

(1992) 03 AP CK 0016

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 16218 of 1990, 78, 3484 and 4536 of 1989

C. Buchaiah Shetty and another

APPELLANT

Vs

Regional Transport Officer, Mahaboobnagar and another

RESPONDENT

Date of Decision : 31-03-1992

Acts Referred:

Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 11, 3, 3(1), 3(2), 4
Motor Vehicles Act, 1939 — Section 51, 62, 63(6)
Motor Vehicles Act, 1988 — Section 88(8)

Citation : AIR 1992 AP 359 : (1992) 2 ALT 485 : (1992) 2 APLJ 213

Hon'ble Judges : S.C. Pratap, C.J.; P.L. Narasimha Sarma, J.; M.N. Rao, J

Bench : Full Bench

Advocate : K.N. Jwala, K. Mangachary, V. Narasimha Reddy and O. Raghunath Raj, for the Appellant; Govt. Pleader, for Transport, for the Respondent

Judgement

P. L. N. Sarma, J.—The question to be answered by us is whether the concessional rate of tax in respect of motor vehicles covered by special permits not exceeding thirty days could be provided by a notification issued by the State Government exercising the powers under S. 9(1) of the A. P. Motor Vehicles Taxation Act 1963 (hereinafter referred to as the "Taxation Act").

2. The reference was made by a Division Bench of this Court of which one of us (M.N. Rao, J.) was a party, as it disagreed with the decision in M. A. Hari v. Government of A. P. (1988) 1 Andh LT 541.

3. Illustratively we may refer to the facts in W. P. No. 16218 of 1990 in so far as they are material for the purpose of answering the reference. The two petitioners are the joint owners of an Omni Bus bearing registration No. PYX-4955 in respect of which temporary permit No. 1247/A2/90 date 7-8-1990 was granted for three days (from 7-8-90 to 9-8-90) to enable them to ply from Madnapuram to Shanpoor empty and pick up a party of labourers at Shanoor and set them down in Kollapur in Mahaboobnagar District and from there return empty to Madnapuram. The petitioners alleged that "because of incessant rains and break

down of the vehicle there was delay" and so instead of reaching Kollapur before the mid-night of 9-8-90, had reached Madanur Check-post on the way to Kollapur at about 12.00 mid-night. The driver of the vehicle requested the Assistant Motor Vehicle Inspector for permission to proceed to Kollapur, but the vehicle was detained by the Inspector. Petitioners obtained another temporary permit No. 1271/A2/90 dated 12-8-1990 valid for three days from 12-8-90 to 14-8-90 to carry "the stranded labour party from Madnur Check-post to Kollapur." On 13-8-90, it was alleged, the Checking Officer did not release the vehicle and the labourers went on dharna. Anticipating that the contract to carry the labourers during the period 7-8-90 to 9-8-90, would be completed as originally intended, the petitioners obtained another temporary permit valid for three days from 10-8-90 to 12-8-90 for carrying a marriage party from Madnapuram to Kan-dukur and back. As the vehicle was stranded at Madnaur check-post because of the refusal of the Checking Officer to allow the vehicle to proceed, the petitioners alleged that they could not utilise the second temporary permit covering the period 10-8-90 to 12-8-90. A show-cause notice was issued by the Regional Transport Officer, Mahaboobnagar, the Licencing Officer, under the Taxation Act" to the petitioners calling upon them as to why the tax for the entire quarter should not be levied treating the same as a stage carriage. In their explanation, the petitioners contended that on the day (10-8-90) when the vehicle was checked, it was covered by a valid temporary permit to carry a marriage party from Madna-pur to Kollapur and therefore, they were not liable to pay the tax as stage carriage. Rejecting the same, the Licencing Officer issued proceedings No. 6952/A2/90 dated 19-11-1990 calling upon the petitioners to pay a sum of Rs. 17,400/- the tax liable to be paid by a stage carriage, and after deducting the amount already paid, viz. Rs. 2,320/- for the quarter ending 30-9-90 as a contract carriage, a demand was raised in a sum of Rs. 15,080/-.

