HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1547 of 2016

Date: 21.06.2016

Between:

Sri D.Prabhu Kishore S/o Nageswara Rao,
Aged about 56 years, H.No.4/60, Nawabpet,
Nellore, Nellore District.

….. Petitioner

And

The State of A.P., rep. by its Principal
Secretary, Transport Department,
Secretariat Buildings, Hyderabad and others.

…..Respondents

The Court made the following:

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.1547 of 2016

PC: (Per the Hon'ble Sri Justice P.Naveen Rao)

This writ petition is filed praying to grant the following relief:

"To issue a writ order or direction more particularly one in the nature of writ of mandamus, declaring the action of the 3rd respondent demanding the tax Rs.5,16,100/- and penalty Rs.2,48,250/- in total Rs.7,64,350/- vide proceedings R.No.AP026/2449/2013, dated 30.03.2015 and conforming the same by the 2nd respondent in his proceedings R.No.AP026/2449/ 2013, dated 16.09.2015 as illegal, arbitrary, malafide, contrary to law and liable to be set aside, consequently direct the 3rd respondent to accept the stoppage report dt.14.07.2014 submitted by the petitioner."

2. Heard Sri S.A.K.Mynoddin, learned counsel for petitioner, learned Government Pleader for Transport (AP) for respondents 1 to 3 and Sri P.Durga Prasad, learned counsel for respondent no.4.

3. Shorn of details, the facts are in narrow compass. Petitioner is the owner of the vehicle bearing registration No.AP-26-W-2449. The vehicle of the petitioner was hired by APSRTC. The hire purchase agreement was completed in June, 2008 and vehicle came into the possession of petitioner. On 14.07.2014, petitioner submitted stoppage report form to the Regional Transport Authority, Nellore, informing the authority about the stoppage of operations of the vehicle. The said application was not accepted. On 15.07.2014, show cause notice was issued demanding payment of tax and penalty, total amount of which comes to Rs.7,64,350/-. Considering the explanation submitted by the petitioner against the show cause notice, demand notice was issued on 30.03.2015. Aggrieved thereby petitioner filed appeal. The appellate authority by his order dated 16.09.2015 rejected the appeal affirming the demand notice. Hence, this writ petition.

4. Learned counsel for petitioner contends that during the

subsistence of hire purchase agreement, the vehicle met with accident and motor accident claims were pending, and on that ground the RTC refused to grant NOC and since NOC was not granted, petitioner could not apply to the transport authority informing the stoppage of operations of the vehicle. As soon as NOC was issued, he applied to the transport authority informing about the stoppage of operations. He, therefore, contends that the demand made for payment of tax is illegal. When vehicle was not in operation, petitioner is not liable to pay the road tax. The provisions relied upon by the respondent authorities in rejecting the request of the petitioner, have no application. No liability can be fixed on the petitioner when vehicle was not in use.

5. Learned Government Pleader submits that as stoppage of vehicle was not furnished till 2014, it is deemed that the vehicle was in use and owner of the vehicle is liable to pay tax and therefore, there is no illegality in the demand made on the petitioner. Admittedly, the vehicle was released from hire purchase agreement by the APSRTC in the year 2008 and it was in his possession and from the year 2008 to 2014, petitioner did not submit the stoppage of use of vehicle. Every transport vehicle is liable to pay tax as determined periodically unless an intimation was given to the competent authority informing that the vehicle was not put to use.

6. As seen from the letter of Regional Manager, APSRTC, Nellore, dated 02.07.2014, the vehicle was withdrawn from hire purchase agreement w.e.f. 05.06.2008. As a consequence to the withdrawal of the vehicle from the hire purchase agreement by the RTC, the liability shifts on the petitioner to pay motor vehicle tax. Petitioner can seek exemption from payment of motor vehicle tax only if he applies to the competent authority about the suspension of operations of the vehicle. From the reading of the stoppage report form filed by the petitioner, against column-6, petitioner has written the date of stoppage as 14.7.2014, the date on which the said application was filed.

7. The relevant provisions read as under:

7.1. Section 3 of the A.P. Motor Vehicles Taxation Act, 1963:

> **S.3 : Levy of tax on Motor Vehicles**:-
>
> (1) The Government may, by notification, from time to time, direct that a tax shall be levied on every motor vehicle **used or kept for use, in a public place** in the State.

7.2. Rule 12-A of the A.P. Motor Vehicles Taxation Rules, 1963:

> **12-A. Liability for payment of tax in respect of motor vehicles kept for use**: "For the purpose of Section 3 of the Act, a motor vehicle shall be deemed to be kept for use and is liable to tax unless the registered owner or the person having possession or control of the motor vehicle intimates in writing to the Licensing Officer before the commencement of the quarter for which tax is due that the motor vehicle shall not be used after expiry of the period for which tax has already been paid. The Licensing Officer shall, on receipt of the intimation, acknowledge its receipt."

8. Section 3 of the A.P. Taxation Act, 1963 mandates levy of tax on every motor vehicle used or kept for use, in a public place in the State.

9. Rule 12-A of the A.P.Motor Vehicle Taxation Rules, explains that for the purpose of Section 3 of the Act, a motor vehicle is deemed to be kept for use and liable to pay tax unless the registered owner intimates in writing to the Licensing Officer before the commencement of quarter for which tax is due that the motor vehicle would not be used after expiry of quarter period, for which tax is already paid.

10. Admittedly, petitioner failed in his primary responsibility to inform the Transport Authority, after the vehicle came into his possession, his intention not to use the vehicle. Unless petitioner files an application informing his intention not to use the vehicle and the same is

acknowledged by the competent authority, he is liable to pay tax for the period until such intimation is made. On plain reading of the provision, it does not envisage submission of No Objection Certificate/Clearance Certificate as a condition precedent for filing such application. Even otherwise, no endeavour was made by the petitioner to inform the competent authority about the stoppage of use of the vehicle.

11. In the absence of such intimation and in view of the statutory mandate, we do not see any illegality or irregularity in the demand made by the competent authority for payment of arrears of tax due and the penalty thereon. We see no merit in the writ petition and is accordingly dismissed.

Miscellaneous petitions if any pending shall stand dismissed. No costs.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date: 21.06.2016
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HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO

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