In the High Court of Judicature at Madras

Dated : 04.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.30885 of 2017 & WMP.No.33810 of 2017

K.Rangasamy ...Petitioner

Vs

The Regional Transport Officer,
Coimbatore (North), Coimbatore
District. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned demand notice of the respondent in R.No.31973/A2/2016 dated 31.10.2017, quash the same and consequently direct the respondent herein to accept the rate of tax previously collected by the respondent of Rs.500/- per seat per quarter in respect of the petitioner's vehicles bearing Regn.Nos.TN-38-BE-4406 and TN-38-BE-4365.

For Petitioner : Mr.A.Ganesan
For Respondent : Mr.R.Rajeswaran, SGP

ORDER

Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is running a travel agency called as Thangamman Travels. He purchased two vehicles and registered them with the respondent herein bearing Regn.Nos.TN-38-BE-4365 and TN-38-BE-4406. After the vehicles were registered, the petitioner entered into a lease agreement with one M/s.Robert Bosch Engineering and Business Solutions Limited to ply the vehicles for the use of its employees to pick up and drop them from their respective residences.

3. The petitioner would contend that the said two vehicles are being used as private service vehicles in the said company and that the respondent granted private service vehicle permit to both the vehicles. Considering the lease agreement entered into by the petitioner with the said company, the petitioner is stated to have been paying quarterly tax at the rate of Rs.500/- per seat per quarter.

4. By the impugned notice, the respondent treated both the vehicles as contract carriages and tax at the rate of Rs.3,000/- per seat per quarter has been demanded and it is stated that collection of tax at the rate of Rs.500/- per seat per quarter is incorrect and therefore, the petitioner has been called upon to pay the difference.

5. The petitioner has challenged the impugned notice primarily on two grounds. Firstly, it is contended that the respondent, without issuing any show cause notice, has straightaway issued the impugned demand and that the petitioner had no opportunity to put forth their contentions. Hence, the impugned notice is in violation of the principles of natural justice. Secondly, it is contended that the impugned demand is barred by limitation in view of Section 15A of the Tamil Nadu Motor Vehicle Taxation Act, 1974. In support of this contention, reliance is placed on the decision of this Court in the case of T.R.Varadarajan Vs. RTO, Virudhunagar [reported in 2004 WLR 772]. Therefore, it is submitted that the impugned demand is liable to be quashed.

6. The learned Special Government Pleader, on the other hand, would submit that in the impugned demand, reasons have been assigned after taking into consideration the lease agreement between the petitioner and the said company, that the ownership had not been transferred and that the private service vehicle permit should not have been granted.

7. After hearing the learned counsel for the parties and perusing the materials placed on record, this Court is of the considered view that when the respondent seeks to demand higher rate of tax by treating the vehicles as non private service vehicles, the petitioner should have been afforded an opportunity to put forth their objections. This is more so when the petitioner raised a plea of limitation and contended that the claim is barred by Section 15A of the said Act. Hence, this Court is convinced that the impugned demand notice has been issued in violation of the principles of natural justice. But, considering the facts of the case, it may not be necessary for this Court to set aside the impugned demand notice and it would suffice to direct the petitioner to treat the impugned demand as a show cause notice and submit their objections, after which, the respondent should afford an opportunity of personal hearing and pass a speaking order. The petitioner is at liberty to raise all the issues before the respondent in the objections to be filed including the plea of limitation and the decision, which the petitioner seeks to rely upon.

8. Accordingly, the writ petition is disposed of by directing the petitioner to treat the impugned demand notice as a show cause notice and submit their objections within 15 days from the date of receipt of a copy of this order. On receipt of the reply, the respondent shall afford an opportunity of personal hearing to the authorized representative of the petitioner, consider all the issues and pass a speaking order on merits and in accordance with law. Till such decision is arrived at, the respondent shall not initiate any action to recover the difference in tax as demanded in the impugned notice. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To
The Regional Transport Officer, Coimbatore (North), Coimbatore District.

WP.No.30885 of 2017&
WMP.No.33810 of 2017

SJ(CO)
TR(02/01/2018)