IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.315 of 2012 & M.P.No.1 of 2012

K.P.Natarajan ... Petitioner

Vs.

The Secretary,
State Transport Authority,
Chepauk, Chennai-600 005. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the respondent in its proceeding R.No.A3/73379/2011 and to quash that portion of the proceedings dated 21.12.2011 being "subject to conditions that the difference of tax due for the period from 01.10.2009 to till date at the rate of floor area should be paid before effecting the variation of permit conditions".

For Petitioner : Mrs.Radha Gopalan

For Respondent : Mr.J.Pothiraj,
Special Government Pleader

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O R D E R

Heard M/s.Radha Gopalan, learned counsel for the petitioner and Mr.J.Pothiraj, learned Special Government Pleader for the respondent.

2.The legal issue involved in this writ petition is no longer res integra and has been settled by a Division Bench of this Court, to which I was a party, in the case of Tamil Nadu Omni Bus Owners' Association v. State of Tamil Nadu and another reported in 2014 (1) CWC 32. The issue was whether the permit holders can be called upon to pay floor tax and they should be entitled to pay tax per seat per quarter. The Division Bench, in the said judgment, upheld the provisions of the Tamil Nadu Motor Vehicles Taxation Act and held that in order to prevent evasion of tax by Omni Buses providing lesser number of seats, the Government has taken a decision to amend Tamil Nadu Motor Vehicles Taxation Act by levying tax on the basis of floor area for Contract Carriages and therefore, held that there is no arbitrariness or unreasonableness.

3.On the basis of floor area, in the said batch of cases, submission was made that the petitioners therein had by then paid 70% of the tax as demanded. Therefore, the Division Bench directed the authorities to issue fresh notice.

4.In the instant case, the learned counsel for the petitioner would submit that it is not clear as to whether the petitioner has paid the tax calculated at floor areas, but the counter affidavit stated that the petitioner has been paying tax at the rate of Rs.3,000/- per seat per quarter for 36 seats.

5.So far as the petitioner's bus is concerned, the initial permit granted was for 33+1 overall and subsequently, the permit stood amended for 36+1 overall and it was at that time that the impugned order was passed and a condition was imposed that the petitioner should pay the difference of tax due for the period from 01.10.2009 to till date at the rate of floor area. Now that the amendment to the Tamil Nadu Motor Vehicles Taxation Act have been upheld by the Division Bench, the petitioner is liable to pay tax calculated at the floor area up to the said cut off date. However, since in the interregnum, the petitioner has been paying tax at the rate of Rs.3,000/- per seat per quarter for 36 seats, the respondent should issue a demand after giving credit to the payments made by the petitioner and grant minimum of 15 days time to the petitioner to remit the same. Notice is required if the petitioner has not cleared all the arrears.

6.With the above direction, this writ petition is dismissed. It is needless to state that the authorized representative of the petitioner shall be heard in person before a final decision is taken. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Secretary,
State Transport Authority,
Chepauk, Chennai-600 005.

+1 cc to M/s.S.Radhagopalan Advocate sr 1796
+1 cc to the Govt Pleader sr 2399

W.P.No.315 of 2012

nri(co)

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