(2007) 09 MAD CK 0188

In the Madras High Court

Case No : Writ Petition No. 41109 of 2006 and M.P. No. 2 of 2006

R. Giri APPELLANT

Vs

The Regional Transport Officer RESPONDENT

Date of Decision : 04-09-2007

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 3O
Motor Vehicles Act, 1988 — Section 2(40)
Tamil Nadu Motor Vehicles Rules, 1989 — Rule 3
Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 13, 2, 3(1), 4(1)

Citation : AIR 2008 Mad 95 : (2007) 6 MLJ 509

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : N. Gopalkrishnan, for the Appellant; P. Subramanian, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S. Manikumar, J.—The petitioner is a mini bus operator and he made an application dated 13.11.2003 to the respondent for grant of mini spare bus permit. As the said application was rejected by the respondent, the petitioner filed statutory appeal in Appeal No. 330 of 2003, before the State Transport Appellate Tribunal, Chennai. The Tribunal, by an order dated 06.01.2004, set aside the order of the respondent and remanded the matter for fresh disposal, in the light of the observation contained therein. Thereafter, the respondent by letter dated 22.03.2004, requested the petitioner to produce necessary documents in respect of vehicle bearing Registration No. TN-25-Z-8701 for issuance of permit. On production of the same, the mini spare bus permit was granted for a period of five years, upto 01.06.2009 and also the tax was collected at the rate of Rs. 9,000/- per quarter.

2. The petitioner further submitted that on 18.10.2004, his application for replacement of the vehicle bearing Registration No. TN-25-Z-8701, by a later model vehicle bearing Registration No. TN-31-P-7337 was allowed with effect

from 01.11.2004. Thereafter, the respondent started collecting excess tax for replacement of the mini spare bus at the rate of Rs. 9,375/-. Aggrieved by the collection of excess tax by the respondent, the petitioner had sent a representation dated 21.06.2004 to the respondent to collect tax at a lesser rate. Since the said representation was not disposed of within time, the petitioner filed a Writ Petition in W.P.No. 21605 of 2004 before this Court and this Court by an order dated 30.09.2004, directed the respondent to consider the said representation on merits and pass orders within 12 weeks from the date of passing of the order. Pursuant to the direction, the respondent by letter dated 29.08.2005, informed the petitioner that the tax collected for mini spare bus permit cannot be reduced without any specific Government Order. Aggrieved by the same, the petitioner has filed the present writ petition.

3. Learned Counsel for the petitioner submitted that as per Rule 3(o) of the Tamil Nadu Motor Vehicles Rules, 1989, mini bus is also a stage carriage and therefore, the rules and regulations applicable for a regular route bus owners, equally applies to mini bus owners. He further submitted that the tax, as per the provisions of the Motor Vehicles Taxation Act, 1974 and rules framed thereunder, in respect of mini spare bus, otherwise known as Reserve vehicle, 3/4th of the maximum rate of tax payable for regular vehicles. He further submitted that the tax in respect of regular mini bus is Rs. 5,000/- per quarter and if 3/4th of the tax is payable by the petitioner, in respect of spare bus, the total tax payable would be Rs. 3,750/-. Whereas, the collection of tax by the respondent for the mini spare bus at rate of Rs. 9,375/- per quarter is illegal and it is contrary to the provisions of the Tamil Nadu Motor Vehicles Taxation Act.

4. Learned Counsel for the petitioner further submitted that the reason assigned in the impugned order that the tax collected cannot be reduced at this stage, without any specific Government order, amounts to violation of the provision of the Tamil Nadu Motor Vehicles Taxation Act. He therefore submitted that the impugned order is liable to be set aside and consequently prayed for a direction to the respondent either to refund or adjust the excess tax paid in respect of the vehicles bearing Registration Nos. TN-25-Z-8701 and TN-31-P-7337 and for further orders.

5. Referring to the impugned order, Mr. P. Subramanian, learned Government Advocate submitted that the petitioner, mini stage carriage operator, was permitted to ply the mini spare bus in the event of temporary breakdown of on the special occasion, with a specific condition that the tax payable in respect of mini stage carriage bus will be 3/4th of the tax payable in respect of regular stage carriage as per the First Schedule to Section 2(iii)(c)(i) of the Tamil Nadu Motor Vehicle Taxation Act, 1974. He further submitted that having agreed to pay the tax, at the rate applicable to the regular stage carriage as per the above said schedule, it is not open to the petitioner to turn around and contend that his liability is restricted to 3/4th of the total tax payable in respect of regular mini spare bus. He further submitted that in the absence of any specific order, the

petitioner is bound to pay the tax as applicable to the regular stage carriage as agreed by him while granting permission and that there is no illegality in the impugned order. He further submitted that if the petitioner was really aggrieved by the impugned order imposing a condition to pay 3/4th of the tax payable in respect of regular stage carriage, he ought to have challenged the order and in the absence, it is not open to him to assail the impugned order at this stage.

