IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-08-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.36002 of 2006
And
WPMP No.1 of 2006

St. Francis Assisi Matriculation School,
Represented by its Correspondent,
Sr. A.Agnes,
Ponnagar Road,
Chinnamanur – 625 515,
Theni District.
.. Petitioner

vs.

The Government of Tamil Nadu,
Represented by its Secretary,
Home (Transport) Department,
Fort St. George,
Chennai-600 009. .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Declaration, declaring that the Section 4 of the Tamil Nadu Motor Vehicle Taxation (Amendment) Act 13 of 2003 as unconstitutional, in so far as it purports to substitute the rate of motor vehicle taxes from Rs.500/- per quarter for a vehicle to Rs.150/- per seat per quarter, with reference to the educational vehicle bearing Reg. No.TN 60/X 2531, owned by the petitioner school.

For Petitioner : Dr.Fr. A.Xavier Arulraj,
Senior Counsel for
Mr.S.M.Edward Stanley

For Respondent : Mr.V.Veluchamy,
Government Advocate.

ORDER

The present writ petition is filed for a Writ of Declaration, declaring that the Section 4 of the Tamil Nadu Motor Vehicle Taxation (Amendment) Act 13 of 2003 as unconstitutional, in so far as it purports to substitute the rate of motor vehicle taxes from Rs.500/- per quarter for a vehicle to Rs.150/- per seat per quarter, with reference to the educational vehicle bearing Reg. No.TN 60/X 2531, owned by the petitioner school.

2. The respective learned counsel appearing on behalf of the parties in this writ petition made a submission that the Hon'ble Division Bench of the Madras High Court rejected the claim of the writ petitioner and the matter was taken by way of an appeal before the Hon'ble Supreme Court of India.

3. The Apex Court passed an order dated 18.07.2018 in Civil Appeal No.9253 of 2010 and the following orders are passed:-

> "The essence of the dispute which arises in these appeals for consideration is captured in order dated 12th October, 2017 passed by this Court and, therefore, it would be apt to reproduce the same in its entirety:
>
> The present batch of appeals raises a challenge to the Amendment (Act 13 of 2003) of The Tamil Nadu Motor Vehicles Taxation Act, 1974 by which Motor Vehicles Tax on buses that are used by educational institutions has been increased from a flat figure of Rs. 500/- per quarter to Rs. 150/- per seat per quarter. The effect of the raise, therefore, in percentage terms is between 450% and 1800%.
>
> Ms. V.Mohana, learned senior counsel appearing on behalf of the appellant, has pointed out that the educational institutions appearing before us include a number of nursery schools, special schools for mentally and physically challenged children, dumb and deaf children, blind children etc. These schools have vehicles-buses and vans of their own to bring students to such schools from far off places. She has pointed out that in most of these institutions free education is provided, and that the impugned judgment

dated 15.11.2006 of the High Court of Madras stating that this was not the case is not correct.

It has also been pointed out that Section 3(2) of the Tamil Nadu Motor Vehicles Taxation Act, 1974, while empowering the Government, by notification, to increase the rate of tax specified in the Schedules to the Act provides that such increase by notification shall not in the aggregate exceed 50% of the rate so specified in any of the said Schedules. She has argued that the Amendment Act flies in the face of the principle of the said proviso, which is that arbitrary increases in tax should not be resorted to. According to her, it is obvious that on facts unequals are being treated as equals and that insofar as the appellant institutions are concerned, there would be a violation of the equality clause of the Constitution.

We feel that it would be in the fitness of things if the State of Tamil Nadu were to examine these cases separately and differently from other cases involving payment of motor vehicles tax. We have been informed that the present batch of appeals only relates to three years, namely, 2003 to 2006, and that when the tax was decreased in 2006 to Rs.100 per person per bus, the appellants have thereafter paid motor vehicles tax at the said rate. Ms. Mohana has also made a fervent plea before us that it would be well nigh impossible for the institutions before us now to collect amounts by way of tax that may be charged at this exorbitant rate for these three years, especially having regard to the fact that payments at the earlier rate of Rs.500 per bus per quarter has in fact, been made in all these three years. This being the factual scenario, we would request Mr. Subramonium Prasad, learned Additional Advocate General, to look into these matters personally and advise the Government to exempt, as a one time measure, these educational institutions from payment of tax at the higher rate.

The matters to come up after eight weeks.

(2) Pursuant to the aforesaid order, matter was examined by the respondent-State Government. Mr.K.V.Vijaya Kumar, learned counsel appearing for the respondent-State, submits that the Government has agreed not to recover any arrears of the Motor Vehicles Tax but the amount which is already recovered, is not to be refunded.

(3) Learned counsel appearing for the appellants have argued that increase in the rate of Motor Vehicles Tax was substantially higher, as noted in Order dated 12 th October, 2017, and was contrary to proviso to Section 3(2) of the Tamil Nadu Motor Vehicles Taxation Act, 1974 and, therefore, there is no reason for not refunding the tax which is already collected from these appellants.

(4) We may record here at this stage that all these appeals are preferred by the educational institutions or the educational institutions represented through their associations. Therefore, the scope of these appeals is confined to the payment of Motor Vehicles Taxes by such schools/colleges on the buses or other vehicles used by them.

(5) Having considered the entirety of the issue and also going by the spirit and tenor of Order dated 12th October, 2017, we are of the opinion that though a decision is taken by the State Government not to overcharge insofar as these educational institutions are concerned even the tax which was collected on that account should also be refunded.

(6) We, therefore, allow these appeals to the aforesaid extent and the Motor Vehicles Tax which was collected by the State Government, in excess, from the appellants shall be refunded to them within a period of four weeks from the date of receipt of a copy of this Order.

(7) We make it clear that this order shall not be treated as a precedent and insofar as other vehicle owners, who do not

fall in the category of educational institution, are concerned they shall not be entitled to take advantage of this order. We also make it abundantly clear that any such tax paid by any such other vehicle owners shall not claim any refund of Motor Vehicle Tax already paid by them.”

4. In view of the orders passed by the Hon'ble Supreme Court, cited supra, the said benefits are to be extended to the writ petitioner in this writ petition.

5. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Svn

To

The Secretary,
Government of Tamil Nadu,
Home (Transport) Department,
Fort St. George,
Chennai-600 009.

+1cc to Government Pleader Sr No.40725

WP 36002 of 2006

KV (CO)
PR (06/09/2021)