

WP(C) 160/2016

BEFORE

HON'BLE THE CHIEF JUSTICE (ACTING) MR. T VAIPHEI

THE HON'BLE MR. JUSTICE PARAN KUMAR PHUKAN

(T Vaiphei, CJ (Acting))

Heard Ms. U Baruah, the learned counsel for the petitioner and Mr. S Saikia, the learned standing counsel, Finance (Taxation) Department. Also heard Mr. B Banerjee, the learned standing counsel, Assam University.

It is agreed that the controversy raised in this writ petition is covered by the order, dated 21-12-2011, passed by this Court in WP(C) No. 3833/2004, which was subsequently upheld by the Division Bench of this Court in the order, dated 04-09-2012, passed in WP(C) No. 2622/2011.

The case of the petitioner is that on 16-06-2014, it had entered into an agreement with the Assam University for rendering the services of transporting the students and staff of the University by the 35 seated Deluxe Mini Buses on specified time and route on payment of hiring charge and as per terms and conditions mentioned in the agreement. As per the agreement, the custody and control of the buses would remain with the petitioner and the maintenance of buses, payment of salary of staff, fuel charges, payment of compensation in case of accident would be the responsibility of the petitioner. Since the petitioner has not transferred the right to use to the respondent No. 1, the contract for hire agreement will not fall within the meaning of sale and the same would not come within the purview of the Assam Value Added Tax Act, 2003. However, the respondent authorities decided to deduct/realize tax at source under the Assam Value Added Tax Act, 2003 in respect of a contract agreement executed between it and the respondent No. 1 for hiring the services of buses. This prompted it to file the present petition. As already noticed, this case is admittedly covered by the earlier decision of this Court referred to above, the writ petition is disposed of by restraining the Finance Department, Government of Assam, from deducting taxes at source. If any tax has already been deducted at source, the same shall be refunded to the petitioner without any delay.