THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Petition No.21967 of 2009

Order: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

This writ petition is filed questioning the demand notice dated 7.5.2009, directing the petitioner herein to pay tax of Rs.52,690/- and penalty of twice the said amount ie for Rs.1,05,380/-. The petitioner is an educational institution. The fact that it purchased the subject vehicle in September, 2007 is not in dispute. It is also not in dispute that the petitioner did not have the ownership of the vehicle transferred in its favour even by the date on which it was subjected to check ie in September, 2008. The show cause notice dated 23-1-2009 records that the vehicle was carrying 35 students of the petitioner-college. While, in their reply to the show cause notice dated 27.1.2009, the petitioner stated that the vehicle was not put to use, as it had become unserviceable in October, 2007, we find considerable force in the submission of the learned Government Pleader for Transport that, in terms of Rule 12-A of the Motor Vehicles Taxation Rules, failure on the part of the petitioner to intimate the authorities, of the vehicle not having been put to use, would require this Court to presume that the vehicle was being used during the said period.

However, even if the vehicle is said to have been used during the period from September, 2007 till September, 2008, the question which necessitates examination is whether the petitioner was liable to pay tax at the concessional rate applicable to an educational institution or whether they were liable to pay tax on the subject vehicle treating it as a contract carriage. As the petitioner claims that it is an educational institution, it is only if the assessing authority had, on the basis of the material on record, recorded a finding that the vehicle was being put to use as a contract carriage, would they have been justified in levying tax on the vehicle treating it as a contract carriage vehicle. The impugned order does not record any such finding and, in its absence, Sri Ch. Ravinder, learned counsel for the petitioner, is justified in his submission that tax, if any, could only have been levied equivalent to the tax payable on vehicles owned by educational institutions. In any event, these are all matters for the assessing authority to determine.

The other ground of challenge, to the impugned demand notice, is that only after determining the tax due can penalty proceedings be initiated against the petitioner. Reliance is placed in this regard on **Y. Peda Venkaiah vs. The Regional Transport Officer, Nellore**[1]. It is wholly unnecessary for us to dwell on this aspect any further as we are satisfied that the impugned assessment order, levying tax on the petitioner treating the vehicle as a contract carriage, necessitates being set aside in the absence of any finding being recorded that the vehicle was used as a contract carriage. The assessing authority shall pass a fresh order of assessment, after giving the petitioner an opportunity of being heard, and it is only if there is material on record for him to hold that the vehicle was used as a contract carriage, can he call upon the petitioner to pay tax on the vehicle treating it as having been used as a contract carriage. Otherwise, the tax which the petitioner would be liable to pay is only for a vehicle owned by an educational institution.

[1] AIR 1977 A.P. 227 (1)

It is only after a fresh order is passed levying tax, can the respondents initiate penalty proceedings. The amount already paid by the petitioner ie for Rs.52,000/- shall remain in deposit with the assessing authority, and shall be subject to the fresh order of assessment to be passed. The assessing authority shall pass a fresh order of assessment at the earliest and, in any event, not later than three months from the date of receipt of a copy of this order.

The writ petition stands disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

17th January, 2017

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Date: 17.1.2017

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