BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.04.2022
CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) No.9652 of 2016
and
W.M.P.(MD)No.7683 of 2016

N.Rajendran .. Petitioner

Versus

1.The Appellate Authority cum
Joint Transport Commissioner,
Madurai - 625 007.

2.The District Collector cum Regional
Transport Authority,
Madurai District,
Madurai.

3.The Regional Transport Officer,
Madurai (North),
Madurai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order in R.No.86/A2/2016, dated 07.05.2016, passed by the first respondent, confirming the order of the third respondent in Memo R.No.79391/A2/2015, dated 03.12.2015 and quash the same as illegal without jurisdiction.

For Petitioner : Mr.A.C.Asaithambi
For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader

ORDER

The petitioner has challenged the impugned order passed by the first respondent - Appellate Authority cum Joint Transport Commissioner, vide order dated 07.05.2016.

2.The above said order has been passed in the appeal filed by the petitioner against the demand confirmed by the second respondent, dated 03.12.2015. The relevant portion from the order/demand notice, dated 03.12.2015 of the second respondent, reads as under:-

''3.For the above spare mini bus the permit holder has paid quarterly tax at the rate of ¾ of the maximum rate

payable per passenger for the regular mini bus as per the provision in Clause 2 - Item III (c) (4) of the First Schedule. But the permit holder has committed the offence of misusing the spare mini bus as a contract carriage omni bus for the conveyance of passengers for hire. Hence a show cause notice was issued in the reference cited as to why appropriate additional tax should not be levied. The explanation received from the permit holder has been duly considered. Since it is evident that the spare mini bus has been misused as contract carriage omni bus the permit holder is liable to pay additional motor vehicle tax at the rates applicable to contract carriage omni bus as specified in Clause 2 - Item II (b) of the First Schedule read with Section 11 of the Tamil Nadu Motor Vehicles Taxation Act, 1974. As such the additional tax due to be paid by the permit holder in this case is assessed as follows:-

Tax due for 25 seats for a quarterly period (at the rate of Rs.3000/- per seat per quarter applicable to contract carriage omni bus)	*Rs.75000/-*
Less - Tax already paid for the spare bus for the current quarterly period ending 31.12.2015	*Rs. 3750/-*
Additional Amount of Tax to be paid	*Rs.71250/-*

4.The permit holder is hereby is requested to remit the additional tax within seven days of receipt of this order for considering his request for release of the impounded vehicle.

5.The permit holder is further informed that, if he is aggrieved by this order, he may prefer an appeal to the Joint Transport Commissioner, Madurai Zone, Madurai - 7 under Rule 10-A of the Tamil Nadu Motor Vehicles Taxation Rules, 1974, within thirty days of receipt of this order. In the event of preferring an appeal the fact may be intimated and a copy of the appeal petition may be sent to this Office for further action.''

3.It is the specific case of the petitioner that the petitioner is at best liable to pay additional tax in terms of Clause 2 - Item III (c) (4) of the First Schedule to the Tamil Nadu Motor Vehicles Taxation Act, 1974 [hereinafter referred to as ''the Act'']. It is submitted that there is no justification in imposing additional tax in terms of Clause 2 - Item II(b) of the First Schedule to the Act.

4.The facts of the case are that the petitioner is a holder of four different mini stage carriage permits and has a spare bus, which was used by the petitioner for the conveyance of passengers on unauthorized route without obtaining special temporary permit under

Section 88(8) of the Motor Vehicles, Act, 1988. Under these circumstances, on 22.11.2015 the vehicle bearing Registration No.TN-59-U-2003 was stopped by the Motor Vehicle Inspector, Grade – I, Regional Transport Office, Pudukottai, in front of Athanakottai Police Station and certain irregularities were noticed. Particularly, it was noticed that the vehicle is covered by a spare mini bus permit to ply in the place of route buses of the permit holder in the event of temporary break down etc. However, no evidence was produced to prove that the vehicle is permitted to ply on the route Madurai to Thanjavur via. Pudukottai. At the time of check, it was found that the vehicle was proceeding from Madurai to Thanjavur with 25 passengers who were going to attend a marriage betrothal function. Thus, the vehicle was operated on an authorized route without a valid permit. It was further noticed that the Registration Certificate, Fitness Certificate, Insurance Certificate, Pollution under Control Certificate and permit were not accompanying the vehicle at the time of verification. It was also noticed that vehicle did not have requisite first aid box and that the vehicle was misused as contract carriage omni bus for the conveyance of marriage party without obtaining a special permit and without paying the additional motor vehicle tax.

5.The petitioner replied to the demand notice and thereafter, filed an appeal before the first respondent. The first respondent has confirmed the demand proposed in the notice issued by the second respondent.

6.Opposing the prayer, the learned Additional Government Pleader for the respondents submits that the order passed by the first respondent is a well reasoned order and it requires no interference in this Writ Petition. It is submitted that the tax has been levied in terms of Section 11 of the Act. Admittedly, the petitioner was plying the vehicle at the time of seizure as a contract carriage and therefore, the additional tax demanded by the second respondent is correct. The learned Additional Government Pleader for the respondents therefore submits that the Writ Petition is liable to be dismissed.

7.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

8.The relevant entries from the First Schedule to the Tamil Nadu Motor Vehicles Taxation Act, 1974 read as under:-

First Schedule			
(See Sections 3 and 6)			
Glasses of Vehicles	Quarterly tax	Glasses of Vehicles	Quarterly tax
(1)	(2)	(1)	(2)
II. Vehicles permitted to ply solely as contract carriage, whether classified as ''Tourist Vehicle'' or not, which the vehicle is permitted to carry,-		III. Vehicles permitted to ply as stage carriages and to carry more than six persons (other than the driver and the conductor)-	
(a) not more than thirty-five persons (other than driver), for every square metre of floor area of the vehicle	Rs.4,900.00	(a) Plying exclusively within the Chennai Metropolitan Area. For every passenger (other than the driver and the conductor) which the vehicle is permitted to carry.	60.00
(b) more than thirty-five persons (other than driver), for every person (other than the driver)	**Rs.3,000.00**	(b) Plying exclusively within the limits of the City of Madurai or the City of Coimbatore or within the limits of one or more contigenuous municipalities or on other town service routes- For every passenger (other than the driver and the conductor) which the vehicle is permitted to carry.	275.00
		(c) Plying in routes or areas other than those falling under items (a) and (b)	
		(i) For every passenger (other than the driver and the conductor) which the vehicle is permitted to carry, if the service classed as ''Express Service''.	360.00

		(ii) For every passenger (other than the driver and the conductor) which the vehicle is permitted to carry in the case of services other than ''Express Service'' (Mosfussil Service).	360.00

9.The facts are not in dispute. The petitioner has used the spare bus for contract carriage. That apart, the vehicle was not carrying any of the mandatory documents that are required for a vehicle. Under these circumstances, I do not find any reason to interfere with the conclusion arrived by the first respondent, levying additional tax in terms of Clause 2 – Item II(b) to the First Schedule to the Act. The Writ Petition is, therefore, dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (P&A)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

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To

1.The Appellate Authority cum
Joint Transport Commissioner,
Madurai – 625 007.

2.The District Collector cum Regional
Transport Authority,
Madurai District,
Madurai.

3.The Regional Transport Officer,
Madurai (North),
Madurai.

+1 CC to M/s.SPL.GP. (SR-18622[F] dated 13/04/2022)

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12.04.2022

KMV(CO)
GC(04.05.2022) 5P 5C