

“മകനാമെ - മാതൃഭാഷ”



നമ്പർ. ബി1/24391/റ്റി.സി2015

ട്രാൻസ്പോർട്ട് കമ്മീഷണറേറ്റ്, കേരളം,

രണ്ടാം നില, ട്രാൻസ് ടവേഴ്സ്, വഴുതക്കാട്, തിരുവനന്തപുരം - 14,

[☎0471-2333337/2333317 ഫാക്സ് 0471-2333314]

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തീയതി, 03-12-2015

പ്രേഷിതൻ,

ട്രാൻസ്പോർട്ട് കമ്മീഷണർ,  
തിരുവനന്തപുരം.

സ്വീകർത്താവ്,

എല്ലാ ഡെപ്യൂട്ടി ട്രാൻസ്പോർട്ട് കമ്മീഷണർമാർക്കും  
എല്ലാ റീജിയണൽ ട്രാൻസ്പോർട്ട് ഓഫീസർമാർക്കും  
എല്ലാ ജോയിന്റ് റീജിയണൽ ട്രാൻസ്പോർട്ട് ഓഫീസർമാർക്കും

സർ,

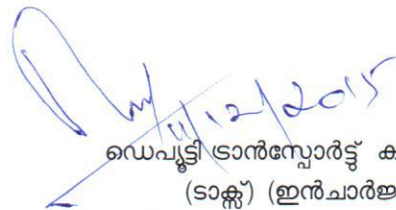
വിഷയം :- **മോട്ടോർ വാഹന വകുപ്പ്** - ട്രാൻസ്പോർട്ട് വാഹനങ്ങളുടെ പെർമിറ്റും,  
നികുതിയും - സ്പെഷ്യലൈസ്ഡ് നൽകുന്നത് - സംബന്ധിച്ച്

സൂചന :- ബഹു.ഹൈക്കോടതിയുടെ 20-10-2014 - ലെ WP(C) No. 26916/2014 -  
ലെ വിധിന്യായം

1976 ലെ കേരള മോട്ടോർ വാഹന നിയമത്തിലെ സെക്ഷൻ 3 പ്രകാരം സംസ്ഥാനത്ത് സർവ്വീസ് നടത്തുന്നതോ, സർവ്വീസ് നടത്തുന്നതിനായി സൂക്ഷിച്ചിട്ടുള്ളതോ ആയ എല്ലാ തരം വാഹനങ്ങൾക്കും ഷെഡ്യൂളിൽ പറഞ്ഞിട്ടുള്ളപ്രകാരം നികുതി അടയ്ക്കേണ്ടതാണ്. ഒരു വാഹനത്തിന്റെ ഫിറ്റ്നസ് സർട്ടിഫിക്കറ്റ് തീർന്നുവെന്നതോ, പെർമിറ്റ് കാലാവധി അവസാനിച്ചുവെന്നതോ ടി വാഹനത്തിന് ഷെഡ്യൂളിൽ പറഞ്ഞിരിക്കുന്ന പ്രകാരമുള്ള നികുതി അടയ്ക്കുന്നതിൽ നിന്നും ഒഴിവാകുന്നതിന് കാരണമല്ല. എന്നാൽ ചില ഓഫീസുകളിൽ സ്റ്റേജ് ക്യുരേജുകളുടെ പെർമിറ്റ് കാലാവധി തീർന്നതിനാൽ വാഹന ഉടമ idle rate അടയ്ക്കുവാൻ ആവശ്യപ്പെടുന്നില്ലായെങ്കിൽപോലും idle/NTV rate-ൽ നികുതി സ്വീകരിക്കുന്നതായി ശ്രദ്ധയിൽപ്പെട്ടിട്ടുണ്ട്. ഇത് നിലവിലുള്ള ടാക്സേഷൻ നിയമത്തിന് വിരുദ്ധമാണ്. ബഹു.സുപ്രീം കോടതിയുടെ State of Orissa and Others Vs. Bijaya C.Tripathy (reported in 2004

