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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2023

CORAM

THE HON'BLE DR JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE SUNDER MOHAN

W.A.(MD)No.195 of 2021
and
C.M.P(MD)No.600 of 2021

Dr.G.Winston .. Appellant/Petitioner

Vs.

1.The Secretary to the Government of India,
Ministry of Transport & Highways,
No.1, Parliament Street, Transport Bhavan,
New Delhi-110 001.

2.The Secretary to the Government of India,
Ministry of Heavy Industries and Public Enterprises,
(Department of Heavy Industry)
Room No.428, Udyog Bhavan,
New Delhi-110 011.

3.The Transport Commissioner,
Transport Department,
Chepauk,
Chennai-5.

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4.The Regional Transport Officer,
RTO Office, Nagercoil,
Situated at,
Pandarapuram, Thovalai Taluk,
Nagercoil, Kanyakumari District.

5.Derik Hyundai Motors,
Rep by its General Manager,
Nagercoil.

6.The Principal Secretary to Government,
Transport Department,
Fort Saint George, Chennai. .. Respondents/ Respondents

(R6 Suo Motu impleaded vide order dated 24.09.2020)

Appeal filed under Clause 15 of the Letters Patent, praying this Court, to set aside the order dated 24.09.2020 passed in W.P(MD)No.5450 of 2020 on the file of this Court by allowing this Writ Appeal.

For Appellants	:Mr.M.R.Sreenivasan, for Mr.T.Arul
For R3,R4&R6	:Mr.D.Sasikumar, Additional Government Pleader
For R1&R2	:Mr.S.Jeyasingh Senior Panel Counsel
For R5	:Mr.B.Michael Sebastian, for Mr.S.Xavier Rajini

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JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
SUNDER MOHAN,J.

The appellant, who lost his writ petition before the learned Single Judge, is before the Division Bench seeking tax exemption for his automatic transmission vehicle, since he is a physically disabled person, entitled for tax exemption.

2.In the year 1976, the Government of Tamil Nadu issued a notification in exercise of its power under Section 20(1) of Tamil Nadu Motor Vehicles Taxation Act, 1974, exempting payment of tax leviable under the said Act, to all motor vehicles specially designed or adapted for the use of physically handicapped persons, provided that adapted vehicles are used by the physically handicapped persons only. The said notification in G.O.Ms.No. 3352, dated 29.12.1976, came into effect from 1st January, 1977. Availing the said concession in the year 2006, the appellant earlier had purchased a Hyundai Santro car with automatic transmission with required alteration. Due to the advancement of technology in motor vehicle as well as

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considering the age of the vehicle he possessed, the appellant had thought fit to dispose the old vehicle and purchased a new Hyundai-*i*10 car in exchange the automatic transmission (hand control). When he sought for tax exemption, as per G.O.Ms.No.3352, Home (Transport-T) Department, dated 29.12.1976, the same was declined by the Road Transport Authorities. Hence, he was compelled to file a writ petition in W.P(MD)No.5450 of 2020 with the following prayer,

> "*to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 22.01.2020 vide his proceedings in Lr.R.No.1223/C1/2020 passed by the fourth respondent and quash the same as illegal and consequently, direct the fourth respondent to register the petitioner's new Hyundai-i10 car with auto clutch, a modern version of automatic Transmission without insisting the petitioner to produce retro fitment certificate within a time frame as fixed by this Court and grant life tax exemption as to the CARs for the disabled persons*."

3.The learned Single Judge, after considering the expression like "Specially designed", "adapted" (specially designed motor vehicle) used in G.O.Ms.No.3352, has dismissed the writ petition making the following

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observations:

"16.Now the only question that has to be answered by me is whether the vehicle purchased by the petitioner can be categorized as motor vehicle specially designed or adapted for the use of physically handicapped persons. Even though the learned counsel appearing for the petitioner made an earnest attempt to persuade me to accede to his view point, I regret my inability. Hyundai i10 can be used by any person. It cannot be called as vehicle specially designed or adapted for the use of physically handicapped person. In other words, Hyundai i10 is a vehicle which a normal person or a differently abled person like the petitioner can drive. It has not been specially adapted or designed for the use of differently abled persons. The technological design of the vehicle is such that the physical disability of the petitioner will not come in the way of driving the vehicle. Use of the vehicle by the petitioner by itself will not make it an invalid carriage. On the other hand, the vehicle must be specially designed or adapted to address the needs of the physically challenged person. Such is not the case here. It is a car designed for all. Incidentally, it suits the petitioner also. The petitioner is an incidental beneficiary. He is not a targeted beneficiary. Therefore, the other requirement set out in G.O.Ms.No.3352, Home (Transport-T) Department, dated 29.12.1976 is not satisfied.