4. The "Taxation Act" was enacted by the State Legislature to consolidate and amend the law relating to levy of tax on motor vehicles in the State. Section 3 is the charging section. Sub-section (1) of S. 3 says that the State may, by notification, direct that tax shall be levied on every motor vehicle used or kept for use, in a public place in the State. Sub-sec. (2) of S. 3 is to the effect that the said notification shall specify the class of motor vehicles on which, the rates for the periods at which, and the date from which, the tax shall be levied. Section 4 deals with payment of tax and grant of licence. Sub-sec. (1)(a) of S. 4 says that tax shall be paid in advance and in the manner specified in S. 11, by the register-ed owner or any other person having control of the vehicle, either quarterly, half-yearly or annually on a licence to be taken out by him. Clause (b) of sub-sec. (1) of S. 4 says that if the tax has been paid for any quarter, half-year or year and the vehicle has not been used during the whole of that period or a continuous part thereof not being less than one month, a refund of the tax shall be effected in accordance with the notification issued by the Government. Sub-sec. (4) of S. 4 of the "Taxation Act" which is relevant for the purpose of this case is as follows:

"Notwithstanding anything in S. 3 or sub-s. (1) the Government may, by notification from time to time, direct that the temporary licence for a period not exceeding thirty days from time to time may be issued in respect of a motor vehicle of any class on payment of such tax, and subject to such conditions as may be specified in such notifications."

Section 6 of the Act deals with power to levy penalty for failure to pay tax. Section 9 deals with the power of the State Government to grant exemption, reduction or other modification of tax.

5. In exercise of the power vested by sub-s. (1) of S. 3 of the Taxation Act" the State Govt. issued G. O. Ms. No. 175 Tr. R & B (Tr. II), dated 28-5-1985 prescribing the quarterly tax leviable on various class of motor vehicles. As regards the vehicles covered by temporary permits, the rate of quarterly tax as prescribed in para 4(vi)(b) of the above G.O. is Rs. 300/- for every passenger. Paragraph 4(vi)(b) of the G. O. reads:

Class of Motor Vehicle Rate of quarterly tax for motor vehicle fitted with pneumatic tyres.

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Vehicles permitted to carry more than six passengers, and plying as contract carriages on inter-State routes on temporary permits under S.63(6) of the Motor Vehicles Act 1939 and on intra-States routes (i.e. within the State of Andhra Pradesh for every passenger) (other than driver) which the vehicle is permitted to carry."

Rs. 300/-

6. In exercise of power conferred by sub-s. (1) of S. 9 of the "Taxation Act" the State Government issued G. O. Rt. No. 735 dated 12-8-1983 prescribing reduced rates of tax in respect of contract carriage plying on the strength of special permit issued under S. 51 or 62 or 63(6) of the A. P. Motor Vehicles Act 1939 (hereinafter referred to as "1939 Act"). So far as contract carriages plying on intra-State or inter-State routes are concerned, the tax prescribed is Rs. 10/- per passenger for a minimum period of three days and Rs. 3.35 as per passenger per day for the period exceeding three days. The lower rates of tax prescribed in the G. O. are subject to sight conditions specified in the G. O. condition No. 6 says that "violation of any of the conditions specified above will entail levy of full quarterly tax."

7. It is, therefore, clear that vehicles covered by special permits under "1939 Act" (Corresponding provision now under the Motor Vehicles Act, 1988 is sub-sec. (8) of S. 88) can pay the concessional rate of tax for the duration of the special permits, but if they violate any of the conditions incorporated in G.O. Ms. No. 735; the full tax for the entire quarter as specified in the notification issued under S. 3(1) of the "Taxation Act" must be paid.

8. The question that arose before the Division Bench of this Court in *M. A. Hari v. Government of A. P.* (1988(1) A LT 541) (*supra*) is whether the contract carriages covered by special permits for periods not exceeding thirty days, in the absence of a notification under S.4(4) of the Taxation Act" can be made liable to pay full quarterly tax as per the notification issued under S. 3(1) of the "Taxation Act" in case of violation of any of the conditions of the said permit and whether such vehicles are also covered by the notification issued under S. 9(1) of the "Taxation Act" for the purpose of not only paying concessional rate of the tax prescribed thereunder but also liable to pay the full quarterly tax in case of violation as specified in the notification issued under S. 3(1) of the "Taxation Act".

