IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.04.2018

Coram

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.1255 of 2018
and
W.M.P.No.1562 of 2018

M/s. Peri Educational and Charitable Trust,rep. by its Authorized Signatory, V.Sasikumar. ...Petitioner

Vs.

The Regional Transport Officer, Chennai (West) Chennai - 600 078. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the respondent, in R.No.83992/D3/17, dated 21.12.2017, and to quash the same.

For Petitioner : Mr.Hema Murali Krishnan
For Respondent : Mr.J.Pothiraj
Special Government Pleader

O R D E R

Heard Mrs.Hema Murali Krishnan, the learned counsel appearing for the petitioner and Mr.J.Pothiraj, the learned Special Government Pleader appearing on behalf of the respondent.

2. The petitioner has filed this Writ Petition, for issuance of a Writ of Certiorari to quash the order passed by the respondent, dated 21.12.2017, by which, the respondent has directed the petitioner to pay the difference of tax of Rs.1,08,000/- for the vehicle, bearing Registration Number TN -04-E-9779.

3. The reason for issuing such demand is on the ground that, the vehicle stood registered in the name of the Trust and not in the Educational Institution. An identical issue was considered by this Court, in Sri G.R. Govindarajulu and sons, Charities, Coimbatore Vs. The Regional Transport Officer, Coimbatore) reported in [(2016) SCC Online Mad 24486] wherein, it was held that, such demand cannot be made. The learned

Special Government Pleader for the respondent, while mentioning about the said judgment, in the typed-set of papers, has stated that the said judgement was delivered in the year, 2016. However, this is not the manner, in which, a judgment should be interpreted. Hence, I am fully convinced that the issue involved in the present Writ Petition is squarely covered by the decision of this Court, in Sri G.R. Govindarajulu and sons (supra). At this juncture, it would be worthwhile to refer to the operative portion of the order, which is extracted hereunder:-

> " 3 The reason behind issuing the impugned proceedings stating that the petitioner's buses are not EIBs is on the sole ground that the owner of the buses is the petitioner which is a Charitable Trust. Section 2[11] of the Motor Vehicles Act, defines an Educational Institution bus to mean an omnibus, which is owned by a College, School or other Educational Institution and used solely for the purpose of transporting students or staff of the Educational Institution in connection with any of its activities. Thus, to satisfy the definition, what would be relevant is that the bus should be owned by a College or School or other Educational Institution. Secondly, it is to be used solely for the purpose of transporting the staff or the students of the Educational Institution in connection with any of its activities. It is not in dispute that the petitioner is the owner of the buses and it is sought to be penalised by claiming higher rate of tax on the ground that it is not an Educational Institution. However, this finding rendered by the respondent is on a thorough misconception of the facts. The petitioner is a Charitable Trust and its main object is to open, establish, construct, maintain, run, develop, improve etc., of Elementary and Secondary Schools and Colleges for imparting secular education ; Colleges and Schools for studying technical and technological subjects ; Schools and Colleges and other institutions for the study of medicine and surgery ; Schools and Colleges and institutions of other forms etc., for study of agriculture ; horticulture etc.
>
> 4 From the above objects, which are few of the objects of the Trust as mentioned in their Memorandum, it is evidently clear that the petitioner Trust is an Educational Trust. Under the provisions of the Tamil Nadu Private Colleges

[Regulation] Act and the Tamil Nadu Recognised Private Schools [Regulation] Act, an educational agency has been recognised as a body which establishes and administers an institution. Therefore, the respondent cannot ignore the fact that the petitioner is an educational agency. One more issue which is very relevant is that the transport permit in respect of all the three buses for which higher rate of tax has been demanded with retrospective effect, stands in the name of the respective Educational Institution. However, this vital fact has been lost sight of by the respondent while issuing the impugned demand. That apart, the impugned demand has been issued in the year 2005 with retrospective effect from the year 1998 to 2002 and there is nothing placed on record by the respondent to show as to under what authority of law, they have issued such a demand with a retrospective effect. Hence, for all the above reasons, it is evidently clear that the impugned order is an outcome of total non-application of mind."

4. One more additional factor, which has to be taken into consideration in the instant case is that, the petitioner has already sold the bus and before selling the bus, the petitioner has paid the entire tax and the respondent, by proceeding, dated 19.07.2016, has stated that, there is no arrears of tax for the vehicle, bearing Registration No.TN -04-E-9779. Thus, the impugned proceeding is wholly unsustainable in the eye of law.

5. In the result, the Writ Petition is allowed, the impugned order is quashed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

sd
To
The Regional Transport Officer,
Chennai (West) Chennai - 600 078.
+ 1 cc to Mr.L.Muralikrishnan, Advocate Sr.30131

Writ Petition No.1255 of 2018

NA(CO)
EU(09/05/2018)