(2008) 01 MAD CK 0241

In the Madras High Court

Case No : Writ Petition No. 35991 of 2002

Tvl. Suganthi Educational Trust — APPELLANT

Vs

The Regional Transport Officer — RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(11), 2(30), 2(33), 3, 66
Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 15, 3
Tamil Nadu Motor Vehicles Taxation Rules, 1974 — Rule 169, 170

Citation : (2008) 3 LW 97 : (2008) 2 MLJ 807

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : Radha Gopalan, for the Appellant;

Final Decision : Dismissed

Judgement

S. Manikumar, J.—The petitioner has sought for Writ of Certiorarified Mandamus, calling for the records of the respondent dated 22.07.2002 made in R. No. D3/27639/2002 and quash the same and consequently direct the respondent to collect tax under item 8(a) of the First Schedule to the Tamil Nadu Motor Vehicles in so far as the petitioner is concerned.

2. The case of the petitioner in brief is as follows:

The petitioner trust has established an Engineering College under the name and style of G.K.M. College of Engineering and Technology, Thiruvenjeri Village, Mopperi Road, Chennai-78 and they have acquired a fleet of eight buses and applied for necessary permits for the vehicles for the use of the college students and staff. The term "Education Institution Bus" is defined u/s 2(11) of the Motor Vehicles Act, 1988 and the object of the said definition is, that the vehicles should be used solely for the purpose of transporting their students and staff in connection with its activities. Earlier, as per Section 3(h) of Section 66 of the Motor Vehicles Act, permits were not required for education institution vehicles. Subsequently, the said Section 66(3)(h) has been deleted with effect from

14.08.2000 and consequently, permits are being granted u/s 76 of the Act r/w Rule 169 of the Tamil Nadu Motor Vehicles Taxation Rules in the prescribed form, under Rule 170 (viii)of the Rules. The application of the petitioner for necessary permits was considered and while issuing permit, the respondent mentioned the name of the petitioner(Trust) as the holder of the permit and it is further stated that the vehicles would be used for transporting students and staff of the educational institutions owned by the petitioner.

3. It is further submitted that the Accountant General has pointed out that the buses owned by educational Institutions standing in the name of the Trust should not be granted concessional rate of tax applicable to educational institution vehicle, as they do not fall within Item 8(a) of the First Schedule of the Tamil Nadu Motor Vehicles Taxation Act, 1974. On the objections raised by the Accountant General, the Government had called for remarks from the Transport Commissioner, Chennai and it appears that the Transport Commissioner had concurred with the objections of the Accountant General and directed the Regional Transport Officers who had issued permits to the Society/Trust, who administer educational institutions, recover the tax with penalty, from the date when permits were granted until recovery is made, at the rate applicable to the private service vehicles, which was Rs. 75/- per seat per quarter for sometime and altered at Rs. 100/- per seat per quarter on and from 01.12.2001. By order dated 22.07.2002 the Regional Transport Officer, Chennai (West), Chennai-78 has directed the petitioner to surrender the Educational Institution Bus Permits issued in Trust''s name and further directed the petitioner to pay the tax with penalty, applicable to "Private Service Vehicles" from the date of issue of "Educational Institution Bus Permits" and apply for "Private Service Vehicle" Permit for the vehicles mentioned in the annexure enclosed therein. Aggrieved by the said order, the petitioner has preferred this writ petition.

4. Mrs. Radha Gopalan, learned Counsel appearing for the petitioner submitted that the impugned order is totally violative of the principles of natural justice. The petitioner was not given any show cause as to why the tax for "Private Service Vehicles" should be collected with penalty. She further submitted that all along the respondent had been accepting the tax applicable for educational institution bus i.e., at the rate of Rs. 500/- per quarter and the petitioner had been paying the same on annual basis, including the current year 2002, without any objections.

5. Learned Counsel for the petitioner further submitted that imposing a liability on the petitioner to pay tax with penalty being quasi judicial, it is incumbent on the part of the respondent to issue show cause and afford an opportunity of personal hearing to the petitioner before making demand for tax/penalty.

6. She further submitted that the Transport Commissioner has failed to consider that the petitioner Trust are the owners of the Engineering College and the vehicles are used exclusively for carrying students and staff of the educational institution and therefore, the vehicles cannot be brought under the definition of a

"public service vehicle", for which, differential rate of tax can be applied and, therefore, the directions of the respondent to surrender the educational institutions bus permits issued in the name of the trust and to pay the tax and penalty applicable to private services vehicle, is liable to be set aside.