9. The Division Bench while referring to the notification issued in G. O. Rt. No. 735 dated 12-8-83 issued under S.9(1) of the Taxation Act" stated as follows:

"Such vehicles as covered by sub-sec. (4) of S.4 and taxes were levied at considerably reduced rates on such vehicles..... In any event it is clear that the essence of a notification under S. 9 of the Taxation Act substantially recognised the principle concerning the levy of tax on vehicles plying for short periods and referred to under sub-section (4) of S. 4 of the Taxation Act."

10. The learned Judges of the Division Bench after stating clearly that such vehicles which are covered by sub-sec. (4) of S. 4 of the Taxation Act" are also substantially covered by the notification issued under S. 9(1) of the Taxation Act", observed as follows:

"There is a duty cast on the Government to do public good as envisaged by S.4 and in that view the Government can be compelled to issue a notification specifying the amount of tax payable by the vehicles covered by sub-sec. (4) of S. 4 of the Taxation Act. It is not open to the Government to levy tax in the notification issued under Ss. 3(1) of the Taxation Act in respect of vehicles specially covered by sub-sec. (4) of S. 4."

The rationale for sub-sec. (4) of S. 4 of the Act, according to the Division Bench, was

"By enacting S. 4(4) of the Taxation Act the legislature contemplated a separate levy of tax in respect of motor vehicles plying on temporary licences for a period not exceeding 30 days at a time."

The Division Bench was of the view that G. O. Rt. No. 735 was effective only till 31-12-1983 and on that assumption concluded :

"Looking into the language, we entertain a doubt whether the vehicles covered by sub-sec. (4) are subject to pay taxes specified in item 4(vi). Inasmuch as the learned Government Pleader claimed that that is the intention of the Government, we quash the said provisions, insofar as they relate to the special category of vehicles referred to in sub-sec. (4) of S. 4 of the Taxation Act. It is open to the Government to issue a notification under sub-sec. (4) of S. 4 of the Taxation Act specifying the tax payable by the special category of vehicles

referred to in sub-sec. (4) of S. 4."

11. The Division Bench ultimately quashed Cl. 4(vi)(a) of G. O. Ms. No. 175 T. R. & B (Tr. II) Department dated 28-5-1985 issued under S. 3(1) of the "Taxation Act". Cl. 4(vi)(a) of G. O. Ms. No. 175 D/-28-5-1985 stated that the vehicles plying on special permits issued under S. 63(6) of "1939 Act" on intra-State routes will have to pay at the rate of Rs. 300/- per passenger per quarter. G. O. Ms. No. 735 dated 12-8-1983 issued under S. 9(1) of the "Taxation Act" stated that if such vehicles violate any of the conditions specified in the special permit, they will be liable to pay not only the full quarterly tax under S. 3 of the "Taxation Act" but also the penalty under S. 6 of the said Act. Therefore, a contract carriage covered by a special permit is only liable to pay the concessional rate of tax as per the notification issued under S.9(1) of the "Taxation Act". But in case of violation of the conditions of the said permit, the full quarterly tax as specified in the notification issued under S. 3(1) of the Taxation Act" will have to be paid by such vehicle apart from penalty.

12. The Division Bench felt that the operation of the notification issued under S. 9(1) of the Taxation Act came to an end by 31-12-1983. Therefore, the concessional rate of tax prescribed thereunder will not be available to the vehicles covered by sub-sec. (4) of S. 4 of the Taxation Act". In view of the fact that there was no notification under sub-sec. (4) of S.4, for violating the conditions of the permit, the full quarterly tax as prescribed under the notification issued under S. 3(1) of the Taxation Act" will not be leviable.

