IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 10TH DAY OF OCTOBER 2017/18TH ASWINA, 1939

WP(C).No. 7046 of 2017 (E)

PETITIONER(S):

SHAIJU. T.C.,
S/O CHAKKUNNI, THUKKUPARAMBIL HOUSE,
NO.136, BHAVANS NAGAR, ANGAMALY-683 572.

BY ADVS.SRI.G.HARIHARAN,
SRI.PRAVEEN.H.

RESPONDENT(S):

THE JOINT REGIONAL TRANSPORT OFFICER
(TAXATION OFFICER), SUB REGIONAL TRANSPORT OFFICE,
ANGAMALY, ERNAKULAM DISTRICT, PIN:683 572.

BY GOVT. PLEADER SRI.V.K. SHAMSUDHEEN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-10-2017, ALONG WITH WP(C).NO.20799 OF 2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 7046 of 2017 (E)

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1: TRUE COPY OF THE CONTRACT CARRIAGE PERMIT ISSUED IN THE NAME OF THE IST PETITIONER RELATING TO BUS NO.KL-41E-6700.

EXHIBIT P2: TRUE COPY OF THE REGISTRATION CERTIFICATE RELATING TO BUS NO.KL-41E-6700.

EXHIBIT P3: TRUE COPY OF THE WORK ORDER DATED 23.02.2016 ISSUED BY M/S. COCHIN INTERNATIONAL AIR PORT, NEDUMBASSERY IN FAVOUR OF THE 2ND PETITIONER.

EXHIBIT P4: TRUE COPY OF THE REQUEST DATED 01.09.2016 SUBMITTED BY THE IST PETITIONER ADDRESSED TO THE RESPONDENT TO INSPECT THE VEHICLE TO VERIFY THE FIXED SEATS IN THE VEHICLE.

EXHIBIT P5: TRUE COPY OF THE EXTRACT OF RELEVANT TAX STRUCTURE FOR CONTRACT CARRIAGE VEHICLES AS PER THE FINANCE BILL 2014-2015.

EXHIBIT P6: TRUE COPY OF THE JUDGMENT MADE IN WPC NO.32674/2016 DATED 07.10.2016.

EXHIBIT P7: TRUE COPY OF THE NOTICE DATED 21.11.2016 ISSUED BY THE RESPONDENT.

EXHIBIT P8: TRUE COPY OF THE REQUEST DATED 01.12.2016 MADE BY THE PETITIONER BEFORE THE RESPONDENT.

EXHIBIT P9: TRUE COPY OF THE JUDGMENT MADE IN WPC NO.29123/2016 DATED 11.11.2016.

EXHIBIT P10: TRUE COPY OF THE CIRCULAR NO.7/2014 DATED 24/07/2014 WAS ISSUED BY THE TRANSPORT COMMISSIONER.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

(CR)

A.K.JAYASANKARAN NAMBIAR, J.

..

W.P.(C).No.7046 Of 2017

&

W.P.(C).No.20799 Of 2017

..

Dated this the 10th day of October, 2017

J U D G M E N T

Since the issue involved in both these writ petitions is the same they are taken up for consideration together and disposed by this common judgment. For the sake of convenience, the reference to the facts and the exhibits is from W.P.(C).No.7046 of 2017.

2. The petitioner is a contract carriage operator and registered owner of a vehicle bearing registration No.KL-41E-6700, which is covered by a contract carriage permit that is valid upto 12.03.2020. The vehicle initially had push back seats, in lieu of fixed seats, and the petitioner used to pay tax at the rate applicable to contract carriages fitted with push back seats ie. at the rate of Rs.1,000/- per seat. After effecting a conversion of the seats from push back seats to fixed seats in the aforesaid vehicle, by a request dated 01.09.2016, the petitioner sought for an inspection of the vehicle by the respondent. The respondent, thereafter, required the

petitioner to produce the vehicle for inspection, and after inspecting the vehicle proceeded to indicate that irrespective of the conversion of the seats from push back to fixed, the petitioner would still have to pay motor vehicle tax at the rate applicable to contract carriage fitted with push back seats. It is therefore, that the petitioner has approached this Court through the present writ petition, seeking a direction to the respondent to apply the rate of tax applicable to ordinary contract carriages with the same seating capacity, in lieu of the rate applicable for contract carriages fitted with push back seats of the same seating capacity. In W.P.(C). No.20799 of 2017, the facts are similar with the sole exception that by Ext.P5 order of the respondent in that case, the application preferred by the petitioner for alteration of the type of seat in the vehicle from push back seats to ordinary seats was allowed by the respondent subject to the condition that the petitioner continue to pay tax at the rate applicable for contract carriages fitted with push back seats.

