BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.5413 of 2017

Vinod ...Petitioner

Vs.

The Regional Transport Officer,
Marthandam,
Kanyakumari District. ...Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the respondent in Memo No.00250/A3/17, dated 13.01.2017 and quash the same as illegal and consequently direct the respondent to refund the tax paid by the petitioner a sum of Rs.2,14,375/- (Rupees Two Lakhs Fourteen Thousand Three Hundred Seventy Five only) and Original RC Book in respect of the petitioner's Omni Bus bearing Registration No. KL 37A 7079.

For Petitioner : Mr.A.C.Asaithambi
For Respondent : Ms.M.Rajeswari
Government Advocate

O R D E R

Heard the learned counsel appearing on either side.

2.The petitioner is having Omni bus bearing Reg.No.KL 37A 7079 with permit, which is valid upto 31.12.2016 and the Omni bus was operating within the state of Kerala as a Tourist vehicle. On 31.12.2016, the Regional Transport Officer, Marthandam stopped and checked the petitioner's vehicle and found that the petitioner is not having any authorization to ply in the state of Tamil Nadu. The petitioner had not paid any tax. Therefore, the petitioner was ordered to pay a sum of Rs.3,43,000/- The petitioner remitted the said amount under protest. Thereafter, the said order levying the tax and penalty was put to challenge, seeking refund of the amount of Rs.2,14,375/-. According to the petitioner, the respondent had collected excess amount from him.

3.There is no dispute that the petitioner had entered Tamilnadu without obtaining permit. In this regard, the Transport Commissioner, Tamilnadu vide R.No.102128/D1/95, dated 13.9.96 had issued a circular No.22/76. The said circular reads as follows:-

"The Government in their Lr.No.14694/Tr.1/76-4, Home dated 02.06.76, directed that it accepted the views of the Transport Commissioner, than when transport vehicles covered by permits are not liable to pay tax for the periods, they are off the road, as per the High Court Judgment, there is no justification in levying the tax on Transport vehicles, not covered by permission when they are off the road. In accordance with the above order of the Government, circular instructions have been issued to Regional Transport Officers, requesting them to withdraw the demand for tax and penalty in respect of such vehicles.

(ii) G.O.Ms.No.261Q.Home(Tr.I) dt. 28.9.77 notification No.II/2/HD/5093/77

The extract of the above Government order is reproduced below:

"The Government of Tamilnadu hereby directs that the transport vehicles not covered by pucca permit which are moved empty from one district to another or from this State to another, either on a temporary permit and Fitness Certificate or when exempt from permit covered by the notifications issued under clauses (I) and (1) of sub-section (3) of section 42 of Motor Vehicles Act 1939, be taxed on the basis of their unladen weight."

The other two references mentioned in item (iii) and (iv) above were based on the circular (I) cited.

In view of the above it is clear that tax need not be levied for category (a) ie, idle transport vehicles, which are off the road, provided that the non-usage or otherwise of the vehicle should be ascertained. If the vehicle found, put on road in idle stage, be taxed on the basis of their unladen weight with due penalty, levied from the date of idle of the vehicle. If the vehicle found misused i.e used for hire or reward without obtained permit, then tax applicable to that class of vehicle, as specified in the clauses of taxation schedules, shall be collected with due penalty, for the full quarter, besides action such as prosecution etc.," 4.Ninth schedule third clause of vehicles have been dealt with as under

C	Omni bus including sleeper coach in respect of which permit is granted under sub section (8) or (9) of Section 88 of the Motor Vehicles, Act 1988	
	(i) If the temporary licence is for period not exceeding 7 days.	600 per seat or birth entry
	(ii) If the temporary licence is for a period exceeding 7 days but not exceeding 30 days	1500 per seat or birth entry
	(iii) If the temporary licence is for a period exceeding 30 days but not exceeding 90 days.	3500 per seat or birth entry

5. Since the petitioner's vehicle was found used for hire without permit, tax applicable should be collected with due penalty for the full quarter. Full quarter means 'for the period exceeding 30 days, but not ninety days.' Hence, Rs.3500/- per seat is to be collected from the petitioner. The respondent had rightly levied the penalty as stated supra and the question of refund does not arise at all. There is no need to interfere with the impugned order and accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Regional Transport Officer,
Marthandam,
Kanyakumari District.

+1 CC to M/s.A.C.ASAITHAMBI, Advocate (SR-14186[F] dated 29/03/2021)

+1 CC to M/s.SPL GP (SR-14077[F] dated 29/03/2021)

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