

(2017) 03 KAR CK 0259

In the Karnataka High Court

Case No : 200511 and 200520-200545 of 2016

Assistant Regional Transport Officer, Humnabad, Bidar District
and another

APPELLANT

Vs

Andhra Pradesh Tourist Development Corporation, Hyderabad

RESPONDENT

Date of Decision : 23-03-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Code of Civil Pro

Citation : (2017) 03 KAR CK 0259

Hon'ble Judges : Aravind Kumar, B.A. Patil

Bench : DIVISION BENCH

Advocate : A. Syed Habeeb, S.V. Krishnaswamy, Roja Amaresh Sharanappa

Judgement

1. This intra Court appeal is directed against the order dated 17.08.2016 passed in W.P.No.83491-80313- 80338/2010 (T-MVT) where under learned single Judge has allowed the writ petition and has quashed the impugned orders passed by Assistant Regional Transport officer dated 23.04.2007-Annexure-C1 to C26 and the order dated 15.10.2008 Annexure-D passed by Deputy Commissioner for Transports by concluding that petitioner-Corporation is entitled to claim tax exemption in respect of its tourist vehicles by virtue of notification dated 22.03.1994. 2. Facts in brief which has led to the filing of these Writ Appeals are as under : Petitioner is a State Transport Development Corporation formed by the Andhra Pradesh State and has obtained All India Permits under Section 88(9) of the Motor Vehicles Act, 1988 (for short "MV Act", 1988) and operates its tourists vehicles from Hyderabad to places like Mumbai, Pune, Shirdi etc. First respondent issued check reports to the petitioner and a show cause notice to the effect that tourist vehicles operated by it are violating permit conditions and they are liable to pay tax under Section 3(1) of the Karnataka Motor Vehicles Taxation Act, 1957 (for short KMVT Act) and as such called upon the petitioner to show

cause as to why action should not be taken to levy and recover tax payable under Section 3(1) of Karnataka Motor Vehicles Taxation Act, 1957 (for short "KMVT" Act) contending inter alia that vehicles are not liable to pay tax by relying upon notification dated 22.03.1994 (for short "notification") and contending that said notification provides for exemption of its vehicles from payment of tax. Reply was submitted by the petitioner to the show-cause notice. However, demand notices came to be issued by the Assistant Regional Transport Officer and Taxation Authority, Humanabad Check-post, Bidar District vide Annexure-C to C26, raising demand for payment of tax from petitioner. Being aggrieved by the same petitioner-Corporation filed appeals before second respondent who by order dated 04.06.2007 directed the Corporation to deposit 50% of the tax demand and to furnish bank guarantee for remaining 50% of the tax. Petitioner approached this court in W.P.No.80527/2009 and learned single Judge by order dated 10.08.2009 set aside the same and remanded the matter to the second respondent with a direction to dispose of the appeals in accordance with law. Thereafter, second respondent by order dated 15.10.2009-Annexure-D dismissed the appeals by arriving at a conclusion that vehicles operated by petitioners which ply in State of Karnataka are covered by permits granted under Section 88(9) of the Motor Vehicles Act, 1988 read with Rules 83-85 of M.V. Rules for which no specific exemption from payment of tax has been granted by the State of Karnataka by issue of notification under Sect. 16(1) of KMVT Act and notification dated 22.03.1994 is inapplicable. 3. Being aggrieved by the same Corporation filed writ petitions above referred to and learned single Judge allowed the same on the ground that notification dated 22.03.1994 exempts the vehicles operated by Tourists Development Corporation of any State except the State of Karnataka and State of Kerala. It was also held by the learned single Judge that proviso to the notification excludes the case of Motor Vehicles covered by special permits granted under Section 88(8) of M.V. Act, 1988 and it does not cover the case of the petitioner corporation and there is no other restrictive condition in the main body of the notification dated 22.03.1994 which justifies the denial of exemption to petitioner vehicles from payment of tax to the Corporation, by order dated 13.08.2016 which is under challenge. 4. We have heard Sri. Syed Habeeb learned Addl. Government Advocate appearing for the appellant-State and Sri. S.V. Krishnaswamy appearing for the respondent-Corporation. We have perused the records. 5. It is the contention of Mr. Syed Habeeb, learned Additional Government Advocate that learned single Judge having noticed that notification dated 22.03.1994 excludes the case of Motor Vehicles covered by special Permits granted under Section 88(8) had erred in not considering that said notification is not applicable to the Motor vehicles granted with permits issued under Section 88(9) of the M.V. Act. He would also contend that learned single Judge erred in not noticing that except for instances dealt within the proviso of the notification same should not be used for interpreting the main provision so as to exclude something by implication and interpretation placed on proviso of the said notification is totally perverse. He would also elaborate his submissions by contending that learned Single Judge failed to