6. Before determining the rate of tax applicable to the mini spare bus, it would be useful to extract the relevant provisions dealing with the stage carriage and the liability of the operators to pay the tax.

i. Section 2(40) of the Motor Vehicles Act, 1988,

"Stage Carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

ii. As per Rule 3-O of the Motor Vehicles Rules, 1959,

"Mini-bus" means a stage carriage constructed on a wheel base of not exceeding 390 cms. and carrying or adapted to carry more than six passengers but not more than twenty-five passengers excluding the driver and the conductor.

iii. u/s 3(1) of the Tamil Nadu Motor vehicles Taxation Act, 1974,

tax is levied on every motor vehicle used or kept for use in the State of Tamil Nadu at the rate specified for such vehicle in the First Schedule or in the Second Schedule or in the Third Schedule, as the case may be.

iv. The tax levied u/s 4(1) of the Motor Vehicles Taxation Act, 1974, shall be subject to the provision of Sub-section (1-A) of Act, which prescribes the manner in which the registered owner or by any other person haying possession or control of the motor vehicle, has to pay tax Schedules 1 to 4 of the Motor Vehicles Act provides the rate of tax applicable to the different classes of vehicles. Clause 2(iii)(1) provides for collection of tax in respect of vehicle permitted to ply as stage carriages and to carry more than six persons (other than driver and conductor). The rate of tax that would be levied for the reserve stage carriage or spare bus, for the period between the 1st day of April 1974 and 31st day of March 1990 and for subsequent periods, are given hereunder:

(1) During the period commencing on the 1st day of April 1974 and ending with the 31st day of March 1990, the tax payable in respect of a reserve stage carriage or a spare bus shall be three-fourths of the maximum rate payable per passenger for any regular stage carriage of permit holder.

(2) During the period commencing on the 1st day of April 1990 and ending with the 9th day of January 1992, the tax payable in respect of a reserve stage carriage or a spare bus shall be maximum rate payable per passenger for any regular stage carriage of permit holder.

(3) During the period commencing on the 10th day of January 1992, and ending with the 31st day of March 1994, the tax payable in respect of a reserve stage carriage or a spare bus shall be three-fourths of the maximum rate payable per passenger for any regular stage carriage of permit holder.

(4) During the period commencing on the 1st day of April 1994, the tax payable in respect of a reserve stage carriage or a spare bus shall be maximum rate payable per passenger for any regular stage carriage of permit holder.

7. At this juncture, it is pertinent to note that the Government has already examined large number of representations from the stage carriage operators and felt that the spare buses operators should be allowed to pay tax at a lesser rate than the regular stage carriages and passed orders in G.O.Ms.No. 507, Home (Transport-I) Department, dated 30.04.1998, whereby, the Government reduced the tax payable in respect of reserve stage carriage or spare buses mentioned in paragraph III in Clause 2 of the First Schedule to the said Act, from the maximum rate payable per passenger for any regular stage carriage of the permit holder to three-fourths of such maximum rate.

8. The above said provisions relating to the tax payable in respect of the reserve stage carriage or spare bus, indicate that the tax payable, shall be 3/4th of the tax payable for any regular stage carriage of the permit holder. Interpretation of the said provision with regard to the liability of tax refers only to the regular stage carriage of the permit holder, which means, if the permit holder possess a permit of stage carriage bus having a seating capacity of 50 passengers with 25 standees. If the operator obtains permit from the Transport Authority to ply a spare bus in the event of temporary breakdown or on the special occasion, then, the tax that would be payable for such permit holder, would be 3/4th of the tax of the regular stage carriage. Similarly, if the mini spare bus operator is granted permission to ply a spare bus, then the tax payable by the permit holder, would be referable to his regular stage carriage permit, i.e., mini bus.

9. The onerous condition that a mini bus operator should pay 3/4th of tax payable in respect of the regular stage carriage, having seating capacity of 50 passengers with 25 standees, will burden the operators, and therefore, it is arbitrary. There is no logic in demanding a higher rate of tax in respect of mini spare bus, as there is no change in the seating capacity of the spare bus permitted to be operated by the Transport Authority. The permit holder can levy and collect tax only in respect of number of passengers permitted to be carried in the mini spare bus and not more than that. Therefore, the only logical conclusion which this Court can arrive at is that if the mini bus permit holder is permitted to use a spare bus, he has to pay 3/4th of maximum rate payable as per the provisions of the Tamil Nadu Motor Vehicles Act, 1974 and the rules framed thereunder.

10. The contention of the learned Counsel for the respondent that as regards the absence of challenge of the condition imposed, cannot be countenanced in law as

there is no estoppel against statute. When the provisions of the Tamil Nadu Motor Vehicles Taxation Act, 1974 contemplate that a specific thing to be done in the particular manner, the collection of excess tax is without jurisdiction. In these circumstances, the collection of the tax in respect of vehicles referred to in the foregoing paragraphs is liable to be refunded or it should be adjusted against future payment.

11. For the above said reasons, the impugned order is set aside. The petitioner is directed to make necessary application to the respondent to refund the excess tax paid within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondent shall pass appropriate orders u/s 13 of the Motor Vehicles Taxation Act, 1974, within a period of two weeks thereafter.

12. With the above direction, the writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.