3rd respondent on 18.03.2016, 19.03.2016 and 02.04.2016.

5. The 3rd respondent then wrote a letter to 2nd respondent on 07.04.2016 requesting instructions on the action to be taken on petitioner's applications for grant of temporary permits under the Andhra Pradesh Motor Vehicles Taxation Act, 1963.

6. However, the 2nd respondent addressed a letter dt.12.05.2016 **[for short, the 'impugned proceedings']** to petitioner quoting Rule 90 (7) of the Central Motor Vehicles Rules, 1989 which prohibit picking up or setting down goods between two points situated in the same State other than the home State, and also quoting a notification No.31 dt.04.06.1975 as reasons for declining to issue temporary permits to petitioner in the State of Andhra Pradesh.

7. The petitioner assails the same on the ground that it is contrary to Section 87 (1) of the Act which permits issuance of temporary permits and contends that both Rule 90 (7) of the Central Motor Vehicle Rules, 1989 and notification No.31 dt.04.06.1975 have no application and cannot over-ride Section 87 of the Act which permits issuance of temporary permits for seasonal business or for temporary need.

8. Counter-affidavit is filed by 3rd respondent admitting that under Section 87 (1) temporary permits can be granted by a Regional Transport Authority or a State Transport Authority for a period not exceeding four (04) months subject to the conditions stipulated therein. However, it is stated that though G.O.Ms.No.68 Transport, Roads & Buildings (Tr.-I) dt.13.04.2006 prescribes payment of quarterly tax leviable on various classes of motor vehicles in the State of Andhra Pradesh, since petitioner's vehicles belong to other States, petitioner would be issued temporary permits provided the petitioner pays motor vehicle tax as prescribed in G.O.Ms.No.231 Transport, Roads & Buildings (TR.I) Department dt.18.08.2008.

9. The 3rd respondent contends that petitioner may obtain temporary permits for a period not exceeding seven (7) days and for a period not exceeding thirty (30) days by paying the tax prescribed for the said periods in G.O.Ms.No.231 Transport, Roads & Buildings (TR.I) Department dt.18.08.2008 at the Border Check Posts / Office of the Deputy Transport Commissioner, Nellore.

10. The learned Government Pleader for Transport (Andhra Pradesh), appearing for respondents, reiterated the said contentions.

11. The counsel for petitioner on the other hand pointed out that petitioner requires temporary permits for period of at least four (04) months and is willing to pay the tax prescribed therefore under G.O.Ms.No.68 Transport, Roads & Buildings (Tr.-I) dt.13.04.2006, and it is not open to respondents to insist that for such period of four (04) months or more for which petitioner requires temporary permits, petitioner should be compelled to pay tax on a weekly basis or thirty (30) days basis as prescribed in G.O.Ms.No.231 Transport, Roads & Buildings (TR.I) Department, dt.18.08.2008.

12. I have noted the contentions of both sides.

13. Section 87 (1) of the Act permits issuance of temporary permits to applicants for the purpose of seasonal business or to meet a particular temporary need. It states :

*"**87. Temporary permits** : - (1) A Regional Transport Authority and the State Transport Authority may without following the procedure laid down in Section 80, grant permits, to be effective for a limited period which shall, not in any case exceed four months, to authorize the use of a transport vehicle temporarily –*

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings; or

(b) for the purpose of a seasonal business; or

(c) to meet a particular temporary need; or

(d) pending decision on an application for the renewal of a permit;

and may attach to any such permit such conditions as it may think fit :

Provided that a Regional Transport Authority or, as the case may be, State Transport Authority may, in the case of goods carriages, under the circumstances of an exceptional nature, and for reasons to be recorded in writing, grant a permit for a period exceeding four months, but not exceeding one year."

14. Since petitioner states that on account of lack of shipping berths at Ennur Port in Tamilnadu, Coal and Gypsum imported have to be transported by petitioner from Krishna Patnam Port in Nellore District temporarily, it cannot be disputed that petitioner needs temporary permits and his case clearly falls under Clauses (b) and (c) of Section 87. This is not seriously contested by the respondents. Therefore, there needs to be decided the question of applicable tax on the temporary permits sought by petitioner.

