IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2018

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition Nos.44385 and 44386 of 2006
and M.P.Nos.1 and 1/2006

K.Yogeshwaran ... Petitioner in W.P.44385/2006
Dhandayuthapani ... Petitioner in W.P.44386/2006

(Name of the petitioner in W.P.No. 44386/2006 substituted vide order dated 12.6.2018 in WMP.16190/18)

Vs.

The Secretary,
Regional Transport Authority,
Tiruvallur District at Tiruvallur.
... Respondent in both W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the respondent herein contained in the Demand Notice No.A2/13061/2006-1 and No.A2/13061/2006-2 respectively, dated 27.04.2006 and quash the same.

For petitioners : Mr.T.Padmanabhan

For respondent : Mr.K.Ravikumar,
Addl. Govt. Pleader

COMMON ORDER

Challenging the Demand Notices dated 27.4.2006 of the respondent herein, wherein the petitioners were directed to pay the difference of tax as applicable to the moffusil spare buses for a certain period, the present Writ Petitions have been filed.

2. The case of the petitioner is that the petitioner is a Stage Carriage Operator and operating the bus on the route Tambaram to Ambattur which is classified as a Metro Service. Primarily, the permit has been issued by the Regional Transport

Authority, Tiruvallur. He is a Single Bus Operator and plying the above said bus for a long time without any interruption. In order to attend the repairs and break down of the vehicles and also to ply on special occasion as per conditions attached to the permit, the petitioner applied for the grant of a Spare Bus and after granting the permit, he is operating the Spare Buses TN-41-F-9797 and TN-63-W-1793.

3. The further case of the petitioner is that while so, when the petitioner applied for such a permit on 23.2.2006, the respondent herein by a Written Order communicated on 3.3.2006 rejected his application on the ground that the W.P.Nos.19277/1993 and 820/1999 have been dismissed and hence, he must pay the difference of tax applicable to spare bus of Mofussil Stage Carriage per seat per quarter for issuing Special Permit under Section 88(8) of the M.V.Act. Aggrieved over the same, the petitioner filed W.P.Nos.8437 and 8438/2006 to quash the communication dated 3.3.2006. The said Writ Petition is disposed of by order dated 27.3.2006 wherein this Court directed the respondent to consider the representation of the petitioner therein and disposed of the same on merits and in accordance with law and pass appropriate orders as regards the payment of difference in tax applicable to spare buses of Moffsil Stage Carriage. Though the copy of the said order was produced before the respondent, the respondent had sent a Demand Notice dated 27.4.2006 completely ignoring the clarification issued by the Government in their letter dated 7.2.2003. Hence the present Writ Petitions.

4. Learned Counsel appearing for the petitioners submitted that the issue raised in this Writ Petition is already covered by a Division Bench decision of this Court in W.A.No.262/1979 etc. batch dated 18.12.1981. Therefore, he would pray that following the same, the present Writ Petitions have to be allowed.

5. It is relevant to extract paragraphs 10 and 11 in the judgment passed by the Division Bench of this Court in W.A.No.262/1979 etc. batch here under :

> ''10. On a reading of the various provision the Act we do not find any prohibition as such for using spare bus on a permit granted under Section 62 of under Section 63 (6) of the M.V.Act. Mr.Gopalan learned counsel rightly pointed out Rule 160 of the T.N.M.V.Rules which reads as follows:
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> "It shall be a conditions of the permit that under a temporary permit is issued to a vehicle covered by the permits to meet the re-allotments on special

occasions, the breach of any of the conditions of the temporary permit shall be deemed to be the breach of conditions of the permit itself and such permits shall be liable for suspension or cancellation".

The above provision visualises user of a spare bus on tempy. permit in route other than the one for which the operator was granted the permit when the operator holds permit for the spare bus also. Section 48 (3) (xvi) of the M.V.Act makes it clear that reserve vehicle is both to maintain the continuity of service to provide the special occasion. A liberal interpretation of this provision also does not for a spare bus being used under a permit granted under Section 62 or under Section 63 (c) of the Motor Vehicles Act.

Apart from the user of such a spare bus the taxing provision does not contemplate payment of extra rate other than the one fixed for which the operation if it is used in a route other than the one fixed for which the operator. Whether the spare bus is liable to full rate of tax is the question be decided. The said provision which read:

"The tax payable in respect of a reserve stage carriage of spare bus shall be three-fourth of the maximum rates payable per passengers for many of the regular stage carriages of the permits holder, provided the permit hold has paid the taxes for the period in respect of all his stage carriages covered by valid permit."

Makes it clear that the rate of tax for spare buses the three fourth of the maximum rates payable per passenger for any regular stage carriage of the permit holder. Once such has been paid for the spare bus, further tax cannot be demanded. The only condition of concessional tax for spare buses that the permit holder should have paid the tax for the period in respect of all his fulfilled the state as per the charges or provisions cannot demand more than that is payable for a spare bus. No doubt in G.O.Ms.No.1904, Home dated 21.10.74 it is stated that concessional rate of tax is available for temporary permit for fairs and festiuvals as contract carriage under Section 63 (6) of the M.V.Act and substitute services in the place of regular stage carriage of other permit holder for permit holder a short period when their vehicles are withdrawn without surrender of permit not involving refund of tax. Such enumeration in the said G.O. will not prohibited a Spare bus from being at the under valid permit on a route other than the one specialised in the permit of the bus operator. It is will settled that any measure relating to termination must be strictly construed. The timing provision above referred to does not contemplated under Ruling of any extra tax for a spare bus other than the one mentioned in that provision.

In this connection we carefully refer to the decision of Ramanujam J. In W.P.No. Of 1974 dated 16.7.75 where in the learned Judgment stated that concessional rate of tax will be available all the place of bus in belonging to the State Carriage Operators. The learned Judge has held that there is no restriction contained in the taxing provision that the concessional rate of tax will be available only when the spare bus is in the place of the other vehicles owned by the permit holder. This will squarely apply to the factors of the present case also, we are in agreement with the said principles laid down in the above writ petition.''

A reading of the above makes it clear that there is no restriction contained in the taxing provision that the concessional rate of tax will be available only when the spare bus is in the place of the other vehicles owned by the permit holder and the G.O.Ms.No.1904, Home dated 21.10.74 will not prohibit a Spare Bus from being at the under valid permit on a route other than the one specialised in the permit of the bus operator.

6. Apart from the above decision, the said case is covered by a decision of this Court in Parveen Travels & other v. The Regional Transport Officer, Salem-7., 2008 (1) TN MAC 538 in which the relevant portion is extracted here under:

''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:

> "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.
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> 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.
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> 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 contravention 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."

In view of the above, I am inclined to extend the benefit given by this Court in the decision cited supra to the petitioners herein also.

7. In the result, the Writ Petitions are allowed and the impugned orders dated 27.04.2006 are set aside. No costs. Consequently, connected M.Ps. are closed.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

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To

The Secretary,
Regional Transport Authority,
Tiruvallur District at Tiruvallur.

+2cc to Mr.T.Padmanabhan, Advocate SR.No.44263, 44264
+1cc to Government Pleader SR.No.44935

W.P.Nos.44385 & 44386/2006

SV(CO)
GN(27/07/2018)