HONOURABLE SMT. JUSTICE V.SUJATHA

WRIT PETITION No.38285 of 2022

ORDER:

The present Writ Petition came to be filed under Article 226 of the Constitution of India seeking the following relief:-

> *"…to issue a writ, direction or order or orders more particularly one in the nature of (a) Writ of Certiorari declaring the order dated 27.08.2022 in R.No.00730/A2/2022 issued by the 2nd respondent herein rejecting the appeal dated 14.6.2022 against the order dated 14.6.2022 in R.No.25/A1/2022 passed by the 3rd respondent as illegal, arbitrary and in contravention of the provisions of the Motor Vehicles Act and AP Motor Vehicles Taxation Act besides being violative of the petitioner's rights guaranteed under Article 14 and 19(1)(g) of the Constitution of India and to consequently set aside; (b) Writ of Mandamus/ such other writ setting aside the demand of Rs.22,71,700/- raised by the 3rd respondent vide VCR (Vehicle Check Report No.AP231/NOV2021/029057, No.AP231/NOV2021/028945, No.AP231/NOV2021/029009, No.AP231/NOV2021/029022, No. AP231/NOV2021/029093, No.AP231/NOV/2021/028996, NO.AP231/NOV2021/028925 and AP231/NOV2021/029046, all dated 16.11.2021 against the motor vehicles bearing Nos.* AP-39-Y-5285, AP-39-X-5681, AP-39-Y-0230, AP-39-X-9253, AP-39-X-6145, AP-39-X-9310, AP-39-X-7129, AP-39-X-3329, AP-31-TT-5238, AP-31-TT-5067, AP-31-TT-4950, AP-31-TT-4050, AP-31-TT-4077, AP-31-TT-4678, AP-39-X-6314, AP-39-Y-0230, AP-39-X-3329, AP-39-X-5681, AP-39-X-6085, AP-39-X-6145, AP-39-X-6314, AP-39-X-7129, AP-39-X-8973, AP-39-X-9153, AP-39-X-9286, AP-39-X-9310, AP-39-Y-5285, AP-31-TT-4050, AP-31-TT-4077, AP-31-TT-4500, AP-31-TT-4509, AP-31-TT-4678, AP-31-TT-4950, AP-31-TT-5067, AP-31-TT-5148, AP-31-TT-5238, AP-31-TT-5373, AP-31-TT-5490, AP-31-TT-5517, AP-31-TT-6039, AP-31-TT-5670, AP-31-TT-5580, AP-31-TT-5418, AP-31-TT-5400, AP-16-TG-2619, AP-16-TG-2579, AP-16-TG-2479, AP-39-Y-3008, AP-39-X-8856, AP-39-X-7639, AP-16-TD-7759 *respectively by declaring the same as illegal, arbitrary and in contravention of the provisions of the Motor Vehicles Act and AP Motor Vehicles Taxation Act and to consequently refund the sum of Rs.34,49,590/- paid under protest; (c) Writ of Mandamus/such other writ to grant*

exemption of tax under Section 9 of the Andhra Pradesh Motor Vehicles Taxation Act, 1963 for all vehicles owned by the petitioner and used within the premises of Rashtriya Ispat Nigam Limited for the purpose of the contract dated 17.11.2020 by the petitioner and Rashtriya Ispat Nigam Limited until the expiry of the contract dated 17.11.2020 by the petitioner and Rashtriya Ispat Nigam Limited until the expirty of the contract dated 17.11.2020 and pass ..."

2. The petitioner is a company registered under Companies Act 1956, engaged in the business of providing logistics support since 1985 and is diversified into deployment of heavy lifting equipment required for infrastructure and construction projects. The petitioner company was awarded with the Contract dated 17.11.2020 for a period of 4.5 years for Handling and storage of Iron and Steel Material at Central Dispatch Yard situated inside of Visakhapatnam Steel Plant, Andhra Pradesh, a corporate entity of Rashtriya Ispat Nigam Limited (RINL).