13. As anomalous situation had arisen because of the Division Bench Judgment. There was no notification issued under S, 4(4) of the Taxation Act" and for vehicles covered by special permits the quarterly tax is not applicable because CI.4((vi)(a) of G. O. Ms. No. 175 dt. 28-5-1985 was quashed in respect of those vehicles. The result is for contract carriages plying under special permits under S. 63(6) of "1939 Act", no provision was made either for payment of concessional rate of tax or for payment of any tax, muchless, full quarterly tax for violating the conditions of the said permit.

14. The Division Bench judgment proceeded on three basic assumptions:

1. that G. O. Ms. No. 175 dt. 28-5-1985 issued under S. 9(1) of the Taxation Act" is in-operative beyond 31-12-1983 :

(2) that sub-sec. (4) of S. 4 of the Taxation Act" contemplates a separate class of Motor Vehicles which will be entitled to ply on payment of tax specified in the notification that may be issued under sub-sec. (4) of S. 4(3) that the word "may" occurring in sub-sec. (4) of S. 4 imposes a duty on the Government to issue notification for public good and therefore the said word shall be read as "shall".

However, the Bench directed the authorities to collect concessional rate of tax in respect of temporary permit holders as per the rates specified in the notification

issued under S. 9(1) of the "Taxation Act" until such time a notification under S.4(4) of the said Act is issued. This Direction enabled the operators to pay concessional rate of tax, but at the same time escapes the consequences of violation of the conditions of the permit.

15. We are of the view that the judgment of the Division Bench is not correct. We have already referred to the provisions of the "Taxation Act" in the foregoing paragraphs. The notification issued u/s 3 of the "Taxation Act" covers every motor vehicle used or kept for use in a public place in the State. This includes the contract carriages plying under special permits issued u/s 63(6) of "1939 Act". Sub-section (4) of Section 4 of the "Taxation Act" is an enabling provision. The Government reserved to itself the power to issue notification thereunder notwithstanding anything contained in S. 3(1) of the "Taxation Act" covering vehicles plying on temporary licences obtained on the basis of special permits for a period not exceeding thirty days. Section 9 of the Taxation Act" generally reserves to the Government the power to issue a notification to exempt, reduce or otherwise modify the rate of tax payable in respect of any motor vehicle or class of motor vehicles. In our view, every motor vehicle is covered by S. 3 and is liable to pay the tax leviable under the notification issued under sub-section (2) of S. 3 of the Taxation Act". Section 9 also covers every motor vehicle, any vehicle or class of motor vehicles. Motor Vehicles plying on special permits issued under S. 63(6) of "1939 Act" also are covered by Section 9 of the said Act. The Division Bench (1988 (1) Andh LT 541) (supra) also clearly stated that the notification issued u/s 9 of the Taxation Act" refers to such vehicles as are covered by subsection (4) of Section 4 of the said Act and they are entitled to pay the reduced rate of tax specified in the notification issued u/s 9 of the Act. It is not correct, in our opinion, to say that the motor vehicle covered by sub-section (4) of Section 4 of the Act are a class by themselves and therefore, a notification has to be issued u/s 4(4) of the Act.

16. Having regard to the provisions of the Taxation Act", we are of the view that Section 9(1) of the Act is a provision which is of general application to all motor vehicles including the motor vehicles plying on special permits issued u/s 63(6) of "1939 Act"(covered by S. 4(4) of the Taxation Act"). All the counsel agreed that there is a notification issued by the Government u/s 9(1) of the Taxation Act" governing the situation as on today also, viz. G.O.Ms. No. 417, Tr. R & B (Tr. II) Department dt. 29-7-1991 issued by the Government u/s 9(1) of the "Taxation Act" which is in force and which is in pari materia to G.O. Rt. No. 735 dt. 12-8-1983. The Government issued series of notifications u/s 9(1) of the said Act, the latest being G.O. Ms. No.417 dt. 29-7-1991.

17. Therefore, we are of the opinion, that contract carriages plying on special permits issued u/s 63(6) of "1939 Act" are liable to pay only at concessional rate of tax as specified in G.O. Ms. No.417 dt. 29-7-1991. If they violate any of the conditions of the said permit, they are liable to pay the full quarterly tax as specified in the notification issued u/s 3(1) of the Taxation Act".