appreciate that by notification dated 20.12.1976 exemption from payment of tax under the KMVT Act had been allowed in respect of tourists motors cabs and tourist omni buses (tourists vehicles) registered in the State other than State of Karnataka covered by permits granted under Section 63(7) of old Motor Vehicles Act, 1939 which is now Section 88(9) and on account of large scale of mis-use of said exemption notification it came to be withdrawn on 31.03.1981, the challenge to which was negated by the Hon'ble Apex Court in case of B. A. Jayaram and others etc., v. Union of India and others, reported in AIR 1983 SC 1005 and as such the finding of the learned single Judge holding that said general exemption is no longer in existence or has no relevance is an erroneous finding. 6. He would also contend that State Government by various notification issued under Section 16(1) read with Section 3(3) of KMVT Act had granted exemption from payment of tax in respect of motor vehicles and motor cabs covered by special permits granted under Section 63(6) of old M.V. Act, 1939 now Section 88(8) of M.V. Act, 1988 which are registered in any State other than the State of Karnataka and chartered by tourists which also came to be withdrawn by notification dated 19.12.1990 and consequently all other State vehicles granted with special permits under Section 88(8) would be liable to pay tax in the State of Karnataka. He would also contend that under the said withdrawal notification only the vehicles belonging to ITDC and STDC or Tourists Development Corporation of Union Territory of Pondicherry or any other State other than the State of Karnataka were exempted from payment of tax in respect of the vehicles covered by special permits granted under Section 88(8) of the M.V. Act. He would contend that proviso to the said notification would also indicate that vehicles belonging to petitioner - Corporation granted with only special permits under Section 88(8) of the Act were exempted from payment of tax in the State of Karnataka and as such the observation made by the learned single Judge at Paragraph Nos. 6 to 8 of the order under challenge is contrary to law and also the withdrawal notifications dated 31.03.1981 and 19.12.1990. Hence, he prays for allowing the writ appeal and prays for dismissing the writ petitions. 7. Per contra Sri. S.V. Krishnaswamy learned counsel appearing for respondent corporation would not only defend the order under challenge but would also contend that very writ appeal itself it not maintainable since writ petition filed by the corporation was against the order of the Appellate Authority and learned single Judge had exercised supervisory jurisdiction under Article 227 of Constitution of India and as such the intra Court appeal under Section 4 of the High Court Act, 1961 is not maintainable. He would elaborate his submission on the merits of the case by contending that notification dated 22.03.1994 exempts on reciprocal basis the tax payable under the KMVT Act in respect of motor vehicles belonging to Indian Tourism Development Corporation or the State Transport Corporation or the State Road Transport Corporation or Tourist Development Corporation of Union Territory of Pondicherry or any other State except the State of Karnataka and the Taxis registered in the Union Territory of Pondicherry. He would contend that proviso to the said notification makes it clear that exemption is not available to the Motor Vehicles operated by special permits

