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HIGH COURT of CHHATTISGARH, BILASPUR

Writ Petition (T) NO.332 of 2017

Hitendra Mishra S/o Bhaktcharan Mishra, Aged About 31 Years R/o Near Chair Factory, Moulipara, Telibandha, Raipur, District Raipur, Chhattisgarh 492006.

----Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Department of Transport, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
2. State Transport Authority, Through Secretary, Indrawati Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
3. Regional Transport Officer/ Taxation Authority/ Registration Authority, Raipur, Chhattisgarh.
4. Officer In Charge, Transport Flying Squad, Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri CJK Rao, Advocate.
For State	:	Shri Gary Mukhopadhyay, G.A.

SB: Hon'ble Shri Justice P. Sam Koshy

Order on Board

30.01.2018

1. The challenge in the present writ petition is the order dated 26.07.2017 (Annexure P/1) whereby a demand notice has been issued assessing Rs.12,05,267/- of which Rs.6,26,000/- is the assessment towards payment of tax, Rs.5,07,000/- towards penalty and interest was assessed at Rs.72,267/-. The assessment of tax has been made declaring the vehicle belonging to the petitioner classified as 'Deluxe Stage Carriage'.
2. The contention of the petitioner is that, it is a case where the vehicle involved in dispute is a Bus bearing registration No.CG-04-E-3168, the permit of which was issued on 28.11.2014 and the validity of which was from 01.12.2014 to 30.11.2019 i.e. for a period of five

years. He further submits that column-6 of the said permit clearly shows that the classification of the vehicle for the purpose of permit has been shown as Ordinary Stage Carriage. The seating arrangement in the Bus is 3 seats on one side and 2 seats on the other side which in usual parlance is referred by 2 X 3.

3. It was further contended by the petitioner that no proper assessment proceedings have been drawn for assessing Tax as has been shown in the demand notice (Annexure P/1) which again is in contravention of the Rule 8(A) of Chhattisgarh Motor Vehicle Taxation Act, 1991.

4. In the present writ petition, notices were issued to the State on 20.11.2017 and interim order was also granted in favour of the petitioner. Meanwhile, the petition came up for hearing on 04.12.2017 and again on 11.01.2018 and in all these dates the State took time to file reply. On the previous date, this court had made it clear that if the respondents/State do not file their reply, the court may proceed to decide the petition without reply on the Board. Today also when the matter is taken up for hearing, the State counsel prays for time to file reply. This court is not inclined to accept the prayer of the State and proceeds to decide the case on merits.

5. The Co-ordinate Bench of this High Court in Writ Petition (C)No.1039 of 2016 (Sharat Kumar Barpanda Vs. State of Chhattisgarh & Ors.) in an identical issue vide order dated 01.09.2016 had allowed a writ petition setting aside the demand notice. It would be relevant to refer to paragraphs 11 to 14 of the said judgment, which for ready reference is reproduced as under :

"11. A conjoint reading of the above referred provisions would manifest that Stage Carriage services are either Ordinary or Express and Deluxe. The seating arrangement of a tourist vehicle provided under Rule 128 of the Central Rules applies to the Deluxe buses, i.e., Deluxe services by virtue of Rule 158 (2) of the Rules of 1994 and the rate of tax per seat in respect of such Deluxe services are provided in the first Schedule of the Taxation Act. Therefore, in order to make any permit holder liable to pay tax per seat applicable to a Deluxe bus, the vehicle has to provide for seating arrangement and other features in accordance with Rule 128 of the Central Rules and Rule 158 (2) & (3) of the Rules of 1994. However, on perusal of the Traffic Inspector's verification report, it would clearly appear like noon day that the petitioner's vehicle has seating capacity of 2 x 3 and not two and two or one and two or one and one on either side, as provided under Rule 128(10)(ii) of the Central Rules.

12. When the petitioner's permit is not issued for Deluxe service nor the vehicle is designed to have seating arrangement of a deluxe vehicle, the petitioner is not liable to pay tax for Deluxe services, therefore, the impugned demand deserves to be set aside.

13. It also requires notice that the impugned demand has been raised only on the basis that the petitioner's vehicle has push back seats or reclining seats, therefore, the vehicle falls within the definition of a Deluxe vehicle. I have examined the provisions quoted above to ascertain as to whether a service can be classified as Deluxe service only on the ground that the seats in the vehicle have push back or reclining facility. It appears, there is no such provision that only on such facility being available in a vehicle it can be classified as a Deluxe service. What Rule 128 (iii) of the Central Rules provides for is only one of the requirements of seating arrangement for a tourist vehicle and that is not the only requirement for classifying a vehicle as tourist vehicle.

14. Even otherwise, the impugned demand notice has been issued without making any assessment in accordance with the procedure prescribed under Rule 8-A of the Taxation Act."

6. The petitioner at this juncture submits that the case of the petitioner squarely falls within the category of the Ordinary Stage Carriage and that his vehicle cannot be brought within the category of a Deluxe Vehicle.

7. Given the facts and circumstances of the case and also on perusal of the permit (Annexure P/3) issued in favour of the petitioner's vehicle, this court is inclined to allow the present writ petition as well, in terms of the order dated 01.09.2016 passed by this court in case of Sharat

Kumar (Supra).

8. The writ petition thus stands allowed. As a consequence, blacklisting of the petitioner vide letter dated 26.10.2017 (Annexure P/2) as well as demand notice dated 26.07.2017 (Annexure P/1) both stand set aside/quashed.
9. However, it is made clear that the petitioner shall appear before the respondent No.3, who shall reconsider the case of the petitioner so far as assessment of the tax is concerned in the light of the judgment dated 01.09.2016 passed by this High Court in Sharat Kumar (Supra) and shall pass a fresh order purely in accordance with the merits of the case.
10. The petitioner should approach before the respondent No.3 positively within three weeks from today i.e. by the 23.02.2018.
11. The writ petition thus stands allowed and disposed of.

Sd/-
(P.Sam Koshy)
Judge

inder