3. The petitioner company in furtherance of the terms and conditions of the contract and in consonance o the work order dated dated 19.01.2021 from RINL, slowly commenced to deploy the 36 vehicles bearing Nos.AP-39-Y-5285, AP-39-X-5681, AP-39-Y-0230, AP-39-X-9253, AP-39-X-6145, AP-39-X-9310, AP-39-X-7129, AP-39-X-3329, AP-31-TT-5238, AP-31-TT-5067, AP-31-TT-4950, AP-31-TT-4050, AP-31-TT-

4077, AP-31-TT-4678, AP-39-X-6314, AP-39-Y-0230, AP-39-X-3329, AP-39-X-5681, AP-39-X-6085, AP-39-X-6145, AP-39-X-6314, AP-39-X-7129, AP-39-X-8973, AP-39-X-9153, AP-39-X-9286, AP-39-X-9310, AP-39-Y-5285, AP-31-TT-4050, AP-31-TT-4077, AP-31-TT-4500, AP-31-TT-4509, AP-31-TT-4678, AP-31-TT-4950, AP-31-TT-5067, AP-31-TT-5148, AP-31-TT-5238, AP-31-TT-5373, AP-31-TT-5490, AP-31-TT-5517, AP-31-TT-6039, AP-31-TT-5670, AP-31-TT-5580, AP-31-TT-5418, AP-31-TT-5400, AP-16-TG-2619, AP-16-TG-2579, AP-16-TG-2479, AP-39-Y-3008, AP-39-X-8856, AP-39-X-7639, AP-16-TD-7759. Prior to the aforesaid contract, the petitioner has paid the Motor Vehicle Tax in respect of the above referred vehicles to the concerned authorities and attained Fitness Certificate, Insurance Certificate and Pollution Under Control Certificate in accordance with the statutory provisions.

4. Upon allotment of the contract, the motor vehicles in batches were deployed to Central Deposit Yard premises and with effect from 01-04-2021 all the motor vehicles stopped plying upon the public roads and were thereafter used exclusively for the purpose of the contract and were to only

ply inside the Central Deposit Yard premises and not leave the compound at any period of time till the end of contract for any other use. Therefore, these vehicles were not used or kept for use on any of the roads maintained by the State of Andhra Pradesh. The Central Deposit Yard was enclosed by compound walls and ingress and egress is regulated through the gates managed by the Central Industrial Security Force (CISF).

5. While the matter being so, the petitioner company vide letter 07.12.2020 and 05.10.2021 had intimated the 1st respondent regarding 'non use' of the motor vehicles on public roads and requested to exempt from payment of tax as the motor vehicles were no longer plying on public roads till the period of the contract in accordance with Section 3 of the Andhra Pradesh Motor Vehicles Taxation Act. But the respondents without considering the petitioner's representations and without conducting proper assessment as per A.P.M.V. Act, the 4th respondent inspected the motor vehicles and raised a demand of Rs.7,37,960/- without disclosing calculation how the tax arrears, penalty arrears etc. were raised in the demand notice.

6. In pursuance of the same, the petitioner has paid a total sum of Rs.22,71,700/- towards Motor Vehicle Tax under protest, as seizure of the vehicles would cause irreparable, consequential loss resulting the halting of RINL operations itself. Thereafter, the petitioner company vide letter dated 25.02.2022 addressed to the 3rd respondent have sought for refund of the amount paid under protest on the ground that the demand order has been passed without providing any reasonable opportunity to the petitioner and without conducting any assessment proceedings and a reasoned order under Section 6 of the A.P.M.V. Act. As the 3rd respondent herein did not respond to the letter addressed by the petitioner on 25.02.2022, the petitioner filed W.P. No.6206 of 2022, which was disposed of vide order dated 26.04.2022, the operative portion of the order is as follows:

> "Accordingly, the writ petition is disposed of with a direction to the respondents to consider the representations of the company dated 07.12.2020 and 05.10.2021 for grant of exemption from payments of tax. Needless to say, the 2nd respondent shall also permit the company to produce all such material or evidence necessary to demonstrate that the vehicles of the company have not been use or kept for use on the public roads in the State of Andhra Pradesh and shall

pass an order, setting out reason, after due opportunity of hearing being given to the company.

