BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.07.2022

CORAM:

THE HONOURABLE **MR.JUSTICE M.NIRMAL KUMAR**

W.P.(MD)No.3002 of 2015
and
MP(MD) No.1 of 2015

M/s.Ponnaiyah Ramajayathammal Educational
and Charitable Trust
Rep. by its Managing Trustee
P.Murugesan
having registered officer at No.6,
Natarajapuram South
M.C.Road
Thanjavur .. Petitioner

Vs

1.The Secretary to Government
Home (Transport -I Department),
Fort, George
Chennai – 600 009.

2. The Deputy Transport Commissioner
Thanjavur

3. The Regional Transport Officer
Vallam Road, Pillayarpatti Post
Thanjavur, Thanjavur District .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the orders passed by the 2nd respondent in and by its proceedings in A1/0873/2014 dated 13.01.2015, and order passed by the 3rd respondent in 43169/B2/2013 dated 06.02.2015, and quash the same and consequently direct the 2nd respondent to entertain the appeal filed by the petitioner and dispose the same an merits

For Petitioner : Mr.K.K.Maheshraja

For Respondents : Mr.P.Subburaj
Special Government Pleader

ORDER

The petitioner Managing Trustee of Ponnaiyah Ramajayathammal Educational and Charitable Trust has filed this Writ Petition to quash the orders passed by the 2nd respondent in and by its proceedings in A1/0873/2014 dated 13.01.2015, and order passed by the 3rd respondent in 43169/B2/2013 dated 06.02.2015.

2. The petitioner's submission is that the Trust was formed in the year 1989 with an object to shape the youth of the nation, thereby

creating talents and skills through proper channel by adequate technical and engineering skills in the youths of the country. They had also provided industrial, technical, vocational, professional management, medicine either by way of residential courses or correspondence courses apart from starting schools and art colleges. The petitioner's institution is affiliated to Bharathidasan University and they have an Engineering College in the name of P.R.Engineering College, which is affiliated to Anna University. The petitioner's institution was granted Deemed University Status under Section 3 of the University Grants Commission Act, 1956. The petitioner owned number of buses for transporting students and staff to the colleges and schools run by them. Buses are primarily used for transporting students and staff of the educational institutions and none of the vehicles is used for any other purpose other than transporting students and staff of the colleges. The buses owned by the petitioner Trust fall under Section 2(11) of the Motor Vehicles Act, 1988. Earlier, the petitioner applied for permission from the third respondent and the third respondent, considering the documents of the petitioner's educational institution granted Permit in the Form PEV under Rule 171(ix) of the Tamil Nadu Motor Vehicles Rules. Consequently, the third respondent was also pleased to levy taxes under the Tamil Nadu Motor Vehicle Taxation Act under Item 8(a) of the First Schedule in the Taxation Act and paying tax as per the Permit issued by the third respondent. This being so, the third respondent without issuing notice in proceedings in R.No.43169/B2/2013, dated 04.12.2013, stating that the buses are not owned by the petitioner's Educational Institution, but by the Trust. Hence, concessional rate of tax applicable to the educational institutions is not applicable. The petitioner challenging the same filed a batch of writ petitions in W.P(MD) Nos.12849 to 12861 of 2014 and this Court was pleased to pass an order on 06.08.2014 stating that without giving opportunity to the petitioner and the petitioner and denying opportunity of personal hearing is not proper and hence, directed notice to be considered as show cause notice for the petitioners therein to give their explanation by 25.08.2014 and thereafter, pass orders on merits. Pursuant to the same, the petitioner filed objections on 20.08.2014 without giving personal hearing, rejected the objections, by an order, dated 26.08.2014. Aggrieved by the order, the petitioner filed statutory appeal before the Deputy Transport Commissioner/second respondent under Rule 10A of the Tamil Nadu Motor Vehicle Taxation Rules. The petitioner was ready to surrender Permits for all the 21 buses and consequently, they also surrendered the Permits on 17.10.2014 and paid the road tax till 31.12.2014, a sum of Rs.6,04,950/- (Rupees Six Lakhs Four Thousand Nine Hundred and Fifty only) which included 100% penalty for the period April 2014 to September 2014. The petitioner not running 21 buses, for which, Permits were surrendered. This being so, the second respondent/appellate authority directed the petitioner to pay 50% of the tax amount for filing appeal as per Section 20 (B) of the Tamil Naud Motor Vehicle Taxation Act, 1974, is not proper. The petitioner informed that there is no necessity to pay 50% as contemplated under Section 20(B) of the Act. The primary contention is that the petitioner's objections have not been considered and the third respondent passed an order, despite the specific direction given by this Court in W.P(MD)Nos.12849 to 12861 of 2014 and hence, challenging the impugned order, the present petition has been filed.

3. The learned Special Government Pleader appearing for the respondents would submit that the petitioner has got appeal remedy under Section 20(C) of the Act in the event he is aggrieved, petitioner to

challenge the impugned order passed by the second respondent under Section 20(C) of the Act . He further submitted that in the impugned order, the number of 14 vehicles provided and tax to be paid are clearly tabulated. The petitioner is to file an appeal under Section 20(C) of the Act before the Commissioner.

4. The learned counsel for the petitioner submitted that there is a statutory time limit of 30 days to challenge the order of the second respondent. Due to the pendency of the writ petition, limitation period expired and his apprehension is that the appeal before the Commissioner may not be entertained on the sole ground of limitation.

5. It is seen that the petitioner, if aggrieved by the order of the second respondent, has to file an appeal under Section 20(C) of the Act. In view of the pendency of the writ petition, the petitioner could not file the appeal. The apprehension of the petitioner considered this Court condones the delay and direct the Commissioner, (Transports) to consider the appeal of the petitioner on merits and in accordance with law. Further, the petitioner is directed to file an appeal within a period of 30

days from the date of receipt of a copy of this order without giving any reason. The Commissioner to dispose the appeals within a period of 60 days thereof. This period of 60 days is only an outer limit.

6. With the above direction, this writ petition stands disposed of. No costs. Consequently connected miscellaneous petition is also closed.

25.07.2022

Index: Yes/No
Internet : Yes/No
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M.NIRMAL KUMAR, J.

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