issued under Section 88(8) of M.V.Act and as such tourist vehicles owned by Tourists Development Corporation of the other States except tourist vehicles of the State of Kerala are exempted from payment of tax. He would submit that all tourists-permit other than the special permits obtained and operated by Tourists Development Corporation of other States except the State of Kerala are exempted from payment of taxes and the permits operated by the petitioner are issued under Section 88(9) of the Act and as such is entitled for exemption as per notification dated 22.03. 1994. Hence, he prays for dismissal of the writ appeal and seeks for conforming the order passed by the learned single Judge. 8. In the instant case, perusal of writ petition filed by petitioner would disclose that petitioner has sought for the following reliefs: "(a) Issue a Writ in the nature of a Writ of Certiorari or such other appropriate Writ, Order of Direction to quash the orders of the 2nd Respondent passed in Appeal No. 29/2007 connected with Appeals No. 3 to 28/2007 marked under Annexure-"D" in which the order of the 1st Respondent in Annexure-" C1" to "C(sic)" is merged; (b) To grant such other appropriate reliefs as may be deemed necessary to meet the ends of justice; (c) Further this Hon"ble Court may also be pleased to direct the 2nd Respondent to reconsider the Appeals particularly in view of the Exemption Notification produced in Annexure-"B" ;" 9. Perusal of the averments made in writ petition would also disclose that petitioner is relying upon the notification dated 22.03.1994 and claiming exemption from payment of Motor Vehicles Taxes in respect of vehicles operated by it in the State of Karnataka on the ground said notification provides for exemption. The writ petition is also styled as one under Articles 226 and 227 of the Constitution of India. 10. While the proceeding under Article 226 of the Constitution of India are in exercise of original jurisdiction of High Court, the proceedings under Article 227 of the Constitution of India are in exercise of supervisory jurisdiction. A proceeding under Article 226 is an original proceeding and if it concerns civil rights it would be an original civil proceedings. Consequently where a petition is filed under Article 226 of the Constitution of India and orders are passed thereunder, an intra-Court appeal would lie from said order if such right of appeal is provided under the High Court Act. However a proceeding under Article 227 is not an original proceedings and as such an intra Court appeal does not lie against the order of a Single Judge. A right of appeal is a statutory right but not an inherent right and same cannot be availed otherwise. Thus, when a petition is filed both under Articles 226 and 227 of the Constitution of India, the Court has to examine the averments made in the petition and the relief claimed thereto and ascertain as to whether petitioner is seeking before the learned single Judge to exercise the original jurisdiction under Article 226 of the Constitution of India or is seeking exercise of supervisory jurisdiction under Article 227 of the Constitution of India. 11. In the case of Tamanna and other v. Mrs. Renuka and others, reported in ILR 2009 Kar 1207 : (AIR 2009 Kar 119), seven Hon"ble Judges Bench of this Court has held that no appeal would lie under Section 4 of the Karnataka High Court Act against the order passed by a single Judge in exercise of power conferred under Article 227 of the Constitution of India in the matter arising against the order made deciding a issue, by a Court

subordinate to the High Court, in the course of suit or other proceedings not finally disposed of, which is attracted by Section 115, of CPC and is governed under Section 8 of Karnataka High Court Act and in all other matters which are not attracted by Section 115 CPC and not governed under Section 8 of Karnataka High Court Act, an appeal would lie under Section 10 (iv-a) against the order passed under Section 9 (xii) of the Karnataka High Court Act read with Articles 226 and 227 of the Constitution of India and Rules 2(1) 26 and 39 of the Writ Proceedings Rules as well as Article 11(sa) to Schedule - II of Karnataka Court Fees and Suits Valuation Act, 1958. 12. Thus, in the background of law laid down in the above judgment, writ petition on hand when examined it would clearly indicate that it is not a petition filed under Article 227 of the Constitution of India alone and the applicability or otherwise of the notification dated 22.03.1994 is the core issue which has been urged in the writ petition to claim exemption, which had been denied by the respondent authorities and as such we are of the considered view that present intra Court appeal is maintainable and as such first contention raised by the learned counsel appearing for respondent with regard to maintainability of writ appeal is hereby rejected. 13. A bare reading of Section 3(1) of the KMVT Act would disclose that in respect of all motor vehicles suitable for use on roads are liable to pay tax at the rates specified in part-A of the Schedule, unless exempted from payment of such tax by the State by issuance of a notification under Section 16 (1) of the KMVT Act. Under Section 16(1) of the KMVT Act the State Government is empowered to exempt or reduce whether prospectively or retrospectively the tax payable in respect of any class of motor vehicles or motor vehicles not used on the road the tax payable, if in its opinion it is necessary so to do by issuance of a notification. Every such notification issued under sub-section (1) of Section 16, KMVT Act is required to be laid before the State Legislative Assembly for modification if any. 14. In the instant case the writ petitioner undisputedly is claiming exemption from payment of tax by relying upon the notification dated 22.03.1994 contending inter alia that vehicles in question are covered by the permits granted under Section 88 (9) of M.V. Act, 1998 read with Rules 83-85. The learned single Judge having extracted the said notification at paragraph 6 of the order under challenge has opined that said notification would clearly show that Tourist Development Corporation of any State except the State of Karnataka and State of Kerala, which the present petitioner is not, is exempt from payment of tax on reciprocal basis. It is further held that proviso to said notification which excludes the Motor vehicles covered by special permits granted under Section 88 (8) of the M.V. Act, 1988 does not cover the case of the petitioner-Corporation and it has been further held that there is no other restrictive condition in the main body of the notification which justifies the denial of exemption from payment of tax to the petitioner-Corporation. 15. The general rule is that exemption notification has to be given strict interpretation. An exemption notification must be interpreted in the light of the words employed by it and not on any other basis and there cannot be any addition or subtraction from the words used in the exemption notification, as it requires strict interpretation by the Courts. The words of the exemption

