IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.20963 to 20975 of 2015
And
M.P.Nos.1 to 1 and 2 to 2 of 2015

1.M/s.Motor and Services (P) Ltd
rep. by V.Sampathkumar ...Petitioner in W.P.No.20963 & 20964 of 2015

2.Conti travels
Rep by.V.Sampath Kumar
Orissa. ...Petitioner in W.P.No.20965 & 20966 of 2015

3.Tamil Selvi
W/o Paramesh ...Petitioner in W.P.No.20967 & 20971 of 2015

4.P.Suseela
Orissa ...Petitioner in W.P.No.20974 & 20975 of 2015

5.Mohanan S/o Kelukurup ...Petitioner in W.P.No.20972 & 20973 of 2015

Vs.

The Transport Commissioner
Chepauk, Chennai. ...Respondent in all WP's

Prayer in W.P.No.20963 to 20975 of 2015:

Writ petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the Impugned Circular of the Respondent in R.No.A3/64992/2014 dated 19.12.2014 and to quash the same and further to direct the Respondent and its subordinates to accept the Motor Vehicles Tax at par with the temporary permits for a period of 7 days or 30 days or 90 days in respect of the Petitioners Contract Carriage Omni Buses bearing Registration No.KA-01-AB-7086, KA-01-AB-7087, OD-21-4059, OD-21-4069, KL-09-R-5566, KL-40-F-2902, KL-40-D-6477, KL-09-Z-677, KL-09-Z-577, KL-60-A-4869, KL-59-A-6264, OD-21-9386 and OD-21-9379 respectively as per the Ninth Schedule of the Tamilnadu Motor Vehicles Taxation Act.

For Petitioners : Mr.S.Govindraman
For Respondent : Mr.R.Lakshmi Narayanan

COMMON ORDER

There are thirteen writ petitions filed by the petitioners seeking to issue Writ of Mandamus, to call for the records of the Impugned Circular of the respondent in R.No.A3/64992/2014 dated 19.12.2014, to quash the same with a further consequential direction to the respondent and its subordinates to accept the Motor Vehicles Tax at par with the temporary permits for a period of 7 days or 30 days or 90 days in respect of petitioners' Contract Carriage Omni Buses bearing Registration Nos.KA-01-AB-7086, KA-01-AB-7087, OD-21-4059, OD-21-4069, KL-09-R-3566, KL-40-F-2902, KL-40-D-6477, KL-09-Z-677, KL-09-Z-577, KL-60-A-4869, KL-59-A-6264, OD-21-9386 and OD-21-9379 respectively, as per the Ninth Schedule of the Tamil Nadu Motor Vehicles Taxation Act.

2.The petitioners being the holder of Contract Carriage Omni Bus permits granted by the State of Karnataka, Karnataka, Odisha, Orissa, Kerala, Kerala, Kerala, Kerala, Kerala, Kerala, Kerala, Orissa and Orissa respectively, in respect of vehicle Nos.KA-01-AB-7086, KA-01-AB-7087, OD-21-4059, OD-21-4069, KL-09-R-3566, KL-40-F-2902, KL-40-D-6477, KL-09-Z-677, KL-09-Z-577, KL-60-A-4869, KL-59-A-6264, OD-21-9386 and OD-21-9379 respectively, were plying their vehicles in the State of Tamil Nadu by obtaining Special Permits depending on the usage of the vehicles in the State of Tamil Nadu for a period of 7 days (or) 30 days (or) 90 days. That apart, they have to pay tax to the State of Tamilnadu, as contemplated under the provisions of Tamilnadu Motor Vehicles Taxation Act, 1974, hereinafter called as the Taxation Act. Learned counsel continuing his argument would submit that until 2012, the tax for other State Contract Carriage Vehicles were collected as per the first schedule of the Taxation Act, depending upon the period of usage of the vehicles in the State of Tamil Nadu. In the year 2012, the State Government of Tamil Nadu brought an amendment to Sections 3, 4 and 6 of the Taxation Act, 2012 called as Act No.13 of 2012 and inserted ninth schedule under which, tax has been prescribed for Contract Carriage Omni Buses from other State Permits covered under Sub-Sections (8) or (9) of Section 88 of the Motor Vehicles Act 1988, prescribed in Column (c) of Schedule Nine, as follows :-

