IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.22392 of 2016
and
W.M.P.Nos.19107 & 19108 of 2016

C.Ravindran ... Petitioner

Vs.

Secretary,
Regional Transport Authority,
Hosur,
Krishnagiri District. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, writ of Certiorari, to call for the records of the respondent relating to the file in Letter in R.No.7809/A4/2016 dated 17.05.2016 demanding additional tax with penalty (tax Rs.5,13,000/- with 100% penalty Rs.5,13,000/-) for the period 03.10.2013 to 01.02.2016 in respect of the petitioner's vehicle OD-21/A-1697 and to quash the same.

For Petitioner : Mr.K.Hariharan

For Respondent : Mr.R.P.Prathap Singh
Government Advocate.

O R D E R

The present Writ Petition has been filed against the impugned order dated 17.05.2016 bearing reference R.No.7809/A4/2016 passed by the respondent.

2.By the impugned order, the respondent has demanded a sum of Rs.5,13,000/- together with 100% penalty of Rs.5,13,000/- by invoking the provisions of Section 11 and 15(a) of the Tamil Nadu Motor Vehicle Taxation Act, 1974. The petitioner is engaged in passenger transport and has an omni bus with a national permit registered in State of Odisha bearing registration No.OD-

21-A-1697. As and when the vehicle ply in the State of Tamil Nadu, the petitioner is required to pay Road Tax under the provisions of the above.

3.It is the case of the petitioner that the petitioner had increased the number of seats from 35 to 42 in his bus during February 2016 but did not apply for suitable corrections in the certificate of registration. The petitioner's bus was booked and therefore was used without alteration in the certificate of registration. During the inspection at the check post, the authority namely Motor Vehicle Inspector (NT) Outgoing Check Post, Sipcot, Hosur noticed that the number of seats in the petitioner's bus was 44 + 1 (45), but only tax was paid for the 35 seats. The bus was detained and therefore, the driver of the bus paid the tax for the period from 09.02.2016 to 15.02.2016.

4.It is case of the petitioner that the demand for the aforesaid sum of Rs.5,13,000/- together with 100% penalty Rs.5,13,000/- vide impugned order for the period between 03.10.2013 to 01.02.2016 cannot be adopted as the seats during the material time, but had only 35 seats in numbers. After, the vehicle was detained, the petitioner had also filed Writ Petition in W.P.No.14792 of 2016 pursuant to which the vehicle was released with directions to the petitioner to make his submissions before the respondent for release the vehicle and directions to the respondent to pass a fresh order with regard to the release of the vehicle.

5.Accordingly, the respondent was called upon the petitioner to pay the additional tax of Rs.5,13,000/- together with penalty of Rs.5,13,000/-.

6.The learned counsel for the petitioner has brought to the attention of this Court to the Check Post report dated 15.12.2015 showing that the petitioner's bus had only 35 passenger seats on the aforesaid date and a sum of Rs.21,210/- was only collected from the petitioner. Recasting the demand on the petitioner based on the report dated 09.02.2016 for the 45 seats retrospectively for the period between 03.10.2013 and 01.02.2016 cannot be sustained in the light of the Check report dated 15.12.2015 where admittedly Check Post Officer themselves collected the tax for the 35 seats in the vehicle right from 15.12.2015 to 21.12.2015. He further submits that in absence of any evidence to substantiate the petitioner had all along 45 seats in vehicle right from 03.10.2013 was unsustainable.

7.Heard the learned counsel for the petitioner and the respondent. I have also perused the affidavit and counter affidavit filed by the parties. Though in the court it is stated that the subject vehicle had 39 seats in certificate of Registration, the notice issued to the petitioner on 16.03.2016 bearing reference Memo No.7809/A4/2016 records the irregularly as follows:-

> Irregularity:
>
> "The vehicle was stopped and checked while proceeding from Hosur to Bangalore. The Motor Vehicle Inspector (NT), Outgoing check post, Sipcot, Hosur has made a physical verification and found that the total seating capacity as 45 in all (Berth 15+ Seat 28 and plus 2 = 45). As per the certificate of Registration, the seating capacity is 35.
>
> And further found that in the form 47-(Authorization for Tourist Permit) the seating capacity is 36 in all, it is alleged that all the documents are not in accordance with Motor Vehicle Act and Rules.
> In the reference 3rd cited, the Hon'ble High Court, Chennai has ordered in its W.P.No.8780/2016 the charge memo issued to the Permit holder based on the gravity of irregularities detected the Check report within 7 days from the date of receipt of this charge memo failing which orders will be passed on the available records and merits of the case.

8.The said notice was issued pursuant an order of this Court in W.P.No.8780 of 2016. Thus, it stands established that the bus was registered with 35 seats only. Whether there was escaped assessment or not to demand tax under Section 15(a) of the Tamil Nadu Motor Vehicle Taxation Act, 1974 based on the check report on 09.02.2016 right from 03.10.2013 to 01.02.2016 is purely based on conjecture.

9.The authorities having all along collected tax for 35 seats under Section 3 of the Act cannot invoke Section 15(a) of the Act for the purported escaped turnover in absence of any direct admission by the petitioner or its employers that the vehicle had all along 45 seats right through the period between

03.10.2013 and 01.02.2016. To demand tax on 45 seats based on the check report dated 09.02.2016 for the aforesaid period would be assessment by sampling which is impermissible.

10.I am of the view, the impugned order passed by the respondent is set aside with consequential relief to the petitioner. The Writ Petition stands allowed. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jas/jen

To

1.The Secretary,
Regional Transport Authority,
Hosur,
Krishnagiri District.

+1cc to Mr.K.Hariharan, Advocate sr.103294
+1cc to Government Pleader SR.NO. 103684

W.P.No.22392 of 2016 and
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nr 03/02/2020