notification have to be given its natural meaning when the wordings are simple, clear and unambiguous. 16. The Hon"ble Apex Court in the case of Commissioner of Central Excise, Surat-1 v. Favourite Industries, reported in 2012 (7) SCC 153 : (AIR 2012 SC 1758) has held to the following effect: "35. The notification requires to be interpreted in the light of the words employed by it and not on any other basis. There cannot be any addition or subtraction from the notification for the reason the exemption notification requires to be strictly construed by the courts. The wordings of the exemption notification have to be given its natural meaning, when the wordings are simple, clear and unambiguous." 17. Exemptions are to be strictly interpreted in fiscal statutes and the important principle of interpreting of exemption notification is that as far as possible liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed therein. In construing an exemption provision, question of equity does not arise. Exception or exemption provision, must be construed strictly. Hon"ble Apex Court in the case of Eshwar Dutt v. Collector (LA), reported in (2005) 7 SCC 190 : (AIR 2005 SC 3165) has held: "The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee, does not apply to the construction of an exception or an exemption exempting provision as the same have to be construed strictly. Further this Court also held that a person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision and in case of doubt or ambiguity benefit must go to the State. (Emphasis supplied by us) 18. In case of ambiguity which rule of construction will be applicable to exemption provision has been answered by the Hon"ble Apex Court by its authoritative pronouncement in the case of Union of India v. Wood Papers Limited, reported in 1990 (4) SCC 256 : (AIR 1991 SC 2049) as under : "4. Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it be in the nature of exception is to be construed strictly and against the subject but once ambiguity or doubt applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction." 19. In the case of Commissioner of Income Tax and another v. Yokogawa India Limited reported in (2017) 2 SCC 1 : (AIR 2017 SC 463) it has been held by Hon"ble Apex Court as under :- "8. The cardinal principles of interpretation of taxing statutes centers around the opinion of Rowlatt, J. in Cape Brandy Syndicate v. Inland Revenue Commissioners (1921) 1 KB 64 which has virtually become the locus classicus. The above would dispense with the necessity of any further elaboration of the subject notwithstanding the numerous precedents available inasmuch as the evolution of all such principles are within the four corners of the following opinion of Rowlatt, J. Cape Brandy Case (1921) 1 KB 64. "... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." In the case of State of Gujarat v.

Essar Oil Limited, reported in (2012) 3 SCC 522 : (AIR 2012 SC 1146) it has been held by Hon"ble Apex Court that: "person invoking an exception or an exemption provision to relive him of tax liability must establish clearly that he is covered by said provision and in case of doubt or ambiguity, benefit of it must go to the State." 20. In the light of the afore stated discussion of law, we are of the considered view that a notification in a fiscal statute should be construed strictly and not liberally. In this background when the notifications relied upon by the petitioner namely notification dated 22.03.1994 which came to be accepted by the learned Single Judge by arriving at a conclusion that it exempts the petitioner from the payment of tax under Section 3(1) of KMVT Act when examined, it would disclose that under the notification dated 22.03.1994 issued by the State Government in exercise of the powers conferred under sub-section (1) of Section 16 read with Section 3(3) of KMVT Act was in supersession of the notifications No. HD 38 TMT 57, dated 15th May, 1958, HD 38 TST 57 dated 25th November, 1959, HD 72 TMT 61 dated 22.11.1962, HD 38 TMT 71 dated 2.11.1971 and HD 118 TMT 79 dated 25.7.2981 and FTD 326 TMT 890 dated 15:19.12.90. For the purposes of convenience and immediate reference we are also extracting notification dated 22.03.1994 herein below : "Government of Karnataka.