18. Sri K. N. Jwala, one of the learned counsel appearing for the private operators contended that if it is held that S.9(1) of the Taxation Act" covers the vehicles contemplated u/s 4(4) of the said Act also, then sub-section (4) of Section 4 of the said Act will become redundant and that can never be the intention of the legislators. We have already held that Section 9 of the Taxation Act" is a general provision and sub-section (4) of Section 4 of the said Act is a special one. So long as a provision is made in the notification issued under the general provision of Section 9, no notification need be given under sub-section (4) of Section 4 of the Taxation Act". Whether a notification was u/s 9(1) or u/s 4(4) of the Taxation Act¹, the result sought to be achieved was one and the same i.e. subjecting the particular class of vehicles to pay the concessional rate of tax because of the temporary nature of permits for shorter periods not exceeding thirty days. We do not see any substance in the contention of the learned counsel.

19. Sri Mangachari, learned counsel appearing for the private operators also contended that if a notification u/s 4(4) of the Taxation Act" was issued, it would have definitely contained a provision for paying of tax not exceeding thirty days if the conditions of the said permit are violated. This contention, though appears to be attractive, is bereft of merits on a closer examination. It is based on an assumption that a notification was issued u/s 4(4) of the Taxation Act". The question that had a notification been issued u/s 4(4) of the Taxation Act" what would have been, the position need not be gone into in the view we have taken in respect of notification issued u/s 9(1) of the said Act. We do not find any merit in the contention made by the learned counsel appearing on behalf of the operators.

20. We have already observed that subsection (4) of Section 4 of the Taxation Act" is only an enabling provision and there is no obligation cast on the Government to issue notification thereunder. When the notification issued under Section 9(1) of the Taxation Act" covering the vehicles contemplated u/s 4(4) of the said Act also, the holders of special permits will have no grievance whatsoever. The discretion conferred on the Government to issue notification u/s 4(4) of the Act is not coupled with any duty. We are of the opinion that the word "may" occurring in sub-section (4) of Section 4 of the Taxation Act" in the context cannot be read as "shall".

21. Having regard to the facts and circumstances and for the reasons mentioned above, we are of the view that the judgment of the Division Bench (1988 (1) Andh LT 541) (supra) is not correct and accordingly the same is overruled.

22. Accordingly, reference is answered as under:

(1) The notification issued under S. 9(1) of the "Taxation Act" covers the motor vehicles contemplated under sub-section (4) of Section 4 of the said Act and the vehicles plying on the strength of special permits issued u/s 63(6) of "1939 Act" are liable to pay only the concessional rate of tax mentioned in the notification

issued u/s 9(1) of the said Act.

(2) The vehicles plying on special permits on payment of concessional rate of tax as specified in the notification issued u/s 9(1) of the Taxation Act" are liable to pay the full quarterly tax as specified by the notification issued u/s 3(1) of the Taxation Act" if they violate the conditions of the said permit,

(3) The word "may" occurring in sub-section (4) of Section 4 of the Taxation Act", which is only an enabling provision, cannot be read as "shall".

23. We now proceed to hear and decide each matter on the respective facts and circumstances and in the light of this Full Bench ruling.

W.P. No. 16218 of 1990:--

S. C. Pratap, C.J.

24. In the ruling pronounced today in Writ Petition No. 78 of 1989 and batch we have held that the notification u/s 9(1) of the Andhra Pradesh Motor Vehicles Taxation Act covers the vehicles contemplated under sub-section (4) of Section 4 of the said Act and the vehicles plying on the strength of special permits issued u/s 63(6) of the Motor Vehicles Act, 1939, are liable to pay only the concessional rate of tax mentioned in the said notification. We have further held that vehicles plying on special permits on payment of concessional rate of tax as specified in the notification issued u/s 9(1) of the Andhra Pradesh Motor Vehicles Taxation Act are liable to pay the full quarterly tax as specified in the notification issued u/s 3(1) of the said Act if they violate the conditions of the said permits. It is also held by us that the word "may" in sub-section (4) of Section 4 of the Andhra Pradesh Motor Vehicles Taxation Act cannot be read as "shall".

