IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.26632/2015
MP.No.1 of 2015

K.Kala
Petitioner

Vs.

The Regional Transport Officer
Tiruvarur.
Respondent

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India, for the relief as stated therein.

For Petitioner : Mr.K.Hariharan

For Respondents : Mr.M.S.Ramesh, AGP

ORDER

This Court heard the learned counsel on either side and with their consent, this Writ Petition is taken up for final disposal.

2. This Writ Petition is filed by the Petitioner to issue a Writ of Mandamus, forbearing the respondent from demanding authorization tax (Rs.52,800/-) vide in N.Dis.A2/26544/2015, dated 06.08.2015 for the period from 07.07.2013 to 06.07.2015, for accepting surrender of National Permit in respect of petitioner's Goods Carrier Lorry No.TN-52-A-6278.

3. The learned counsel for the Petitioner submitted that the Petitioner is holding goods carriage National Permit issued by the respondent in respect of Vehicle No.TN-52-A-6278 and the said permit was valid upto 06.07.2015 and the authorisation to ply in other States was valid up to 06.07.2013. However, as the petitioner did not get any booking to his lorry to transport goods to the other States, the Petitioner did not renew the authorisation from 06.07.2013 and she has been plying her lorry only in Tamil Nadu from 6.7.2013 by paying home state tax upto 30.09.2015. It is his further submission that the Petitioner has incurred loss in the lorry business and therefore, she decided to sell the vehicle. Hence, on 06.08.2015, she made an application to

surrender the permit in Form ACC before the Respondent, but, the Respondent by the impugned order, dated 06.08.2015, returned his application, directing the Petitioner to pay the authorisation tax of Rs.52,800/- for the other States from 07.07.2013 to 06.07.2015, as a pre-condition for accepting the surrender of permit. Assailing the approach adopted by the Respondent, the learned counsel would submit that the renewal of authorisation to ply the vehicle is optional and if the authorisation is renewed, only then the vehicle can be used in other States and if it is not renewed, then the vehicle can be used only in home State, namely, the State of Tamil Nadu. In similar circumstances, several Writ Petitions have been filed from the year 1987 to 1992 before this Court, challenging the demand of authorisation tax for the non-renewed period for acceptance of surrender of National permit and this Court, while allowing the Writ Petitions, quashed the demand of authorisation tax and held that authorisation tax cannot be demanded or collected for the non-renewed period. The learned counsel has also drawn the attention of this Court to one such order passed in WP.No.26068 of 2014, dated 30.10.2014 and the relevant paragraphs of the said order are extracted as under:-

> " 8. It is further seen that the Transport Commissioner, Chennai had issued a circular in Circular No.36 of 2001, dated 03.09.2001, wherein a circular has been issued to the Regional Transport Officers to accept the surrender of permits without insisting proof of payment of tax and payment of composite tax, if authorization expired. The stand taken by the respondent in the counter affidavit stating that the circular is only an executive order issued in 2001, cannot be a valid stand to state that the circular need not be complied with. The circular having been issued by the Head of Department, namely, the Transport Commissioner, unless it is withdrawn, modified or cancelled, is bind on the all subordinate officers including the respondent also. Therefore, the circular No.36 of 2001, binds the respondent and as per the circular, such demand of authorization tax is not tenable.
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> 9. The decision rendered in W.P.No.17452 of 1991, dated 03.09.1992, referred supra, was rendered after referring to several earlier orders, which have also been cited in the said order. Therefore, the order cannot be ignored stating that it will be applicable only for that petitioner, though the benefit may be applicable to the individual petitioner, yet this Court is entitled to see the law laid down in the decision to apply the same in similar cases.
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> 10. As stated above in the counter affidavit that the respondent has admitted that the authorization has not

been renewed beyond 23.09.2014. Thus, by following the decision referred above and the circular of the Transport Commissioner, it is held that the respondent is not justified in demanding the authorization tax of Rs.16,500/- for the period from 24.09.2013 to 23.09.2014.

11. Accordingly, the Writ Petition is allowed and the respondent is restrained from demanding authorization tax (Rs.16,500/-) vide in N.Dis.No.A1/46562/2014, dated 04.09.2014, for the period from 24.09.2013 to 23.09.2014, for accepting surrender of National permit in respect of petitioner's goods. No costs. Consequently, connected miscellaneous petition is closed."

4. The learned counsel for the Petitioner has also brought to the notice of the Court, the circular issued by the Transport Commissioner, Chepauk, Chennai bearing R.No.066607/D1/2001 dated 03.09.2001 (Circular No.36/2001). The relevant portion of the said circular also reads as follows:-

"Secondly, whether the demanding of composite tax relating to goods carriages of National permits, in cases where the authorisation was not renewed is correct. In this regard various writ petitions were filed before the High Court, Chennai against the demand of payment of composite tax in cases where the authorisation expired and the High Court, Chennai had ordered against the collection of composite tax in cases where the authorisation expired and not renewed.

Incidentally, it may not be out of place to refer to G.O.Ms.No.1695, Home (Tr-III) Department, dt. 24.12.99 to Col (VII), wherein it has been stated that the composite tax shall be payable so long as the authorisation is valid. So it goes without saying that there may not be any need to collect composite tax where the authorisation expired.

In view of the above, all the Regional Transport Officers are requested to accept the surrender of permit and renewal of authorisation in respect of goods carriages covered by National permits, without insisting proof of payment of tax and payment of composite tax if authorisation expired."

In the light of the above settled legal position, learned counsel for the Petitioner sought for allowing the writ petition.

5. The learned Additional Government Pleader for the Respondent also taking note of the circular issued by the Transport

Commissioner, Chepauk, Chennai, has fairly agreed that the issue is no longer res integra.

6. In view of the settled legal position and in view of the circular and the observation made by this Court in W.P.No.17452 of 1991 dated 03.09.1992, this Court is of the considered view that the stand taken by the Respondent demanding authorisation tax of Rs.52,800/- for the period from 07.07.2013 to 06.07.2015 for accepting the surrender of national permit in respect of the petitioner's Goods Carrier Lorry No.TN-52-A-6278 is totally unsustainable in law. When the Circular No.36/2001 dated 03.09.2001 issued by the Heads of the Department makes the issue clear that the composite tax shall be payable so long as the authorisation is valid, it goes without saying that there may not be any need to collect composite tax where the authorisation expired.

7. In the light of the circular and by virtue of the earlier orders passed by this Court as referred to above, this Writ Petition is allowed. The Respondent is directed not to demand the authorisation tax of Rs.52,800/- as authorisation fee for the period from 07.07.2013 to 06.07.2015 for accepting the surrender of National Permit. No costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

Srcm

To:

The Regional Transport Officer, Tiruvarur.

1 cc to Mr.K.Hariharan, Advocate Sr.No.46170
1 cc to Government Pleader.Sr.No.46335

WP.No.26632/2015

ctk(Co)
pmk.2.9.2015