In the High Court of Judicature at Madras

Dated : 13.7.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice M.DHANDAPANI

Writ Appeal No.614 of 2017

A.M.Velu Mudaliar ...Appellant

Vs

1.The Transport Commissioner,
(State Transport Authority),
Chepauk, Chennai.

2.The Regional Transport Officer,
Vellore, N.A.A.District.

3.The Regional Transport Officer,
Tirupathi, Andhra Pradesh ...Respondents

APPEAL under Clause 15 of the Letters Patent against the order dated 12.1.2017 made in W.P.No.2820 of 2003.

For Appellant : Ms.P.Vedavalli
For Respondents 1 & 2 : Mr.P.Shivashanmugasundaram, SGP

JUDGMENT
(Judgment was delivered by NOOTY.RAMAMOHANA RAO,J)

This appeal is preferred against the order passed on 12.1.2017 by the learned Single Judge dismissing the writ petition.

2. The learned Single Judge, upon dismissing the writ petition, had to necessarily vacate the interim stay granted earlier during the pendency of the writ petition and hence, directed the writ petitioner - appellant to pay tax and penalty as demanded by the first respondent within four weeks from the date of receipt of the copy of the said order. We are informed that though the copies were made available and received by the party in the month of February 2017 itself, the tax and penalty amount have not yet been paid.

3. Heard the learned counsel for the appellant for a considerable length of time. However, we are of the opinion that there is no error committed by the learned Single Judge in relying upon the assertion of fact made by the Transport Commissioner in paragraph No.4 of the counter affidavit, the relevant part of it runs as under :

> *"It is further submitted that in this case, the vehicle was covered by valid permit (then valid upto 31.12.1989) but was replaced by another vehicle with effect from 30.12.1989. So, the vehicle in question was not an idle during the period for which tax and penalty were demanded. The Regional Transport Officer, Tirupathi by his letter dated R.No.3092/A1/1992 dated 18.8.1992 reported that the vehicle was not garaged at the place mentioned and that therefore the physical verification report for the vehicle from 25.5.1989 to 31.12.1989 was not possible. Hence, the where about of the vehicle was also not known since the vehicle was not garaged at the address given by*

the petitioner."

4. Further, dealing with all the important contention raised by the writ petitioner that the demand of tax is illegal and arbitrary in view of the intimation was delivered by the writ petitioner with regard to stoppage of the vehicle on 30.9.1988 itself and that he also deposited the documents in the office of the Competent Authority and hence, he is entitled for exemption from payment of tax from 30.9.1988 right up replacement was allowed on 30.12.1989, it is brought out in the counter affidavit that NIL assessment has been made after resumption of the vehicle due to replacement of the vehicle. The admitted position was that the vehicle has stopped plying on 01.10.1988 and the replacement was allowed with effect from 29.12.1989. Though the physical verification report was given for the period from 01.10.1988 to 23.5.1989, since the replacement of the existing vehicle was allowed by another vehicle bearing Regn.No.ATC 2255 with effect from 30.12.1989, tax for the remaining period i.e. beyond 23.5.1989 commencing from 24.5.1989 upto 31.12.1989 was levied.

5. It follows that for the actual period when the originally permitted vehicle has stopped plying and for the duration that it was found to be not plying for the period between 01.10.1988 and 23.5.1989, in fact, no tax was levied or demanded. It is only for the subsequent period i.e. from 24.5.1989 onwards upto 31.12.1989, the tax was levied. The reasons for doing so were set out in the above quoted passage because the physical verification of the vehicle, which is claimed to be lying in Tirupathi in Andhra Pradesh, had

turned futile. The local Transport Officer at Tirupathi had reported that the vehicle is not available at the garage where it was stated to be receiving repairs. Thus, the demand for the period between 24.5.1989 and 31.12.1989 does not appear to suffer from any legal infirmity.

6. We consequently agree with the view expressed by the learned Single Judge in the judgment under appeal and we find no merit in this writ appeal. Accordingly, the above writ appeal is dismissed. No costs.

7. However, the learned counsel for the appellant made a request to allow the writ petitioner - appellant to clear the dues including the penalty in three equal monthly instalments.

8. We consider the request to be reasonable and hence, subject to the writ petitioner - appellant paying the arrears including the penalty amount in three monthly instalments from today i.e. on or before 14.8.2017, 14.9.2017 and 13.10.2017, the respondents may not take any further coercive measures for recovery. However, if any default is committed in paying any of the three equal monthly instalments towards demanded tax and penalty, the respondents are at liberty to proceed further with the matter.

13.7.2017

Internet : Yes

RS

NOOTY.RAMAMOHANA RAO,J
AND
M.DHANDAPANI,J

RS

To
1.The Transport Commissioner, (State Transport Authority), Chepauk, Chennai.
2.The Regional Transport Officer, Vellore, N.A.A.District.
3.The Regional Transport Officer, Tirupathi, Andhra Pradesh

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