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17.Of-course, issue regarding the mode of interpretation did arise in this case. A beneficial provision must be expansively and liberally construed so that the intended beneficiaries reap the fruits. But it is equally well settled that a provision exempting payment of tax must be strictly interpreted and if there is any ambiguity, the benefit must go not to the assessee but to the revenue. The G.O in question is not however torn by such conflicting interpretations. It poses a factual and straight-forward question. Is the vehicle "specially designed" or "adapted" for the use of physically handicapped persons?". "special" is something different from what is normal. "Specially" means "for a particular purpose or person" (Oxford Advanced Learner's Dictionary 9th edition). P Ramanatha Aiyar's 'Advanced Law Lexicon' defines the word 'special' as follows:-

*"**Special.** Designed for a particular purpose.*

Exceptional in character, quality or degree, appointed or employed for a particular purpose or occasion, relating to a single thing."

Black's Law Dictionary also defines 'special' as 'unusual' or 'extraordinary'. Since the expression "specially" bears such a connotation, the vehicle in question cannot fall within the scope of the G.O."

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4.The learned counsel for the appellant contends that the learned Single Judge has failed to appreciate the spirit of G.O., granting tax exemption as well as the improvement in the technology. To encourage the disabled persons and to make them self-reliance, as a welfare measure G.O has been passed granting tax exemption in 1976, when there was no technology auto transmission alteration was to be made specially for the use of disabled persons. Whereas, by efflux of time, technology has improved and auto transmission using hand clutch has become order of the day, which is very well suitable for any disabled person without making any mechanical alteration of the vehicle. Therefore, the vehicle, which a disabled person, can drive without making any mechanical alteration, should also be exempted. However, the learned Single Judge has failed to take note of the technology improvement.

5.Further, the learned counsel has also drawn our attention to the clarification letter issued by the Government of India, Ministry of Road Transport and Highways, dated 13.11.2020, which makes clear that the vehicles with automatic gear have been considered suitable for driving by some of the disabled person without altering the vehicle. In order to

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facilitate those disabled persons to get the various exemptions/facilitation/relief provided by the State Government in respect of the invalid carriage vehicles may also be extended for these vehicles owned by the disabled persons. This clarification letter was issued, after the delivery of the impugned order, which is dated 24.09.2020. The clarification letter, dated 13.11.2020, makes clear the current legal position it allows the disabled persons to seek exemption, even for the automatic gear vehicle without making any mechanical alteration, provided the said disabled person is fit to drive the said automatic transmission vehicle. It all depends upon the vehicle as well as the person, who drives the vehicle and subjective satisfaction of the authority, who grants exemption. For convenience sake, the clarification letter of the Government of India is also extracted below:

> *"Sir/Madam,*
>
> *Kindly find attached notification G.S.R.661(E) dated 22.10.2020 which contains amendments in Form 20 of the Central Motor Vehicles rules (CMVR), 1989. With this notification Divyangjan have been categorized as ownership type. Form 20 of the CMVR 1989 provides for application for registration of a motor vehicle with the ownership of a vehicle in the name of the categories as mentioned at Sr.No.4A of the*

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form.

2.The attention is also invited to the advisory issued by the Ministry No.RT.II021140/2014-MVL dated 14th June 2016 regarding Procedure for guidelines for grant of driving licenses and registration certificates to differently abled persons. The vehicles with Automatic gear have been considered suitable for driving by some of the Divyangjan without altering the vehicle.

3.In order to facilitate Divyangjan, the various exemptions/facilitation/relief provided by the State Governments in respect of invalid Carriage vehicles may also be extended for theses vehicles owned by Divyangjan.

4.This issues with the approval of the Competent Authority."

6.In the light of the above facts and circumstances, this Court is of the view that the appellant herein is entitled for tax exemption and the fourth respondent is hereby directed to consider the request of the appellant herein, in the light of the clarification letter issued by the Union of India, directing all the State Governments to extend the tax exemption for automatic transmission vehicle also without alteration if it is purchased and drove by the disabled persons.

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7The appellant herein is hereby directed to make a representation within seven(7) days from the date of receipt of a copy of this order. On such receipt of the said representation, the fourth respondent is directed to pass appropriate orders in the light of the observations made by this Court and in the light of the clarification given by the Union of India, dated 13.11.2020.

8.With the above direction, this Writ Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(G.J.,J.) (S.M.,J.)
04.01.2023

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Transport Department,
Chepauk,
Chennai-5.
2.The Regional Transport Officer,
RTO Office, Nagercoil,
Situated at,
Pandarapuram, Thovalai Taluk,
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