(7) SCC 139 = AIR 2005 SC 1431=2004 KHC 1482) എന്ന കേസിൽ പെർമിറ്റിന്റെ കാലാവധി അവസാനിച്ചാൽ പോലും ഒരു വാഹനം ട്രാൻസ്പോർട്ട് വാഹനം ആകാതിരിക്കുന്നില്ലായെന്നും ടി വാഹനം പൊതു നിരത്തിൽ ഉപയോഗിക്കുവാൻ സാധിക്കുമെന്നും അതിനാൽ പൊതുനിരത്തിൽ ഓടിയിട്ടില്ലായെങ്കിൽ പോലും “kept for use” എന്ന വിഭാഗത്തിൽ ഉൾപ്പെടുമെന്നും പ്രതിപാദിക്കുന്നുണ്ട്. ഇക്കാര്യങ്ങൾ ബഹു.ഹൈക്കോടതിയുടെ WP(C) No. 26916/2014 എന്ന കേസിലെ 20-10-2014 - ലെ വിധിനൂയത്തിലും പ്രതിപാദിക്കുന്നുണ്ട് (പകർപ്പ് ഉള്ളടക്കം ചെയ്യുന്നു) ആയതിനാൽ സ്റ്റേജ് ക്യാരേജുകളുടെ പെർമിറ്റ് കാലാവധി അവസാനിച്ചശേഷം വാഹന ഉടമ idle/NTV rate-ൽ നികുതി അടയ്ക്കുന്നതിന് അനുമതിക്കായി അപേക്ഷ സമർപ്പിച്ചിട്ടില്ലായെങ്കിൽ ടി വാഹനത്തിന് സ്റ്റേജ് ക്യാരേജ് നിരക്കിൽ തന്നെ നികുതി ഈടാക്കേണ്ടതാണ്. അല്ലാത്തപക്ഷം മോട്ടോർ വാഹന നികുതി നിയമത്തിലെ 11-0 വകുപ്പുപ്രകാരമുള്ള നടപടികൾ സ്വീകരിക്കാവുന്നതാണ്.

വിശ്വസ്തയോടെ,



ഡെപ്യൂട്ടി ട്രാൻസ്പോർട്ട് കമ്മീഷണർ  
 (ടാക്സ്) (ഇൻചാർജ്ജ്)  
 ട്രാൻസ്പോർട്ട് കമ്മീഷണർക്കുവേണ്ടി

  
 11/12/15

  
 11/12/15

മോട്ടോർ വാഹന വകുപ്പ്, കോരട്ട്



'CR'

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.26916 of 2014

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Dated this the 20<sup>th</sup> day of October, 2014

JUDGMENT

The petitioner was the registered owner of the vehicle, a stage carriage, bearing No.KL6/A 9273 w.e.f. 02.01.2007. Admittedly there occurred a default on the part of the petitioner to satisfy the tax under the Kerala Motor Vehicles Taxation Act on time. Various reasons have been stated, pointing out that the vehicle was not in a position to be operated on road and that the petitioner had never used the vehicle, nor had the vehicle been kept ready for use on road, so as to impose the tax liability under Section 3 of the Kerala Motor Vehicles Taxation Act. When the respondents proceeded with steps for realisation of the amount allegedly due in respect of the vehicle for the relevant period, the petitioner has approached this Court with the following prayers:-

- 1) issue a writ of mandamus or any other appropriate writ, order or direction directing the respondent to endorse the exemption of vehicle tax at stage carriage rate in respect of the vehicle KL 6/A 9273 for the period 1.7.2012 to 30.6.2014 mentioned in Exhibit P4



request with immediate effect by taking a final decision as it is admitted that 'G' form is received for the period and also as per the different judgment 2002(2) KLT 578.

2) to grant such other relief as this Hon'ble Court may deem fit and proper." (sic)

2. Heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for the respondent.

3. It is the case of the petitioner that the vehicle was not having regular permit. The last temporary permit expired on 26.02.2009, as evident from Ext.P2. Alleging tax arrears for 2009-2010, the vehicle was seized and it was released only much later, after compulsory satisfaction of the alleged dues. It is stated that the vehicle was subsequently dismantled. But now, the petitioner has been required to pay tax for 2012-2014 as per Ext.P3 notice; to which, detailed objections have been preferred vide Ext.P4, which is still to be considered and finalised. It is contended that the petitioner is entitled to get exemption. The learned counsel for the petitioner points out with reference to the pleading in the writ petition, particularly in Ground D, that the issue is squarely covered by the judgment rendered by this Court in **Mini Dileep v. Regional Transport Officer** (2013 (3)



KLT 97) (wrongly typed as 2013'(2)' KLT 97 in the Synopsis, in paragraph 4 and elsewhere in the writ petition).

4. In the decision **Mini Dileep** there was an observation in paragraph 7, to the effect that, when the vehicle could not have been used for transport of passengers, in circumstances like the expiry of validity of fitness certificate or expiry of the route permit, tax only at the rate applicable to a non-transport vehicle kept idle need be paid, as per the residual clause in Sl.No.12 of the Schedule to the Act. The petitioner in the said case contended that the route permit granted to the vehicle was valid only up to 09/08/2010 and that it could not have been used as a transport vehicle beyond the month of December 2010. The authorities proceeded with steps to impose tax liability for the whole period, for the reason that intimation 'Form G' was not given.