7. She further submitted that when the trust has been granted permission to establish and run colleges and the permits stand in the name of the petitioners'' trust for the use of vehicles solely for the purpose of carrying the students and staff, the trust cannot be denied the rate of tax applicable to education institution''s bus and it is liable to pay tax only for such use. Finding fault with the Registering authority, describing the trust or the society, as the holder of permit, she submitted that the registering authority could have very well described the educational institution, namely G.K.M. College of Engineering and Technology as the holder of permit and therefore the petitioner trust, cannot be penalised by demanding rate of tax applicable to "private services vehicle".

8. Learned Additional Government Pleader appearing for the respondent submitted that vehicles registered in the name of the trust can be used for carrying the students/staff or for any college purposes or for any transporting persons who are engaged in the affairs of the trust. If the Educational Institution viz., G.K.M. Engineering College and Technology Case uses vehicle only for the purpose of transporting students and staff of the College, the Trust could have very well approached the registering authority and got the permit changed in the name of Principal or Correspondent of the institution. Since both the vehicles are registered in the name of the Educational Trust, the demand notice issued by the respondent is fully justified in terms of the provisions of Motor Vehicles Act and Clause 8(a) of the First Schedule of the Tamil Nadu Motor Vehicle Taxation Act, 1974.

9. He further submitted that as per Clause 8 (a) to Schedule I of Tamil Nadu Motor Vehicles Taxation Act, 1974, in respect of vehicles owned by Educational Institutions (Educational Institution bus), for every person (other than the driver) which the vehicle is permitted to carry, the tax payable is Rs. 500/- per quarter and for other Transport vehicles it is Rs. 150/- per seat per quarter and therefore the petitioner has to surrender the permits and remit the tax applicable to private service vehicle.

10. Learned Additional Government Pleader further submitted that the concession given by the Government in respect of the vehicles owned by the educational institutions is not applicable to the vehicles owned by the trust and, therefore, there is no illegality in directing the petitioner to surrender the educational institution bus permits, issued in the name of the trust and consequently they are liable to pay tax with penalty, applicable to private service vehicles, from the date of issue of the educational institution bus permits.

11. He further submitted that as the petitioner is not entitled to the concession applicable to the educational institution bus permits, there is no need to issue

any show cause notice and, therefore, there is no violation of the principles of natural justice.

12. Before adverting to the facts of this case, it is relevant to extract the definition of "owner", as provided u/s 2(30) of the Motor Vehicles Act, 1988.

30. "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease of an agreement of hypothecation, the person in possession of the vehicle under that agreement.

13. The provision relating to levy of tax as codified u/s 3 of the Tamil Nadu Motor Vehicles Taxation Act is as follows:

1) Subject to the provisions of Sub-section (2) tax shall be 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,

2) The Government may, by notification, from time to time, increase the rate of tax specified in the Schedules,

Provided that such increase, by notification, under this sub-section shall not, in the aggregate, exceed fifty person of the rate specified in the First Schedule or in the Second Schedule or in the Third Schedule, as the case may be.

As per Section 3 of Tamil Nadu Motor Vehicles Taxation Act, the amount of tax is fixed as per Clause 8(a) to Schedule 1 of the Act and the quarterly tax is fixed at Rs. 150/-:

14. The rate of tax prescribed in respect of item 8 (a) of the I schedule under Tamil Nadu Motor Vehicles Act in respect of vehicles owned by educational institution (educational institution bus), at the time of registration of vehicle was Rs. 500/- per quarter. In respect of the other motor vehicles covered by Transport vehicles permit and "private services vehicle permit, a separate rate of tax is provided i.e. Rs. 150 per seat per quarter.

15. Admittedly, though the trust has started the educational institution as per the norms provided by the AICTE, the trust can have various other activities, also. The term "Education Institution bus" is defined u/s 2(11) of the Motor Vehicles Act, 1988 that the vehicle should be used solely for the purpose of transporting students and staff of educational institution, in connection with its activities.

16. A "private service vehicle" is defined u/s 2(33) of the Act, which means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than a for hire or reward but does not include a motor vehicle used for public purposes.