Thereupon, the respondents shall either refund or retain the amounts collected from the company in accordance with the orders passed by the 2nd respondent. The said exercise is to be completed, within a period of eight (8) weeks from the date of receipt of this order. No coercive steps shall be taken against the company pending disposal of the said representations. There shall be no order as to costs."

7. In compliance of the directions of this Court, the petitioner company submitted his representation to the 3rd respondent vide letter 25.05.2022 seeking for grant of exemption from payment of tax and refund of Rs.22,71,700/- along with interest @ 6% which was subsequently rejected by the 3rd respondent vide orders dated 14.06.2022 by stating that RINL is a Government company therefore falls within the definition of public place. Aggrieved by the order of the 3rd respondent, the petitioner approached appellate authority i.e. 2nd respondent herein vide Appeal dated 29.06.2022, which was rejected on 27.08.2022 on the following grounds:

a) that rule 12-A of Motor Vehicles Taxation Rules contemplates that the Motor Vehicle shall not be used at all and that the rule did not mention that the Motor Vehicle shall not be used in public place.

b) that petitioner did not file stoppage intimation or non use intimation to the licensing officer for the vehicles in question.

c) that the petitioner has been operating his vehicles at RINL, Visakhapatnam premises, the question of exemption of tax does not arise since the registered owner did not file stoppage / non use intimation to the licensing officer.

d) that RINL had insisted for road tax receipt indicating tax has been paid as per statue and has sought clearances from labour department and other connected departments and the petitioner after agreeing the terms and conditions stipulated by RINL had signed the agreement. Further, RINL has quoted the price to petitioner herein after considering the expenditure incurred by the company, including the Motor Vehicles Tax is to be paid to the Transport Department and thus petitioner has been executing the contract and utilizing the vehicles for the purpose of contract by taking hire charges / payment as per the terms of the contract. Therefore, the contention that RINL is a private cannot be accepted.

e) that the petitioner is receiving hire charges but is not willing to pay Motor Vehicle Tax that is due to the Government.

f) that the tax can be exempted only when the vehicles are not use and this should be done as per the procedure prescribed in G.O.Ms.No.82, Tr. R&B(Tr.II) dt. 26.03.1980.

8. Meanwhile, the petitioner vide letter dated 09.08.2022 informed the 2nd respondent to keep the demand amounting to Rs.10,66,350/- of Motor Vehicle Tax for the quarters from 01.4.2022 to 30.06.2022 and 01.7.2022 till 20.09.2022 in abeyance till the pendency of the appeal. However, the 2nd respondent has rejected the appeal and as such the petitioner has paid the amount of Rs.11,77,890/- under protest. Challenging which, the present writ petition is filed.

9. In support of the case of the petitioner, the learned counsel for the petitioner relied upon ad Judgment of High Court of Bombay in the case of ***Tata Motors Limited vs. Dy.Regional Transport Officer*** passed in Writ Petition No.8001 of 2008, dated 11.03.2010, wherein it was held as follows:

> "29.After considering all the above referred decisions and the law declared by the Apex Court on the subject, the clear legal position which is emerging is that tax imposed on vehicles under the Tax Act is compensatory in nature for the purpose of raising revenue to meet the expenditure for making and maintaining the roads and regulation of traffic. Even as per the law declared by the Full Bench in the case of Pandurang (supra), the word 'public place' defined under Section 2(24) of the Act of 1939 was construed in the light of the object, purpose and provisions of the Act of 1939 by the Full Bench and therefore, going by the same analogy the word 'public place' defined in Rule 5(1) of the Tax Rules will have to be construed in the light of the object, purpose and scheme of the Tax Act of 1958 and the Rules made there under, coupled with the law

> declared by the Apex Court on the subject. Consequently, the meaning of the word 'public place' declared by the Full Bench in the case of 'Pandurang' (supra) in the context of Motor Vehicles Act, 1939 will not be attracted to the word 'public place' defined under Rule.
>
> 30. ....Similarly, as per the consistent view expressed by the Apex Court on the subject, while considering the scheme of Section 3(2) of the Tax Act and Rules 5(1) of the Tax Rules, legislative power conferred on State by Entry 57 of List II of Seventh Schedule of the Constitution and the object and purpose of the Tax Act, we are of the view that the impugned decision of respondent No.4 that the factory premises of the petitioner are 'public place' in view of the decision of this Court in the case of Pandurang (supra), and therefore, motor vehicles used exclusively on the factory premises of the petitioners are not entitled to be exempted from payment of tax under Rule 5(1) of the Tax, Rules is unsustainable in the law since the decision of this Court in the case of Pandurang (supra), for the reasons stated hereinabove is distinguishable and therefore, not applicable in the present case.