25. Hearing Counsel on either side and going through the impugned demand notice, we find that the claims and contentions of the petitioners and their explanation to the show cause notice have not received due consideration. Claim of the petitioners was that because of breakdown of the vehicles on account of rains they could not reach the destination on 9th August, 1990 before midnight and that on 10th August 1990, at about 2.00 a.m. the vehicle was checked by the Assistant Motor Vehicles Inspector, Madnur Checkpost. It is further stated in the explanation that the vehicle was on its return journey which was delayed for reasons beyond control. Contention is also raised that, in any event, the petitioners have obtained a permit also for the subsequent period, namely, 10th August, 1990 to 12th August 1990, which indicates their bona fides in the matter of not plying without a temporary permit. These have not been duly considered. Considering all aspects, factors and circumstances and the contentions raised in reply to the show cause notice, this, in our view, is a fit case where the matter deserves to be sent back to the authority with a direction to adjudicate the matter afresh on merits and in accordance with law from the stage of show cause notice and the explanation submitted thereto by the petitioners.

26. In the result, the following order is passed on this petition:

(a) The impugned demand notice dated 19th November, 1990 is set aside and the proceedings relegated to the authority to adjudicate the matter afresh on merits and in accordance with law from the stage of show cause notice dated 16th August, 1990 and the petitioners' reply thereto; and

(b) The amount already deposited by the petitioners will continue to be retained by the respondent till the hearing and disposal of the proceedings pursuant to this remand and will abide by such final orders as may be made in that behalf by the concerned authority.

27. Order accordingly on this petition, which is thus disposed of. No order as to costs. Advocate's fee Rs. 300/-.

W. P. No. 78 of 1989:

28. In view of the ruling pronounced today in the batch of writ petitions including the present writ petition, the petitioner is liable to pay full quarterly tax as specified by the notification issued u/s 3(1) of the Andhra Pradesh Motor Vehicles Taxation Act. This in view of the fact that the petitioner was found to have violated the conditions of the temporary carriage permit. There is no dispute, however, that by virtue of G.O. Ms. No. 285 dated 15th day of July, 1985, the petitioner is liable to pay one-third of the full quarterly tax because the vehicle in question was an outside one. There is no dispute that this one-third amount of quarterly tax due in this case comes to Rs. 7279/-. To pay this amount, the petitioner's learned counsel states that the petitioner may be granted reasonable time. Petitioner is granted time to pay the same latest by the end of April, 1992. In default, liberty to the respondent to proceed to recover the same in accordance with law. Further, in the event of default, the respondent will be at further liberty to institute penalty proceedings against the petitioner in accordance with law.

29. The impugned demand notice dated 15th October, 1988, in the present case, is a composite demand, i.e. containing demand for tax as also penalty. In view of the Full Bench ruling of this court in Y. Peda Venkaiah Vs. The Regional Transport Officer, Nellore, penalty proceedings cannot be instituted unless and until default is committed in payment of the tax "as" demanded. The respondent will, therefore, be at liberty to invoke penalty proceedings only if the tax as demanded by the demand notice dated 15th October, 1988, is not paid. Consequently, the said demand notice, to the extent it demands penalty, is invalid and is liable to be set aside.

30. In this view of the matter, the following order is passed on this petition:

(a) The petitioner is directed to pay tax amount of Rs. 7275/- as per the demand notice dated 15th October, 1988, latest by the end of April, 1992. In default, liberty to the respondent to take steps to recover the same in accordance with law. In default, further liberty to the respondent to institute penalty proceedings against the petitioner in accordance with law;

(b) In the event of the petitioner paying the tax amount of Rs. 7,279/- by the end of April, 1992 the bank guarantee already executed by the petitioner at the time of release of the seized vehicle shall be revoked and cancelled and returned to the petitioner within a fortnight of the receipt of the tax amount; and

(c) The impugned demand notice, to the extent it demands penalty in a sum of Rs. 7,279/- is set aside and quashed.