No. HTD 189 TMT 93 Karnataka Govt. Secretariat

M. S. Building

Bangalore, dated 22.3.1994

Notification In exercise of the powers conferred by sub-section (1) of Section 16 read with sub-section (3) of Section 3 of the KMFVT Act, 1957 (Karnataka Act 35 of 1957) and in super session of Notification No. HD 38 TMT 57, dated 15th May, 1958, HD 38 TST 57 dated 25th November, 1959, HD 72 TMT 61 dated 22.11.1962, HD 38 TMT 71 dated 2.11.1971 and HD 118 TMT 79 dated 25.7.2981 and FTD 326 TMT 890 dated 15:19.12.90 (sic), the Government of Karnataka hereby exempts on reciprocal basis, the tax payable under the said Act in respect of motor vehicles belonging to the Indian Tourism Development Corporation or a State Road Transport Corporation or Tourist Development Corporation of Union Territory of Pondicherry or any other State except the State of Kerala and other than the State of Karnataka and the Taxies registered in Union Territory of Pondicherry or in any other State except the State of Kerala and other than the State of Karnataka with immediate effect. Provided that such exemption shall not be available in respect of Motor Vehicles covered by Special Permits granted under sub-section (8) of Section 88 of Motor Vehicles Act, 1988 by the Transport Authority of Union Territory of Pondicherry or any other State except the State of Kerala and other than the State of Karnataka to pick up and set down passenger in the State of Karnataka. By order and in the name of the Governor of Karnataka Sd/- (T.B. Renuka Prasad) Under Secretary to Govt. (Transport), (I/U) Home and Transport Department" 21. The seven (7) notifications referred to in the notification dated 22.03.1994 referred to herein

above has been produced by the appellant - State along with I.A.No.3/2016 which has been perused by us and it would disclose that under the notification dated 15.05.1958 State had exempted the tax payable under the KMVT Act in respect of the motor vehicles registered in the State of Tamil Nadu, Andhra Pradesh, Kerala or Bombay and chartered by tourists if tax had been paid in their respective States. The notification dated 25.11.1959 was the exemption granted in respect of the motor vehicles registered in the State of Orissa on the same lines of 1958 notification. The notification dated 22.11.1962 exempted on reciprocal basis, the tax payable under the KMVT Act in respect of motor vehicles registered in any State other than State of Karnataka or union territories in India provided the tax has been paid in the State where it is registered. Notification dated 02.11.1971 issued under Section 16(1) read with Section 3(3) of KMVT Act would disclose that on reciprocal basis the tax payable under the KMVT Act was exempted in respect of motor vehicles registered in Union territory of Pondichery and a special permit granted under sub-section (6) of Section 63 of M.V. Act, 1939. Notification dated 19.12.1990 provided for exemption from payment of tax under the KMVT Act in respect of motor vehicles belonging to Indian Tourist Development Corporation or a State Road Transport Corporation or Tourist Development Corporation of Union Territory of Pondichery or any State other than State of Karnataka excluding the motor vehicles covered by special permits granted under sub-section (8) of Section 88 of M.V. Act, 1988. These notifications i.e., seven (7) notifications referred to the vehicles covered under the permit granted under Section 63(6) of M.V. Act, 1939 or the vehicles covered under the permit granted under Section 88(8) of M.V. Act, 1988. Both these provisions are akin to each other or to put it differently Section 88(8) of M.V. Act, 1988 is similar and identical to Section 63(6) of the erstwhile M.V. Act, 1939. 22. At this juncture, it would be apt and appropriate to note that a notification dated 20.12.1976 came to be issued by the State of Karnataka exempting from payment of tax in respect of motor vehicles of other States covered by permits granted under Section 63(7) of the M.V. Act, 1939 which provision is akin to Section 88 (9) of the M.V. Act, 1988. Said exemption notification came to be withdrawn by a notification dated 31.03.1981. Several operators of other states questioned the constitutional validity of withdrawal notification dated 31.03.1981 before the Hon"ble Apex Court in the case of B.A. Jayaram and others v. State of Karnataka where under the constitutional validity of withdrawal notification came to be upheld by holding that such withdrawal cannot be held to be violative of Article 14 of the Constitution of India. It was held by the Apex Court as under : "5. The Government of Karnataka apparently the worst sufferer, reacted sharply. The concession given to the holders of all India permits by way of exempting the all India tourist vehicles, registered in other States, from payment of the Karnataka tax if tax had already been paid in the home State was withdrawn by a notification dated 31st March, 1981. It is this notification and the consequences of the notification that are in question in these several Writ Petitions. We are informed that the State of Andhra Pradesh has also issued a notification similar to that of the State of Karnataka withdrawing the exemption which it had granted