10. The learned counsel for the petitioner relied upon a Judgment of Apex Court in the case of ***Travancore Tea Estates Co. Ltd. and Ors. Vs. State of Kerala and Ors.*** passed in Civil Appeal Nos.437-438 and 1460 of 1970, dated 03.06.1980, wherein it was held as follows:

> "4. The question that falls for decision is whether on the assumption that the motor vehicles are used or kept for use within the estate, and not intended to be used on public roads of the State; the tax is leviable? In order to appreciate the question raised, it is necessary to refer to the relevant entry in the Constitution, the provisions of the Act and the Motor Vehicles Act and the decision relating to the question rendered by this Court. (Entry 57 in List II of the Constitution relates to taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III. This entry enables the State Government to levy a tax on all vehicles whether mechanically propelled or not,

suitable for use on roads.) (emphasis supplied). There is no dispute that the vehicles are mechanically propelled and suitable for use on roads.

5. Section 3 of the impugned Act (Kerala Motor Vehicles Taxation Act (Act 24 of 1963) provides that a tax "shall be levied on all motor vehicles used or kept for use in the State." The levy is within the competence of the State legislature as entry 57 in List II authorises by on vehicles suitable for use on roads. It has been laid down by this Court in "Bolani Ores Ltd. v. Orissa," that under Entry 57 of List II, the power of taxation cannot exceed compensatory nature which must have some nexus with the vehicles using the roads i.e. public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Act, they cannot be taxed.

6. If the words used or kept for use in the State is construed as used or kept for use on the public roads of the State, the Act would be in conformity with the powers conferred on the State legislature under Entry 57 of List II. If the vehicle are suitable for use on public roads they are liable to be taxed. In order to levy a tax on vehicles used or kept for use on public roads of the State and at the same time to avoid evasion of tax the legislature has prescribed the procedure. Sub-section 2 of sec. 3 provides that the registered owner or any person having possession of or control of a motor vehicle of which a certificate of registration is current shall for the purpose of this Act be deemed to use or kept such vehicles for use in the State except during any period for which the Regional Transport Authority has certified in the prescribed manner that the motor vehicle has not been used or kept for use. Under this sub-section there is a presumption that a motor vehicle for which the certificate of registration is current shall be deemed to be used or kept for use in the State. This provision safeguards the revenue of the State by relieving it from the burden of proving that the vehicle was used or kept for use on the public roads of the State. At the same time the interest of the bonafide owner is safeguarded by enabling him to claim and obtain a certificate of non-user from the prescribed authority. In order to enable the owner of the vehicle or the person who is in possession or being in control of the motor vehicle of which the certificate of registration is current to claim exempting from tax he should get a certificate in the prescribed manner from the Regional Transport Officer.

11. The learned counsel for the petitioner relied upon a Judgment of High Court of Madras in the case of ***Neyveli***

Lignite Corporation Ltd. vs. Government of Tamil Nadu and Ors. in Writ Petition No.6787 of 1998, dated 19.09.2005, wherein it was held as follows:

> 4. The main contention of the petitioner is to the effect that since the vehicles are plying only on the private roads of the Corporation, no tax is leviable.
>
> 13. Applying the ratio of the aforesaid decisions to the present case, it is apparent that the contention raised on behalf of the petitioner must be accepted. There is no dispute relating to the fact that the vehicles in question are kept for use only within the area belonging to the Corporation and they are not intended to be used on any public road maintained by the State. The respondents have no where come to any conclusion nor raised any contention in the present case that in fact some of these vehicles are used on public roads outside the area belonging to the Corporation.
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> 14. Learned counsel for the respondents has contended that even though the roads are within the area of the Corporation, public have an access to such roads, and, therefore, it must be taken that those roads are public roads. I am afraid such contention cannot be countenanced. It is no doubt true that at times the outsiders are also allowed inside the area of the Corporation. Even otherwise the inhabitants of the township within the area of the Corporation in a generic sense can be said to be members of the public and in that sense the private roads constructed and maintained by the Corporation can be said to be accessible to the public. However, in the context of Entry 57 of List II, the tax being leviable when the motor vehicle is used or kept for use on the roads within the State, it evidently means public roads maintained by the State or any other agency on behalf of the State. Where the roads are private roads belonging to a particular person or entity and the vehicles are exclusively used within such private area, such vehicles would not be liable to tax and such vehicles are entitled to get exemption as contemplated in the Act. It is made clear that even though such vehicles are required to be registered under the Motor Vehicles Act, such vehicles cannot be subjected to tax, provided of course necessary exemption is claimed in accordance with the provisions contained. It is further made clear that if there is any violation and the vehicles which are exe mpted are used on public roads belonging to the State lying beyond the area belonging to the Corporation, obviously the State Government would be entitled to levy tax as well as penalty.

> 15. The learned Special Government Pleader appearing for the respondents has placed reliance upon several decisions in support of his contentions. That the area within the Corporation is a Public Place and since the vehicles use such public place, tax can be levied. The decision reported in G.BHUVANESWARI Vs. M.SORNAKUMAR (200(1) CTC 145), is one such decision of the Division Bench of this Court. The said decision arose out of the claim comes under the Motor Vehicles Act 1988. The accident was caused by a tempo inside the factory, the Tribunal while awarding compensation, came to the conclusion that the accident occurred in a private place and therefore, the Insurance Company was not liable to pay the compensation under section 147 of the Motor vehicles Act. In appeal, the Division Bench relying upon the earlier Full Bench decision in the case of UNITED INDIA INSURANCE CO. LTD., Vs. PARVATHI DEVI & OTHERS, 1999 T.N.L.J. 144 held that public place includes places where public have an access whether free or control in any manner. For the aforesaid purpose, the Full Bench as well as the Division Bench has placed reliance on the expression of Public Place as contained in section 2(24) of the Motor Vehicles Act. In my considered opinion, the ratio of the aforesaid decisions has no application in the present case. The dispute in the present case is not as to whether the area within the Corporation is a public place within the meaning of section 2(24) of the Motor Vehicles act, the dispute is whether the vehicle exclusively being used on the private road belonging to the Corporation and not using any other road belong to the State Government can be subjected to levy of taxes. The question to be decided in the present case is whether the vehicle in question use any road of the State Government or use private road belonging to the Corporation.

12. The learned counsel for the petitioner relied upon a Judgment of High Court of Gujarat in the case of ***Srinath Travels Agency vs. State of Gujarat & 2 others*** in Special Civil Application No.18553 of 2014, wherein it was held as follows:

> **17.** We**,** however, cannot lose sight of the fact that the vehicle is registered for airport premises use only. The vehicle in question is described as TARMAC COACH. The contract carriage allows its use only for airport and not other. The question, therefore, is, as long as such vehicles are used only for transport of passengers from the airport terminal to the

> aircraft, can it be stated that they are operating in a public place. As noted, Section 2(34) of the Act defines term 'public place' as to a road, street, way or other place, whether a thoroughfare or not, to which the public have a right to access. The definition is in inclusive term and any place or stand at which the passengers are picked or set down by a stage carriage would also be included in such definition. Perusing minutely, ht present case does not satisfy any of the requirements. The vehicle is used only for transporting the passengers from airport terminal to aircraft. These areas are heavily restricted areas. It is certainly not a road, street or other place or the way where public have a right of way. It is also not any other place whether a thoroughfare or not to which the public have a right of access. No ordinary member of the public, under any circumstances, can assert any such right. Only persons, who are being transported from two terminals points, noted above, are the fare paying passengers, who are travelling through the airlines. Even these persons have no right to access on these roads where movement is restricted, controlled and heavily guarded by the airport and security authorities. They are transported from airport terminal under heavy security to the aircraft. Any movement of such passengers by foot is strictly prohibited, failing which, it will be a serious threat to the security in premises, intentional damage or even a serious accident. It is not a stand, at which, passengers are picked up or set down by stage carriage. The petitioner is not stage carriage. The airport is not a stand. The flying passengers are not passengers of the bus. For multiple reasons, therefore, the definition of 'public place' under Section 2(34) of the Act would not apply in such a case. This is what was also clarified by the Government of India in its clarificatory letter dated 03.11.1992. In clause (b) of para 2 of such letter, it is stated that, an aerodrome is a restricted area and, it therefore, cannot be deemed to be public place as defined under Section 2(34) of the Motor Vehicles Act.

