IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 04.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.18692 & 18693 of 2005

S.Subbaratna ...petitioner in W.P.No.18692 of 2005

S.Subramaniam ...petitioner in W.P.No.18693 of 2005

Vs

The Transport Commissioner,
Chepauk,
Chennai-5 ...Respondent in both cases

Prayer in W.P.No.18692 of 2005: Writ Petition filed under Article 226 of the Constitution of India to pass an order of Writ of Certiorari, calling for the records of the respondent herein made in R.No.E3/29396/02 dated 22.03.2005 in demanding tax in respect of the stage carriage of the petitioners bearing Regn.No.TML 9025 plying on the enclave route Desakuppam to Alagiripeta.

Prayer in W.P.No.18693 of 2005: Writ Petition filed under Article 226 of the Constitution of India to pass an order of Writ of Certiorari, calling for the records of the respondent herein made in R.No.E3/29396/02 dated 22.03.2005 in demanding tax in respect of the stage carriage of the petitioners bearing Regn.No.TM A7968 plied on the enclave route and Narasareddy Kandriga to Appalaraju Kandriga respectively.

For petitioners : Mr.M.Palani
in both cases

For Respondents : Mr.K.Bhuvaneswari
in both cases Additional Government Pleader

C O M M O N O R D E R

The petitioners herein were granted with the permit to ply on a enclave route by the State Transport Authority, Andhra pradesh. The respondent herein had issued show cause notices demanding payment of taxes for the period between 01.04.1999 to 31.03.2005 on the ground that though the enclave permit is granted under 2nd proviso to Section 88 (1) of Motor Vehicle Act 1988, in view of the prohibition for private operators on scheme routes under Sub-Section (4) of Section (6) of Tamil Nadu Act 41/92 and in the absence of any specific tax exemption notification, the petitioners are liable to pay the taxes. The petitioners had given a detailed reply on 11.04.2005 to the said show cause notices which has been rejected through the impugned orders dated 12.05.2005.

2. The learned counsel for the petitioners submitted that the permit was granted by the State Transport Authority of Andhra pradesh and in view of the interstate agreement dated 26.09.1975 arrived at between the Government of Tamilnadu and Andhra pradesh, the petitioners' vehicles are exempted from the payment of tax in Tamilnadu. The learned counsel also submitted that since the petitioners have paid necessary taxes to the Government of Andhra pradesh, they are not required to pay the taxes in the State of Tamilnadu. It is further submitted that when the show cause notices came to be issued on 22.03.2005, the petitioners had given a detailed explanation as to why they are not liable to pay the taxes, which aspect was not considered by the respondent.

3. The learned Additional Government Pleader for the respondent submitted that the petitioners enclave permit was granted under 2nd proviso to Section 88 (1) of the Motor Vehicles Act. Since the petitioners' route overlaps with the scheme route in Tamilnadu, there is a prohibition. It is also their submission that there is no specific notification exempting the vehicles to ply on the enclave routes from payment of taxes and in the absence of such tax notification, there is no infirmity in the demand notices made. The learned Additional Government Pleader further submitted that Section 3 of the Tamilnadu Payment of Tax Act states that the petitioners are liable to pay the tax due for the use of the vehicles in the State.

4. I have given careful consideration to the submissions made by the respective counsel.

5. It is not in dispute that the petitioners herein have been granted with the permit for their stage carriages on the enclave route by the State Transport Authority of Andhra pradesh. It is not the case of the respondent also that the part of the route in Tamilnadu, in which the petitioners have a permit, is more than 16 kms. 2nd proviso to Section 88 of the Motor Vehicles Act, 1988, provides that where the enclave route of a stage carriage is situated within the same State and a part of such route lies in an other State to a length not exceeding 16 km, the permit shall be valid in the other State in respect

of that part of the route which lies therein, notwithstanding that such permit has not been counter signed by the concerned authorities of the other State.

6. While that being so, the petitioner herein, who has been granted with a permit by the State Transport Authority of Andhra pradesh and whose permitted route extends into the State of Tamilnadu for a distance of not more than 16 k.ms, will not be liable to pay the taxes demanded by the State of Tamilnadu, in view of the aforesaid 2nd proviso to Section 88.

7. Section 88 of the Motor Vehicles Act also provides for exemptions in cases of agreement entered between the two or more States. In the present cases, there was an interstate agreement arrived at between the Government of Tamilnadu and Andhrapradesh on 26.09.1975 in which cause VI Sub Clause (d) reads as follows:

> (d) All transport vehicles excluding contract carriages (Omni buses) covered by the second proviso to Sub-Section (1) of Section 63 of the said Act will also be exempt from payment of taxes.

(Section 63 of the old Act corresponds to Section 88 of the new Act)

8. In view of the specific agreement between the two neighbouring States, it is clear that the vehicles covered under 2nd proviso to Section 88(1) of Motor Vehicles Act will be exempted from payment of tax. The petitioners had also given a detailed reply and brought the aforesaid legal position to the notice of the authorities. However, without any consideration to the explanation given by the petitioners, the impugned demand notices came to be passed with the single statement that the explanation the permit holder, is not satisfactory.

9. In view of the specific Interstate agreement between the Government of Tamilnadu and the Andhra pradesh, the petitioners will not be liable to pay the taxes in the State of Tamilnadu, in so far as it relies on to the present permit.

10. In the light of the foregoing reasons, the order dated 22.03.2005 R.No.E3/29396/02 is quashed. The writ petitions stand allowed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vum

To

The Transport Commissioner,
Chepauk,
Chennai-5.

+1 cc to M/s.M.Palani, Advocate Sr.No.32583
+1 cc to The Government Pleader, Sr.No.34062

W.P.Nos.18692 & 18693 of 2005

CSL/12.06.2019