31. Order accordingly on this petition which is thus disposed of. No order as to costs. Advocate's fee Rs. 300/-.

W.P. No. 3484 of 1989:

32. In view of our ruling pronounced today in Writ Petition No. 78 of 1989 and batch, the petitioner is liable to pay the full amount of quarterly tax as per the demand notice dated 15-4-1988. Learned Counsel for the petitioner submits that reasonable time be granted to pay the same. He further submits that the bank guarantee in a sum of Rs. 1,500/- has been furnished at the time of release of the seized vehicle and an amount of Rs. 3,000/- has also been deposited with the respondent at that time. He submits that suitable direction may be given in that behalf. He further says that towards the quarterly tax certain payments have already been made and the same may be taken into consideration while issuing directions for payment of the tax in question.

33. In all the circumstances, the following order is passed on this petition:

(a) The petitioner is directed to pay Rs. 12,190/- for the full quarterly tax for the quarter ending on 31st March, 1988, less the amount, if any, already paid towards the same. This payment should be made latest by the end of April, 1992. In default, liberty to the respondent to recover the same in accordance with law. In default, further liberty to the respondent to penalty proceedings; and

(b) On receipt of the aforesaid amount, the bank guarantee already furnished by the petitioner shall be revoked and cancelled and returned to him. If, apart from the bank guarantee, any amount has been deposited by the petitioner with the respondent, the same also should be refunded to him on receipt of the amount directed to be paid as per clause (a) above.

34. Order accordingly on this petition which is thus disposed of. No order as to costs. Advocate's fee Rs. 300/-.

W.P. No. 4536 of 1989:

35. In the ruling pronounced today in Writ Petition No. 78 of 1989 and batch we have held that the notification u/s 9(1) of the Andhra Pradesh Motor Vehicles Taxation Act covers the vehicles contemplated under sub-section (4) of Section 4 of the said Act and the Vehicles plying on the strength of special permits issued u/s 63(6) of the Motor Vehicles Act, 1939 are liable to pay only the concessional rate of tax mentioned in the said notification. We have further held that vehicles plying on special permits on payment of concessional rate of tax as specified in

the notification issued u/s 9(1) of the Andhra Pradesh Motor Vehicles" Taxation Act are liable to pay the full quarterly tax as specified in the notification issued u/s 3(1) of the said Act if they violate the conditions of the said permits. It is also held by us that the word "may" in sub-section (4) of Section 4 of the Andhra Pradesh Motor Vehicles" Taxation Act cannot be read as "shall".

36. In the present case, there was considerable dispute between the parties as to precise violations of the temporary permit. Counsel on either side are now agreed that the following two only shall, according to the respondents, be considered as violations of the temporary permit, namely;

(a) Though the permit was for the route Godavarikhani to Lingarigri via Warangal Narsmapet and back to Godavarikhani, the Vehicle at the time of check was found coming from Vemulawada to Godavarakhani;

(b) Though the permit related to the marriage party relating to the marriage of Shri Chiranjeevi and Chi. Sau. Lakshmi of Nara-sampet, the marriage party found in the vehicle at the time of check was one relating to the marriage of Sri Swamy, M. N. and Chi. Sau. Sujatha.

As these violations are vehemently denied by the petitioner, we are inclined to send back the matter to the authority to hear the parties and decide the same on merits and in accordance with law.

37. In the result, the following order is passed on this petition:

(a) The impugned demand notice dated 25th March, 1989 is set aside. The proceedings are relegated back to the stage of show cause notice dated 24th February, 1989. The authority will now hear the petitioner in the matter of the aforesaid two alleged violations of the temporary permit and, after hearing, decide and adjudicate the matter on merits and in accordance with law; and

(b) The amount already paid by the petitioner will continue to be retained by the respondent till the hearing and disposal of the proceedings pursuant to this remand and will abide by such final orders as may be made in that behalf by the concerned authority.

38. Order accordingly on this petition which is thus disposed of. No order as to costs. Advocate's fee Rs. 300/-.

39. Order accordingly.