13. The 3rd respondent filed counter affidavit stating that the petitioner is running the above said lorries/articulated vehicles have requested to exempt the quarterly tax as their vehicles were used within the premises of RINL on

contractual basis. In similar circumstances the Hon'ble Court was pleased to dispose of W.P.No.173 of 2010 batch as follows:

> *"mere exclusive use of a motor vehicle within a factory or enclosed premises would not, by itself, exclude such vehicles from the levy of tax. It is only when such vehicles are specially adapted and specially designed, do those vehicles go out of the purview of the Taxation Act. Even if these vehicles are "off highway" capabilities, as they are fitted with rubber tyres or pneumatic tyres or rubber padded, they are, 'motor vehicles' liable to tax. In case of any doubt, the RTA/Transport Commissioner has the power to determine this question".*

14. The Motor Vehicle Inspector, Gajuwaka have booked cases on the above said vehicles, since the vehicles were used for general transport in public places, without payment of tax and not specially adapted and specially designed for use only in a factory or enclosed premises. The above said vehicles are liable to pay tax as per the rules in vogue.

15. The counter further states that though the petitioner has filed non-use intimation, but the petitioner has used their vehicles in RINL premises against the terms of non-use

Motor Vehicles Tax is levied as per Section 3 of the A.P.M.V. Taxation Act:-

> "**Levy of tax on motor vehicles**:- (1) The Government may, by notification, from time to time, direct that a tax shall be levied on every motor vehicle used or kept for use, in a public place in the State."

Further, as per rule 12(A) of Andhra Pradesh Motor Vehicles Taxation rules, there is liability for payment of tax in respect of Motor Vehicles kept for use-

> ***12-A. Liability for payment of tax in respect of motor vehicles kept for use***:-
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> "Liability for payment of tax in respect of motor vehicles kept for use:- For the purpose of Section 3 of the Act, a motor vehicle shall be deemed to be kept for use and is liable to tax unless the registered owner or the person having possession or control of the motor vehicle intimates in writing to the licensing officer before the commencement of the quarter for which tax is due that the motor vehicle shall not be used after expiry of the period for which tax has already been paid. The Licensing Officer shall on receipt of the intimation, acknowledge its receipt:
>
> Provided further that nothing in this rules shall apply in respect of vehicles for which life time or lump sum tax is prescribed.

Rule 12(A) mandates, that the registered owner, or the person having possession or control of the Motor Vehicles, to intimate in writing to Licensing

> Officer, before the commencement of the quarter, for which tax is due that the Motor Vehicle ***shall not be used*** after expiry of the period for which tax has already been paid. The Rule clearly mandated that the Motor Vehicle shall not be used. The Rule did not mention that the Motor Vehicle shall not be used in public place.

16. The counter further states that if the registered owner wants not to use his Motor Vehicle and if he wants exemption of Motor vehicles tax for his vehicle for a particular quarter, he shall file stoppage/non-use intimation to the Licensing Officer, concerned, clearly indicating the place at which the vehicle will be kept during the period of non-use. The Motor Vehicles Inspector, concerned, shall inspect the Motor vehicle which is kept under non-use, at the place mentioned by the registered owner and shall certify that the vehicle is kept under non-use, before commencement of the quarter. The Licensing Officer/Regional Transport Officer, after receipt of the report of the Motor vehicles Inspector, shall record the same in the registration certificate of the Motor Vehicle. The Motor Vehicle shall be kept at the same place till the end of the quarter and the Motor vehicles Inspector will be again instructed to inspect the Motor Vehicle at the same place

and to certify the period of non-use during the entire quarter. On receipt of the report of the Motor vehicles Inspector, certifying that the Motor vehicle is kept under non-use, the licensing Officer will give exemption of tax for that quarter.

