IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2017

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THE HON'BLE Mr. JUSTICE M. DHANDAPANI

W.P.No.26796 of 2004 &

W.P.M.P. No.32629 of 2004

P.N.Ramesh ... Petitioner

v.

The Regional Transport Officer,
Salem ... Respondent

Prayer: Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent herein made in R.No.99520/A3/2004 dated 02.08.2004 demanding a sum of Rs.17400 as 1/10th of quarterly tax for a contract carriage in respect of petitioner's spare bus TN.59/N.0993 and to quash the same.

For Petitioner : Mrs. S.Radha Gopalan

For Respondent : Mr. M. Elumalai
Government Advocate

O R D E R

The petitioner challenging the demand notice issued by the respondent wherein, he demanded Rs.17,400/- as difference of tax evaded by the petitioner.

2. The case of the petitioner is that the petitioner was granted temporary permit to ply vehicle on the route from Salem to Villupuram, Tindivanam, Chengai, Periyapalayam Kone Falls, Thiruthani, Vellore, Ulundhurpet, Tiruchi, Madurai for the period between 12.06.2003 and 18.06.2003. On 14.06.2003, suppressed the same, steps taken by the authority, the said vehicle was ply from Chennai to Thiruvannamalai and back this vehicle was used against the temporary permit under Section 88 (8) of the Motor Vehicles Act. The said vehicle was carrying independent trip from different party. Thus vehicle is deviating the permit condition and used as contract carriage.

3.After receipt of said notice, the petitioner filed a reply notice dated 15.12.2003, without considering the reply, the demand notice was issued.

4.The learned senior counsel appearing for the petitioner relied upon the decision, the said case is covered by the decision of this Court in Parveen Travels & other v. The Regional Transport Officer, Salem-7., 2008 (1) TN MAC 538 passed an order as follows.

> 34."In Hardev Motor Transport v. State of M.P., 2006 (8) SCC 613, the constitutionality of Entry IV (G) and Explanation 7 (as amended in 2004) of Schedule I of M.P. Motoryan Karadhan Adhiniyam, 1991 was tested. The facts of this case are that the holders of Contract Carriage Permit were alleged to have used their vehicles as Stage Carriages and their vehicles were determined. The Petitioners therein were asked to pay duty, as if the vehicles were being plies without any permit. The amendments and the levy was challenged before the High Court and the operators were unsuccessful. On Appeal, the Supreme Court having regard to the nature of tax and the type of permits granted under the Motor Vehicles Act at Paragraphs 29, 30 and 32 held as follows:
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> > "29. Section 3 of 1991 Act is the charging Section. It provides that the tax shall be levied on every motor vehicle used or kept for use in the State at the rates specified in the First Schedule. The levy of tax, therefore, is on the motor vehicles. Its rate may vary keeping in view its use or the nature thereof. However, the use of a motor vehicle so far as public service vehicles are concerned would depend upon the nature of permit held by it. It is not in dispute that the appellants herein have been granted permit for plying their buses as contract carriage. Allegation against this is that they have been violating the terms and conditions of the permit by plying their vehicles as stage carriage. It is however, not in dispute that the rate of tax of a contract carriage permit is more than the stage carriage permit. Clause (g) of Entry IV specifies the rate of tax of motor vehicle plying without permit at the rate of Rs.1,500 per seat per month.
> >
> > 30. Explanation (7) of the First Schedule of the 1991 Act does not create any legal fiction. It provides for an inclusive definition stating that the words "plying without permit" in Clause (g) shall include

plying of a public service vehicle on an unauthorised route or making a trip not authorised by a permit granted under the 1988 Act.

32. We have noticed that the Constitution Bench categorically states that compensatory tax cannot be progressive. We have furthermore noticed that, according to the Constitution Bench, imposition of tax cannot be a term or condition of a licence. If a permit has been granted, the holder of a permit is liable to comply with the conditions of permit. If he violates the terms and conditions of permit, law will take its own course. A permit is granted under the 1988 Act. If there is violation of the terms of permit, the consequences therefor, shall ensue as contained in Section 192-A of the 1988 Act. A distinction must be borne in mind that a tax cannot be imposed by way of penalty although penalty can be imposed for non-payment of tax or evasion of tax. The State may make suitable legislations in this behalf. But the same would not mean that while specifying a rate of tax, the executive Government of the State can indirectly levy a penalty which it cannot do directly."

35.Reading of the Motor Vehicles Act in entirety along with Government Order does not indicate that a vehicle of a particular class or category if used as a vehicle of other category or class can be subjected to a higher or a differential tax, when such use of the vehicle is found by the Transport Authorities as contravention of the conditions of permit.

36.Motor Vehicles Act, 1988 provides for issuance of permit under Section 72 in respect of contract carriage and they are subjected to certain conditions. If the Transport Authority finds that; there is a violation of permit condition, the scheme of the Act contemplates action either for suspension or cancellation of permit and in certain cases, the permit holders are permitted to compound in lieu of suspension. In so far as change of class of vehicle is concerned, the Motor Vehicles Act, prescribes certain procedure to be followed. Merely because, the vehicle is used on a particular occasion for a different use (in the instant case, contract carriage used as a stage carriage), that by itself does not mean that the class of vehicle itself has been changed. Sections 3 and 4 of the Tamil Nadu Motor Vehicles Taxation Act, enable the Government to levy tax depending upon the class of vehicle and there is a variation in taxing structure, whenever the class of vehicle is changed. The moment the change in class of vehicle is permitted by the Transport Authorities, the rate of tax applicable to the class of vehicle is automatically attracted and as per Section 4 of the Taxation Act, the authorities can levy the differential rate of tax. Therefore, it is clear that the provisions of the Taxation Act is based on the class of vehicle and its regular use and not for an occasional use, which is said to be a contravebtion of the permit conditions. Therefore, following the judgment of the Supreme Court in Hardev Motor Transport's case, I am of the considered view that the respondents are not empowered to demand tax for entire quarter ending with 30.09.2004, as the Petitioner had a valid permits issued under Section 88(8) of the Motor Vehicles Act. However, taking into consideration of the violations of the permit conditions noticed by the Checking Officers, and following the judgment of the Supreme Court in M. Narasimhaiah v. Dy. Commr. for Transport, Banglore, AIR 1938 SC 240, the authorities shall consider the need to enforce the provision of Section 86 of the Motor Vehicles Act, 1988, if so advised. The Judgment of the Supreme Court deals only with the case of excess passengers."

5.On perusal of the above said Judgment, it is clear that if the permit was granted under Section 88(8) is misused, the authority can take action against the violator as per the condition. However, the issue of demand notice as if evasion of tax.

6.The said notice is set aside in the decision cited supra. Accordingly, I am inclined to extend the benefit given by this Court in the decision cited supra to the petitioner.

7.In the result, this Writ Petition is allowed and the impugned notice, dated 02.08.2004 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

nl/nvi

To

The Regional Transport Officer,
Salem.

+ 1 C.C. to M/S.S.RAdha Gopalan, Advocate sr.no.68059

+ 1 cc to Government Pleader sr.69525

W.P.No.26796 of 2004

PVS[co]
RR 22/11/2017