earlier to vehicles operating on permits issued under Section 63(7) and registered in other States. Other States have not withdrawn the exemption previously granted by them to vehicles registered in other States and operating on permits issued under Section 63 (7). But as the exemption granted by most of them is on a reciprocal basis, the withdrawal of exemption by the States of Karnataka and Andhra Pradesh has the effect of making vehicles registered in Karnataka and Andhra Pradesh, immediately subject to payment of tax in every one of those States through which they pass." 23. As could be seen from the dicta of the Apex Court by notification dated 31.03.1981 Annexure-R2 the exemptions granted to the vehicles from payment of tax covered under permit issued under Section 88(9) of the M.V. Act, 1988 (old Section 63(7)) was withdrawn and came to be questioned before the Hon"ble Apex Court and the validity of notification dated 31.03.1981 came to be upheld by the Hon"ble Apex Court. 24. The learned single Judge under the order under challenge has held that notification Annexure-R1 dated 20.12.1976 and Annexure-R2 dated 31.03.1981 are of no relevance on the premise they neither pertain to the period in question 2006-2007 nor they deal with the case of All India Permit buses plied by the Tourist Corporations or the State Road Transport Corporations of other States within the State of Karnataka. It has been further held by the learned single Judge that these old notifications stood superseded by the notification dated 22.03.1994 which has been relied upon by petitioner. Said finding reads as under: "7. The Notification Annexure-R1 dated 20.12.1976 and Annexure-R2 dated 31.3.1981 are of no relevance in the present case, as they neither pertain to the period in question viz ., 2006-07, nor they deal with the case of All India Permit buses plied by the Tourism Corporations or the State Road Transport Corporations of other States within the State of Karnataka. These old notifications which stood superseded by the notification dated 22.3.1994 which covers the case of the petitioner unequivocally are of no relevance in the present case and therefore, the contention raised in this regard on behalf of the State, is liable to be rejected and the same is accordingly rejected." This is a factual error, inasmuch as neither the notification dated 20.12.1976 (Document No. 3) nor notification dated 31.03.1981 (Document No. 4) came to be superseded by the notification dated 22.03.1994. We are also unable to agree with the view expressed by the learned single Judge for the simple reason that notification dated 22.03.1994 itself indicates as to which are the notifications which have been superseded namely the notifications dated 15.05.1958, 25.11.1959, 22.11.1962, 02.11.1971, 25.07.1981, 15.12.1990 and 16.12.1990 came to be superseded and not the notifications dated 20.12.1976 or 31.12. 1981. In fact the notification dated 20.12.1976 came to be superseded by the notification 31.03.1981. A perusal of these two notifications i.e. 20.12.1976 and 31.03.1981 (Document No. 3 and 4 produced by appellant-State along with I.A.No.3/2016) would indicate that notifications dated 20.12.1976 had been issued by State Government in exercise of power conferred by Section 16(1) of KMVT Act exempting tourist vehicles registered in other States other than State of Karnataka exempting from payment of tax to the tourist vehicles plying in the