3. A counter affidavit has been filed on behalf of the respondent in W.P(C).No.7046 of 2017, wherein the stand taken is that although the petitioner could seek an alteration of the nature

of the seats in the vehicle covered by the contract carriage permit, inasmuch as the change in the nature of the seat would result in reduction in the tax payable by the petitioner, the same could not be permitted. Reliance is placed by the respondent on the decision of this Court in **Gopalakrishnan v. R.T.O, Alleppey [1997 (1) KLT 386] as also in Musthaffa K.K and Others v. Assistant Motor Vehicle Inspector, Thrissur and Another [2014 (1) KLT 575]** in support of the said contention.

4. I have heard the learned counsel appearing for the petitioners and also the learned Government Pleader appearing for the respondent.

5. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that, as per the Kerala Motor Vehicle Taxation Act, 1976, the levy of tax under Section 3 is to be in respect of every motor vehicle used or kept for use in the State at the rate specified for such vehicle in the schedule to the said Act. The schedule to the Motor Vehicle Taxation Act as in force during the relevant period reads as under:

7	**Motor Vehicles plying for hire & used for transport of passengers and in respect of which permits have been issued under the Motor Vehicles Act, '1988**	
(i)	**Vehicles permitted to ply solely as contract carriage**	
(a)	xxxxxxx	
(b)	xxxxxxx	
(c)	xxxxxxx	
(d)	**Vehicles permitted to operate within the State**	
	(i) Ordinary Contract Carriage permitted to carry more than 6 passengers but not more than 12 passengers-for every passenger	310.00
	(ii) Ordinary Contract Carriage permitted to carry more than 12 passengers but not more than 20 passengers-for every passenger	530.00
	(iii) Ordinary Contract Carriage permitted to carry more than 20 passengers-for every passenger	750.00
	(iv) Contract Carriage fitted with push back seats and permitted to carry more than 6 passengers but not more than 12 passengers-for every passenger	500.00
	(v) Contract Carriage fitted with push back seats and permitted to carry more than 12 passengers but not more than 20 passengers-for every passenger	750.00
	(vi) Contract Carriage fitted with push back seat and permitted to carry more than 20 passengers-for every passenger	1000.00
	(vii) Contract Carriage fitted with sleeper berths and permitted to carry more than 6 passengers but not more than 12 passengers-for every passenger	1000.00
	(viii) Contract Carriage fitted with sleeper berths and permitted to carry more than 12 passengers but not more than 20 passengers-for every passenger	1500.00
	(ix) Contract Carriage fitted with sleeper berths and permitted to carry more than 20 passengers-for every passenger	2000.00

It can be seen from a perusal of the schedule to the Act that a distinction is made for the purposes of payment of tax between an ordinary contract carriage and a contract carriage fitted with push back seats. The said distinction was introduced through the Finance Act, 2014. During the presentation of the Budget for the said year, the rationale for bringing out a distinction between the said two categories of contract carriages for the purposes of tax was spelt out by the Finance Minister as follows:

"339. <u>Levy of enhanced rate of tax from luxury contract carriages.</u>

Several Contract Carriages fitted with push back seats and sleeper berths are conducting both interstate and intrastate operations. No separate rate of tax is prescribed for such luxury vehicles, they are being operated after paying the tax applicable to ordinary contract carriages. Further, total number of seats that can be fitted on the vehicle gets reduced on fitting push back/sleeper berths. As the tax for contract carriages is assessed on the basis of number of seats, this will result in loss of revenue to Government by way of tax. Hence it is proposed to levy the following rate of tax for the above vehicles as shown below:-

Contract Carriages permitted to operate within the State and having push back/sleeper facility and permitted to carry more than 7 passengers	Push back seat	Rs.1000 per seat
	Sleeper berth	Rs.2000 per seat
Contract Carriages operating inter State and having push back/sleeper facility and permitted to carry more than 7 passengers	Push back seat	Rs.2000 per seat
	Sleeper berth	Rs.3000 per seat

The Government anticipates an additional income of Rs.1 crore for this."