17. The counter further states that if the Motor vehicle, which is kept on stoppage or non-use, has been moved from the place at which the motor vehicle is kept and if it is reported by the Motor vehicles Inspector, then, stoppage or non-use will be treated as not genuine and registered owner shall have to pay

1) Quarterly tax with 50% of penalty, if tax is paid voluntarily.

2) Quarterly tax with 200% penalty, if the vehicle is detected by a Motor vehicles Inspector, for non-payment of tax and a Vehicle Check Report is booked.

The Rule-12 A is not the sole method for granting exemption from payment of tax.

18. The counter further states that as per the contract documents, it is evident that RINL, Visakhapatnam had insisted for road tax receipt, indicating tax has been paid as per statute, from M/s Tara Chand logistics solutions limited,

even at tender stage since RINL is aware of the fact that their premises come under the definition of public place (page 11 of 188 of the agreement between the parties). Further, RINL had also sought clearances from labour department and other connected departments, since their premises come under the definition of public place. M/s Tara Chand logistics solutions limited, after agreeing to the terms and conditions stipulated by RINL, Visakhapatnam had signed the agreement of contract and has been executing the contract. It is to be noted that RINL, Visakhapatnam had quoted the price to M/s Tara Chand logistics solutions limited, after considering the expenditure incurred by the company, including the Motor vehicles tax that is to be paid to the Transport Department, Andhra Pradesh, RINL is aware of the fact that their premises come under the definition of **public place**; hence, the petitioner's interpretation of RINL as a private or enclosed premises is not accepted.

19. For better appreciation of this case, this Court feels it relevant to refer to Section 2 sub Section (34) of the Motor Vehicles Act, 1988, which reads as follows:

> "Public Place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage".

20. On a perusal of the affidavit filed by the petitioner and as well as material papers placed on record, it is clear that the subject motor vehicles were deployed to Central Deposit Yard Premises and with effect from 01.04.2021, all the motor vehicles have stopped plying upon the public roads and were being used exclusively for the purpose of contract of the petitioner and were only plying inside the Central Deposit Yard but did not leave the compound of the Yard at any period of time. In such a case, the subject vehicles are not liable to be taxed and such vehicles are entitled to get exemption as contemplated in the Act. As the Central Deposit Yard is highly restricted area with no ordinary member of the public having any access to enter the premises, the definition of 'public place' under Section 2 (34) of the Act would not apply to the above said Yard.

21. Even this Court, earlier W.P.No.6206 of 2022 has disposed of by directing the respondents to consider the representation of the company dated 07.12.2020 and 05.10.2021 for grant of exemption for payment of tax upon

the company producing all such material or evidence necessary to demonstrate that the vehicles of the company have not been use or kept for use on the public roads in the State of Andhra Pradesh, after giving due opportunity of hearing to the company, the respondents shall refund or retain the amount collections from the company thereafter.

22. In the present case, though the petitioner has submitted representations to the 3rd respondent on 25.05.2022 seeking for grant of exemption from payment of tax and refund of Rs.22,71,700/- along with interest @ 6%, which was rejected by the 3rd respondent vide order dated 14.06.2022 by stating that RINL is a Government company therefore falls within the definition of 'public place', which is admittedly contrary to the above referred findings given by the Hon'ble Apex Court, High Court of Bombay, High Court of Madras and High Court of Gujarat, the fact that the petitioner is plying the vehicles in the Central Deposit Yard premises itself proves that the premises does not fall under the definition of 'public place' as under Section 2 sub Section (34) of the Act.

23. In view of the above, writ petition is allowed and the respondents are directed to refund an amount of Rs.22,71,700/- to the petitioner on an application made by the petitioner seeking such refund. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE V.SUJATHA

Date: 13.06.2023
KGR

HONOURABLE SMT. JUSTICE V.SUJATHA

WRIT PETITION No.38285 of 2022

Date :13.06.2023

KGR