17. A trust/society can establish an educational institution, engage in charitable activity, promote culture or religious activity or any other activity legally permissible. A Trust/Society can earmark a property either movable or immovable for a specific purpose. All the properties and assets owned by the Trust cannot always be the properties of the educational institution. Possession and Management of the trust properties and administering properties owned or held on behalf of the educational institution are entirely different. The corpus of the Trust cannot be said to be corpus of the educational institution. The right of transfer is incidental to ownership. Income derived by the trust in letting out the properties either movable or immovable for generating income, cannot be the income of the educational institution started or established by the trust. The educational laws of the country mandate that the educational institution, college or school, as the case may be, which received recognition from the competent authority to maintain and submit a statement of movables and immovables owned by that college or School or Educational institution, to such authorities from whom recognition is obtained. A trust can start schools, colleges or educational institution or charitable institution or engage in any other activity permissible under law. Each college, school or educational institution is a separate entity by itself and one cannot claim right of ownership or title in respect of movables or immovables held by other. It is the college, school or educational institution, which impart education and awards the degree or diploma or certificate through the Universities or examining bodies are recognised by the competent authorities and trust is not the educational institution. Merely because the trust has started an educational institution, in the instant case, an engineering college, it cannot be called as an educational institution. Trust is only an educational agency and not the institution. Only colleges, schools and educational institutions are provided with the concession in the rate of tax, taking into consideration the ownership of the vehicle coupled with the usage of the vehicle.

18. Motor Vehicles Act is a codified enactment and it must be construed strictly having regard to the purpose it seeks to achieve. Courts have consistently held that interpretation of the Statute shall not go beyond the object and the rule of purposive construction should be applied. Taxation Act provides for concession only for vehicles owned by schools, colleges and educational institutions. The concession cannot be extended to vehicles owned by Trust, which has got a different connotation and meaning. Therefore, in my considered opinion vehicles owned by the Trust or Society cannot be within the definition of "Educational Institutional Vehicle" and consequently the Trust or the Society is not entitled to claim the concessional rate of tax.

19. In the instant case, the vehicles owned by the trust is used for the purpose of trade or business, ''trade'' includes the activity done by a person, for the purpose of generating income.

20. Section 66 of the Motor Vehicles Act deals with necessity for permits which

reads as follows:

(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used.

Since the vehicles used by the petitioner cannot be brought under the definition as educational institution, consequently they have to apply for permits u/s 66 of the Motor Vehicles Act and, therefore, the direction issued by the respondent to surrender the permits of the petitioner is in accordance with the provisions of the Motor Vehicles Act. As the petitioner is not entitled to the exemption granted for the educational institution, consequently, the petitioner is liable to pay the deferential rate of tax applicable to the private service vehicle.

21. Section 15 of the Tamil Nadu Motor Vehicles Taxation Act provides for imposition of penalty and it reads as follows:

If the tax due in respect of any motor vehicle has not been paid within the period prescribed u/s 8, the registered owner or the person having possession or control thereof shall:

(a) pay, in addition to the tax, a penalty of such sum, not exceeding twice the amount of the quarterly tax or as the case may be, half of the amount of annual tax payable, as may be prescribed, and different sums may b prescribed for different classes of motor vehicles and for different periods; and

(b) also be punishable with fine which may extend to fifty rupees, and the amount of the tax due by him in respect of such vehicle together with penalty referred to in Clause (a) shall also be recovered as if such tax and penalty were a fine.

22. Earlier Section 66(3)(h) of the Motor Vehicles Act, 1988 shall not apply to any transport vehicle owned by, and used solely for the purposes of, any educational institution which recognised by the Central or State Government or whose managing committee is a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India". Subsequently the said Section 66(3)(h) has been deleted with effect from 14.08.2000. Consequently, the petitioners ought to have apply to the Transport Authority for issue of a private service vehicle permit.

23. Since the payment of tax is demanded as per Clause 8(a) to First Schedule to the Tamil Nadu Motor Vehicles Taxation Act, 1974, penal provision is automatically attracted as per Section 15 of the Taxation Act and therefore, imposition of penalty is also sustained.

24. In the result, the writ petition is dismissed. The petitioner shall make

necessary arrangements for surrendering the permits and also pay the differential rate of tax and the penalty applicable to the private service vehicles, within a period of three months from the date of receipt of this order copy.