It will be clear, therefore, that the amendment to the schedule, so as to bring an additional category of contract carriages for the purposes of levy of tax, was seen necessary for the purposes of augmenting the revenue of the State through a higher rate of tax being made applicable to seats, which had the effect of providing a luxury to the passengers. The apprehension with regard to loss of revenue was essentially with regard to there being a reduction in the number of seats and consequential reduction in the tax payable, in the event of the contract carriage substituting the ordinary seats with push back seats, with the apprehension that fitting the vehicle with push back seats would have the effect of reducing the total number of seats in the vehicle. I find, however, that under the provisions of the Kerala Motor Vehicle Taxation Act and the schedule thereunder, the levy of tax is with regard to the seating capacity, and it is trite that the seating capacity is one that is indicated in the permit issued to the operator concerned for operating the contract carriage. Inasmuch as in the instant cases, there is no dispute that the seating capacity of the contract carriage has not been altered, the mere changeover from push back seats to ordinary seats will not cause any revenue loss to the petitioner on account of any reduced seating capacity. The revenue loss, if any, can only be attributed to the differential rate of tax stipulated for push back seats as against ordinary seats. The question then arises as to whether, the said revenue loss can be cited as a ground for demanding a higher rate of tax from the petitioner, who has converted the push back seats in his vehicle to fixed seats, so as to bring the vehicle within the classification of ordinary contract carriages with the same seating capacity. I note, in this connection, that a Single Judge of this Court had, by the judgment dated 11.11.2016 in W.P(C).No.29123 of 2016 (produced as Ext.P9 in W.P(C).No.7046 of 2017), clearly found that a mere change in the type of seats in a contract carriage, without a change in the number of seats, cannot be a reason for the Motor Vehicle Department to deny a request for a change in the type of seats even though the change in the type of seats would result in a reduced liability to tax for the operator concerned. While taking such a view, the learned Judge placed reliance on the decision of the Supreme Court in **Kelvinator of India Ltd., M/s. v. State of Haryana [1973 (2) SCC 551]**, wherein it was held that if a party had a choice of arranging its affairs in such a manner as to avoid its liability to tax, it was open to the party to so arrange his affairs so as to minimise/avoid the tax liability. While on the subject, I also find that, the decisions of the Division Bench in **Gopalakrishnan v. R.T.O, Alleppey [1997 KHC 75] and Musthaffa K.K. And Others v. Assistabt Motor Vehicle Inspector, Thrissur and Another [2014 (1) KLT 575]**, which are relied upon by the learned Government Pleader, are clearly distinguishable on facts. In both those decisions, the point to be decided was whether a possible loss of revenue could be a reason cited by the authorities under the motor vehicle tax to deny permission to the operator concerned for reducing the number of seats in a contract carriage vehicle. While in the former decision, a Division Bench of this Court had opined that the loss of revenue could be a valid ground for denying permission under Section 52 of the Motor Vehicles Act for an alteration in the seating capacity of the vehicle concerned, the Division Bench in the later decision took note of the Full Bench decision of this Court **Vishwanatha Menon v. Addl. Registering Authority [1998 (2) KLT 112]** and found that, the operator of a contract carriage, who intended to reduce the seating capacity in a vehicle covered by contract carriage permit, did not have to seek any permission for the same under Section 52 of the Act, since the liability to tax was on the seating capacity as specified by the manufacturer of the vehicle, and in terms of the permit that was granted to the operator in question. The Full Bench, which considered the matter, had left open the issue as to whether the possible loss of revenue could be treated as a ground in cases were a permission was required for the purposes of an alteration under Section 52 of the Act. As already noticed, in the instant case, since the alteration sought for is not a reduction in the seating capacity but only in the type of seats that are fitted in the vehicle, I am of the view that, the issue of any loss of revenue, in the sense understood by the Division Bench in the cases aforementioned, does not arise for consideration. Further, inasmuch as it is not in dispute that the seating capacity of the vehicle has not been altered and the alterations made are only in respect of the kind of seats, namely, from push back seats to fixed seats, I am of the view that the alteration effected by the petitioner would necessitate a changed stand to be taken by the respondents, in respect of the tax payable under the Kerala Motor Vehicle Taxation Act. This is because it is trite that the levy of tax has to be on a vehicle, in the state at which it is presented before the motor vehicle authorities at the commencement of the assessment period. In the instant case, since at the commencement of the assessment period, the vehicle pursuant to its alteration, had to be classified as an ordinary contract carriage permit with carry more than 20 passengers, the tax for the relevant period would necessarily have to be at the rate of Rs.750/- for every passenger and not at the enhanced rate of Rs.1000/- for every passenger, which is the rate applicable to contract carriages fitted with push back seats. I, therefore, allow these writ petitions by directing the respondent to fix the tax structure of the vehicles in question, based on the observations in the judgment, and at the rates applicable to ordinary contract carriages that are permitted to carry more than 20 passengers. As a consequence of the findings in this judgment, Ext.P5 order produced in W.P(C).No.20799 of 2017 is quashed to the limited extent that it directs the petitioner to continue to pay tax at the rate applicable to contract carriages with push back seats.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/10.10.17