IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.02.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No. 2818 of 2015
and
M.P.Nos.1 and 2 of 2015

Syed Alimudinna ...Petitioner

Vs.

The Transport Commissioner,
Chepauk, Chennai - 600 005 ...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call 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 subordinate officials to accept tax at par with the temporary permits for a period of 7 days or 30 days or 90 days in respect of the petitioner's contract carriage omni bus bearing registration no.PY-01-BP-2326 as per the ninth schedule to the Tamilnadu Nadu Motor Vehicles Taxation Act.

For Petitioner : Mr. S.Govindraman

For Respondent : Mr.Digvijaypandian
Additional Government Pleader (T)

O R D E R

With the consent of either side the Writ Petition itself is taken up for final disposal at the admission stage.

2.The petitioner has come forward with the afore said prayer. The case of the petitioner is that he is a holder of contract carriage omni bus permit granted by the Transport Authority of Puducherry in respect of vehicle no.PY-01-BP-2326. The petitioner submitted that the vehicle is covered by the valid home state permit and Insurance and fitness certificate and fulfills all the norms prescribed as per Motor Vehicle Act, 1988 and rules prescribed thereunder. The omni bus used to ply to the neighbouring states and other parts of the country including the State of Tamilnadu. When the vehicle enters Tamilnadu, necessary temporary permit would be secured depending upon the permit of usage in the vehicle in the state of Tamilnadu ie., for a period of 7 days (or) 30 days or 90 days. In the state of Tamilnadu, tax contemplated under provisions of Tamilnadu Motor Vehicle Taxation Act, 1974 has to be paid. Pursuant to the amendment to Sections 3, 4 and 6 of the Taxation Act, 2012 called as Act No.13 of 2012 inserted ninth schedule was brought here under, wherein omni bus is covered by the permits of other states i.,e under Sub-Sections (8) or (9) of Section 88 of the Motor Vehicles Act 1988. For the sake of convenience Section 6 (c) of Ninth Schedule is extracted below:-

> (c) Omni Bus including sleeper coach in respect of which permit is granted under sub-Section (8) or (9) of Section 88 of the Motor Vehicles Act, 1988-
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> (i) If the temporary licence is for a period not exceeding 7 days; (ii) If the temporary licence is for a period exceeding 7 days but not exceeding 30 days;
> (iii) If the temporary licence is for a period exceeding 30 days but not exceeding 90 days.

3.In view of the impugned amendment to the Taxation Act by inserting ninth schedule, the permit holders from other states are liable to pay tax for each and every entry, as the levy of tax is for every entry. Therefore, the operators of other State Omnibus permits are put on to serious commercial loss and inconvenience in view of the confiscatory nature of the Taxation Act. In the circumstances, a Writ Petition No. 2011 of 2012 has been filed to declare the amendment as null and void and the same is pending before this Court. He further submitted that W.P.No.33581 of 2011 has been filed by the Association of Omni bus Operators challenging vires of the Act with reference to the levy of tax per entry to the State of Tamilnadu and the said Writ Petition is also pending before this Court.

4.That being the case, the Transport commissioner has issued circular dated 19.12.2014 referring an evasion of collection of tax by their officials in Poonamallee Check Post, in that circular, the respondent has instructed his subordinates that the tax for vehicles covered by Special Permits should be paid only at the border check posts. Besides the same, respondent instructed the concerned Motor vehicle inspectors of the check posts that if the temporary permit is more than 7 days, an enquiry with the passengers to be made and that if the enquiry statement of the passengers found to be false, then the tax should be collected for

7 days only. Further it is submitted that the respondent and the sub-ordinates are bound to collect tax for other state omni bus as provided in the ninth schedule.

5.The petitioner stated that the respondent should be directed to accept the tax to ply within the State of Tamilnadu in terms of the provisions of the Act and not otherwise. Since the impugned circular restrict the period of operation namely, 7 days from 30 days or 90 days, the circular is bad in law.

6.Per contra, the learned Additional Government Pleader appearing for respondent submitted that the petitioner wanted to pay tax in advance for the period of 90 or 30 days and ply a vehicle in the State of Tamilnadu, which is not permissible. The respondent has power to restrict a number of days of permit depending upon the situation and the petitioner cannot question the same, hence the impugned circular is valid in law. He also drew the attention of this Court to the decision in W.P.No.31008 to 31011 of 2012 dated 22.11.2012 to paragraph Nos. 14 and 15, which are extracted hereunder.

> 14. In terms of the Tamil Nadu Act 13 of 2012 which comes into effect from 01.04.2012, tax insofar as tourist maxi cab which is the vehicle owned by the petitioners in the present cases is set out in clause (b). For grant of temporary licence for a period not exceeding 7 days, they have to pay Rs.75.00 per seat per entry and similarly for other periods as already set out in the ninth schedule. There is no question of advance voluntary payment of tax. Such a provision is not provided under the Act and the petitioners cannot plead for payment of motor vehicles Tax voluntarily in advance. The Act provides for payment of tax in a particular manner at the time of every entry. No other method is permissible. Therefore, the Court will not issue any mandamus as sought for by the petitioner.
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> 15. The Assistant Secretary, Transport Department before this Court states that at every check post at the time of entry of the vehicle from the other State licence will be granted only in accordance with the ninth schedule as amended with effect from 01.04.2012 in terms of amended Act 13 of 2012. Recording the said statement, the relief sought for by the petitioners is declined and the writ petitions are dismissed. No costs.

7.The petitioner reiterated that amendment to the Taxation Act with effect from 01.04.2012 incorporating ninth schedule has been questioned and that is pending and that is not the issue canvassed in this Writ Petition. He further submitted that when he holds, valid permission for 30 days, it cannot be reduced to 7 days, hence to that extent, the circular is bad in law.

8.Heard the learned counsel for the petitioner and learned Additional Government Pleader and perused the materials available on record.

9.As long as ninth schedule is concerned, it is not stated that the respondent is empowered to collect tax in terms of the ninth schedule. There are two aspects with regard to ninth schedule. One is with regard to issuance of temporary license and other one is with regard to taxation. If a period of temporary license granted by the transport authorities for a period of 30 days to ply the vehicle to other State, 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.

10.The apprehension of the respondents is that by using the temporary license, there is possibility of multiple entries in the State, that is not the case of the petitioner herein, 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. There will not be any apprehension of any loss in this case, as the petitioner is willing to pay the necessary charges per entry per seat in terms of ninth schedule and the only grievance of the petitioner is that when he is holding temporary license for a period of 30 days, it cannot be reduced to 7 days by the Transport authorities. The other allegation against the petitioner is that the petitioner is a contract carriage and he is trying to use the vehicle as stage carriage. This allegation has been denied by the petitioner and submitted that they are only using it as a contract carriage and not as a stage carriage, this submission is also recorded.

11.I find that there is no provision to restrict the license period from 30 days to 7 days. In view of the afore said reasons, this Writ Petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssd

To

The Transport Commissioner,
Chepauk,
Chennai - 600 005

W.P.No. 2818 of 2015 and
M.P.Nos.1 and 2 of 2015

SKV (CO)
PSI (02.03.2015)