5. Whether the petitioner had actually operated the vehicle or not, even after the expiry of Permit or Fitness Certificate is a matter which is to be established on the basis of evidence to be let in and the burden is very heavy on the persons like the petitioner. This is for the obvious reason that, mere expiry of the



'Fitness Certificate' or the 'Permit' will not be and cannot be a tool to infer that the party has not used the vehicle for operation. The mandate of Section 3 is something different, which is discernible from the provision extracted below:-

**"3. Levy of tax.-**(1) Subject to the provisions of this Act, on and from the date of commencement of this Act, a tax shall be levied on every motor vehicle used or kept for use in the State, at the rate specified for such vehicle in the Schedule.

Provided that no such tax shall be levied on a motor vehicle kept by a dealer in, or a manufacturer of, such vehicle, for the purpose of trade and used under the authorisation of a trade certificate granted by the registering authority.

[Provided further that in respect of a new motor vehicle of any of the classes specified in item numbers 1,2,6,10(iii) and II of the Schedule to this Act, there shall be levied from the date of purchase of the vehicle one-time tax at the rate specified in Annexure I, at the time of first registration of the vehicle and thereafter tax shall be levied at the time of renewal of such vehicle at the rate specified in the Schedule as per fourth proviso to sub-section(1) of Section 4:]

[Provided further that in respect of new motor vehicle of any of the descriptions specified in item No.1(a) of the Schedule to this Act, there shall be levied from the date of purchase of the vehicle a tax in advance for a period of five years at the rate specified in the Schedule, at the time of first registration of the vehicle, and thereafter tax shall be levied at the rate specified in the Schedule in



accordance with the fourth proviso to sub-section (1) of Section 4:]

[Provided also that in respect of new autorickshaws specified in item number 7(i)(b) of the Schedule to this Act, there shall be levied from the date of purchase of the new vehicle, a tax in advance for a period of five years at the rate specified in Annexure II, at the time of first registration of the vehicle and thereafter tax shall be levied for 5 years or for one year at the rate specified in the seventh proviso to sub-section (1) of Section 4.]

(2) The Government may from time to time by notification in the Gazette, increase the rate of tax specified in the Schedule:

Provided that such increase shall not in the aggregate exceed fifty percent of such rate.

(3) The registered owner of, or any person having possession or control of a motor vehicle shall, for the purpose of this Act, be deemed to use or keep such vehicle for use in the State, except during any period for which no tax is payable on such motor vehicle under sub-section(1) of Section 5.

(4,5,6 are not relevant in this context)

6. The question whether expiry of the 'Fitness Certificate' or 'Permit' will automatically enable the party concerned to evade the tax liability, had come up for consideration before the Apex court in **State of Orissa and others v. Bijaya C.Tripathy** (2004(7) SCC 139 = AIR 2005 SC 1431= 2004 KHC 1482). After considering the relevant provisions of law, the Apex Court



observed that, even in the absence of a permit, the vehicle remains a 'transport vehicle' which is capable of being used on a road. Paragraph 10 of the said verdict is very relevant; which hence is extracted below:-

*declare*

"The High Court also appears to have misread S.66 of the Motor Vehicles Act. All that S.66 of the Motor Vehicles Act provides is that the owner of a motor vehicle cannot use the vehicle as a transport vehicle in any public place without a permit. S.66, therefore, merely prevents use of the vehicle as a transport vehicle without a permit. It does not prohibit driving of such a vehicle on a public road. The vehicle can be driven on a public road so long as it is not used as a transport vehicle. To take an extreme example, the owner of such a vehicle may use that vehicle for taking his family out for a picnic. S.66 will not bar such a use. It is thus clear that even in the absence of a permit the vehicle remains a transport vehicle which is capable of being used on a road so long as the vehicle has a valid certificate of fitness and a valid registration certificate. In such cases it has to be presumed that such a vehicle has been "kept for use" irrespective of whether or not it was actually used on the road."



2 { The said decision was not brought to the notice of the learned Single Judge when the decision in **Mini Dileep v. Regional Transport Officer** (2013(3) KLT 97) was rendered.

7. There is another plea for the petitioner with reference to the law declared by this Court in "2002(2) KLT 578". Despite the extensive search, this Court could not find out any such decision, which cannot but be a mistake of the petitioner. This Court does not intend to express any opinion with regard to the same.

8. The learned counsel for the petitioner submits that the petitioner's relief will stand confined to consideration of Ext.P4 by the respondent and that the petitioner is ready to establish the factual position. In the said circumstances, this Court finds that no other relief as sought for in the writ petition is liable to be granted. The respondent is directed to consider Ext.P4 and pass appropriate orders in accordance with law, giving a chance to the petitioner to establish the facts and figures. This exercise shall be done at the earliest, at any rate, within six weeks from the date of receipt of a copy of this judgment.



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The petitioner shall produce a copy of the judgment, along with a copy of the writ petition, before the respondent for further steps.

**P.R.RAMACHANDRA MENON,  
JUDGE**

sj