State of Karnataka under permit granted under Section 63(7) of the M.V. Act, 1939, which was on reciprocal basis and said notification dated 20.12.1976 came to be withdrawn by notification dated 31.03.1981. The tourist vehicles of petitioner-Corporation plying in the State of Karnataka are issued with permits under Section 88(9) which is similar and identical provision to Section 63(7) of M.V. Act, 1939. When, exemption was granted to vehicles run under the authority of permit issued under Section 63(7) has been withdrawn, burden lies on petitioner-Corporation to prove and establish that notification dated 22.03.1994 also provides for exemption to vehicles issued with permits under Section 88(9) of M.V. Act, 1988 also. As held by Hon''ble Apex Court in Essar Oil Limited's case (AIR 2012 SC 1146) referred to herein above, a person invoking exemption has to establish that he is relieved from payment of tax by virtue of such exemption notification. 25. The learned Single Judge has also held that proviso to the notification excludes the motor vehicles covered by special permits granted under Section 88(8) of M.V. Act, 1988 and does not cover the case of the petitioner and as such held that there is no other restrictive condition in the main body of the notification found which justifies the denial of exemption from payment of tax by the writ petitioner corporation. We are unable to subscribe to the said view for reasons more than one; firstly as held by the Apex Court while examining an exemption notification there should be strict interpretation and when a question arises whether a subject falls in the notification or in the exemption clause being in the nature of exception is to be construed strictly and a person invoking an exception or exemption provision to relieve him of tax liability must clearly establish that he is covered by the said provision and in case of doubt of ambiguity, benefit of it must go to the State (2012) 3 SCC 522 : (AIR 2012 SC 1146). The notification dated 22.03.1994 which is in supersession of earlier seven notifications as discussed herein above all related to exemption from payment of tax under Section 3(1) of the KMVT Act in respect of tourist vehicles granted with a permit issued under Section 63(6) of M.V. Act, 1939 or Section 88(8) of the M.V. Act, 1988 and it did not exempt the tourist vehicles granted with permits issued under Section 63(7) of the M.V. Act, 1939 or Section 88(9) of the M.V. Act, 1988. Thus, the exemption granted under the body of the notification dated 22.03.1994 has to necessarily refer to tourist vehicles granted with the permit under Section 88(8) of M.V. Act, 1988 only. In the instant case undisputedly the permits granted to the petitioners vehicles are all issued under Section 88(9) of the M.V. Act, 1988 and as such the exemption provided under the notification dated 22.03.1984 would be inapplicable to the said vehicles or in other words tourist vehicles of the petitioner-Corporation granted with a permit issued under Section 88(9) of the M.V. Act, 1988. The proviso to the said notification is an exclusion from the exemption notification. A bare reading of the proviso to the notification dated 22.03.1994 would clearly indicate that exemption granted under the said notification would not be available to the motor vehicles covered by special permits granted under Section 88(8) of M.V. Act, 1988 which allows such tourist vehicles to pick up and to set down the passengers in the State of Karnataka and all other permits issued under Section

88(8) would be eligible to claim exemption from payment of tax. In other words the tourist vehicles issued with the permit under Section 88(8) of M.V. Act, 1988 without picking-up and setting down passengers in the State of Karnataka would be eligible from payment of tax under the notification dated 22.03.1994. 26. The exemption notification dated 22.03. 1994, the reliance of which is placed by the petitioner to stave off its liability to pay tax itself should indicate that such exemption has been granted to the vehicles covered under the permits issued under Section 88(9) of M.V. Act, 1988 and in the absence thereof it cannot be construed or contended or inference can be drawn that it provides for exemption to all the tourist vehicles irrespective of nature of permit. If it were to be so, then there was no need or necessity for the State of Karnataka to have withdrawn the exemption notification dated 20.12.1976 by issuance of a notification dated 31.03.1981, where-under it exempted from payment of tax to the tourist vehicles issued with permits under Section 88(9) being withdrawn or in other words such vehicles which were granted exemption from payment of tax being taken out the purview of exemption granted earlier. For the reasons afore stated we are of the considered view that order of the learned single Judge passed in W.P.No.83491/2009 and 80313-80338/2010 cannot be sustained. In the result, we proceed to pass the following: ORDER (i) Writ appeals are hereby allowed. (ii) The order dated 17.08.2016 passed in W.P.Nos.83491/2009 & 80313-80338/2010 (T-MVT) are hereby set aside. (iii) Writ petitions Nos. 83491/2009 & 80313- 80338/2010 (T-MVT) are hereby dismissed and orders passed in Appeal No. 29/2007 connected with Appeal Nos. 3 to 28/2007 - Annexure-D by the second respondent is hereby upheld. (iv) Costs made easy. Appeals allowed.