(i) If the temporary licence is for a period not exceeding 7 days.	Rs.600/- Per seat or Berth per entry

(i) If the temporary licence is for a period exceeding 7 days, but not exceeding 30 days	Rs.1,500/- Per seat or Berth per entry
(i) If the temporary licence is for a period exceeding 30 days, but not exceeding 90 days	Rs.3,500/- Per seat or Berth per entry

3.In view of the above amendment to the Taxation Act by inserting ninth schedule, the members of the petitioner Association are liable to pay tax for each and every entry, as the tax is per entry into the State of Tamil Nadu. Since the said approach adopted has caused immense prejudice, Writ Petition No.22011 of 2012 was filed to declare the amendment as null and void. The same is pending before this Court. Whileso, another W.P.No.33581 of 2014 was filed challenging the vires of Act 13 of 2012 and the said writ petition is also pending for consideration before this Court. In the meanwhile, it is stated that the Transport Commissioner, Chennai, namely, the respondent herein, issued a Circular to his subordinates vide R. No. A3/64992/2014 dated 19.12.2014 citing evasion of collection of tax by his officials in Poonamallee Check Post and instructed his subordinates that the tax should be paid for other State Vehicles, only at border check post. On that basis he has instructed his subordinates that even when the special permits of other State vehicles are valid for more than 7 days, an enquiry has to be made with the passengers and on such statement of passengers, if the officials have any doubt, the tax should be collected for a period of seven days only. As the said impugned circular is improper and contrary to the provisions of the Motor Vehicles Act 1988 and Tamil Nadu Motor Vehicles Taxation Act, 1974, they are bound to collect the tax as per the period of the special permits, namely, for a period of 7 days or 30 days or 90 days and the mode of payment of tax amount has been prescribed under Rule 3A of the Tamil Nadu Motor Vehicles Taxation Rules, 1974. Similar writ petitions have been filed. In W.P. No. 2798 of 2015, on 05.02.2015, this Court has also passed an order disagreeing with the approach adopted by the respondent and had stated that the respondent is not empowered to collect tax to his whims and fancies. As long as the ninth schedule is concerned, two factors have to be considered, one is issuance of temporary license and the other one is with regard to taxation. If the period of temporary license granted by the Transport Authorities is for a period of 30 days to ply the vehicle on other States, the same cannot be reduced to 7 days. However, it is open to the respondent to collect the rate of tax prescribed under Ninth Schedule. On this basis, this Court in the said order, has held that there is no provision to restrict the license period from 30 days to 7 days. The respondent is bound to exercise his power to collect tax in terms of ninth schedule depending upon the number of entry in terms of the ninth schedule. As the petitioner therein was willing to pay the necessary charges, per entry per seat in terms of ninth schedule, the only grievance was that when he is holding temporary license for a period of 30 days, it cannot be reduced to less than 30 days.

4.Mr.R.Lakshmi Narayanan, learned Additional Government Pleader takes notice for the respondent.

5.Heard the submission of learned counsel appearing for the petitioners and the learned Additional Government Pleader representing the respondent. With the consent of both parties, the writ petitions are taken up for disposal, at the stage of admission itself.

6.In the present case also, depending upon the temporary permit granted, the respondent is directed to collect one time tax as prescribed under ninth schedule, depending upon the period of permit. It is made clear that if the petitioners are granted 30 days permit, the tax should be collected for 30 days. If the temporary permit is granted for 90 days, it is needless to mention that the respondent shall collect the temporary tax for 90 days. For, there is no provision to restrict the licence period from 30 days to 7days or lesser.

7.With the above direction, all the Writ Petitions are disposed of. Consequently, the connected Miscellaneous Petitions are closed. No order as to costs.

sd/-
Assistant Registrar(Cs-IV)

/TRUE COPY/

Sub-Assistant Registrar

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To
1.The Transport Commissioner
Chepauk, Chennai.

+13 CC to MR.S.Govindraman Advocate. SR.NO. 35873

W.P.Nos.20963 to 20975 of 2015 And
M.P.Nos.1 to 1 and 2 to 2 of 2015

CO-GGK
JD 21/01/2016