15. The counsel for petitioner categorically asserted that it requires temporary permits for a minimum period of four (04) months and is willing to pay quarterly tax as per G.O.Ms.No.68 Transport, Roads & Buildings (Tr.-I) dt.13.04.2006, prevalent in the State of Andhra Pradesh in respect of motor vehicles used in the said State for transport of goods.

16. This G.O. is issued under Section 3 of the Andhra Pradesh Motor Vehicles Taxation Act, 1963 which enables the 1st respondent by notification to prescribe the tax to be levied on every motor vehicle used or kept for use in a public place in the State and also the periods for which the tax is levied. Under G.O.Ms.No.68 Transport, Roads & Buildings (Tr.-I) dt.13.04.2006, the 1st respondent has prescribed the maximum quarterly tax leviable on various classes of motor vehicles used or kept for use in a public place in the State of Andhra Pradesh and the rates to be charged therefor.

17. However, sub-Section (4) of Section 4 entitles the 1st respondent to specify by notification the tax to be collected in respect of vehicles for which a temporary license is issued for the period not exceeding thirty (30) days at a time. It is for these classes of cases that G.O.Ms.No.231 Transport, Roads & Buildings (TR.I) Department, dt.18.08.2008 is issued by 1st respondent. Under this G.O., the 1st respondent has specified the tax payable on vehicles used or kept for use in the State of Andhra Pradesh which are operating on temporary permits for a period not exceeding seven (7) days and for a period not exceeding thirty (30) days.

18. The intention of 1st respondent is obvious i.e., that applicants for temporary permits for a period not exceeding seven (7) days or for not exceeding thirty (30) days should pay tax under G.O.Ms.No.231 Transport, Roads & Buildings (TR.I) Department dt.18.08.2008.

19. But it cannot be said that the intention of 1st respondent is that persons who seek temporary permit like the petitioner for a minimum period of four (04) months under Section 87 (1) of the Act should pay tax computed on weekly basis or monthly basis under G.O.Ms.No.231 Transport, Roads & Buildings (TR.I) Department dt.18.08.2008 instead of the quarterly tax leviable under G.O.Ms.No.68 Transport, Roads & Buildings (Tr.-I) dt.13.04.2006. It is certainly not the intention of 1st respondent that an applicant for a temporary permit for a minimum period of four (04) months or above should obtain temporary permits of duration seven (7) or thirty (30) days and keep renewing the same after their expiry while paying motor vehicle tax each time at the rates specified in G.O.Ms.No.231 Transport, Roads & Buildings (TR.I) Department dt.18.08.2008.

20. It is not the case of respondents that G.O.Ms.No.68 Transport, Roads & Buildings (Tr.-I) dt.13.04.2006 stood superseded by G.O.Ms.No.231 Transport, Roads & Buildings (TR.I) Department dt.18.08.2008, and that even in respect of vehicles which seek temporary permits for a period longer than thirty (30) days, it is only G.O.Ms.No.231 Transport, Roads & Buildings (TR.I) Department, dt.18.08.2008 which would apply.

21. In my considered opinion, G.O.Ms.No.68 Transport, Roads & Buildings (Tr.-I) dt.13.04.2006 and G.O.Ms.No.231 Transport, Roads & Buildings (TR.I) Department dt.18.08.2008 issued by 1st respondent operate in different fields. While the latter G.O would operate only in respect of temporary permits for periods not exceeding seven (7) days or thirty (30) days only, and would not apply where temporary permits are sought under Section 87 of the Act for a minimum period of four (04) months or above for which G.O.Ms.No.68 Transport, Roads & Buildings (Tr.-I) dt.13.04.2006 would apply.

22. Therefore, the Writ Petition is allowed and the impugned proceedings dt.12.05.2016 issued by 2nd respondent is set aside; and the 2nd respondent is directed to issue temporary permits to petitioner under Section 87 (1) of the Act for a minimum period of four (04) months subject to payment of motor vehicle tax by petitioner as per G.O.Ms.No.68 Transport, Roads & Buildings (Tr.-I) dt.13.04.2006. No order as to costs.

23. This exercise shall be completed within a period of two (02) weeks from the date of receipt of a copy of this order.

24. Miscellaneous applications, pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-08-2016

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