IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2015

CORAM:

THE HONOURABLE Mr.JUSTICE.R.MAHADEVAN

W.P.No.34056 of 2015

M/s.Siva & Co
[Petitioner]
Rep. by its Managing Partner Mr.S.Venugopal
2/60-A South Street Mettupalayam
Thiruthuraipoondi Thiruvarur District

Vs

The Regional Transport Officer
Tiruvarur.

[Respondent]

Writ petition has been filed under 226 of the Constitution of India for the issuance of writ of mandamus forbearing the Respondent from demanding Authorization Tax (Rs.52,800/-) vide A.Thi.Mu.No.34816/A2/2015 dated 09.10.2015 for the period from 09.12.2012 to 08.12.2015 for accepting surrender of petitioner national permit in respect of the Goods Carrier Lorry - TN-50/H-7717 forthwith

For Petitioner : Mr.K.Hariharan
For Respondents : Mr.M.L.Mahendran
Government Advocate

ORDER

Heard the learned counsel appearing for the petitioner and Mr.M.L.Mahendran, learned Government Advocate, who took notice for the respondent and with their consent, the main writ petition itself is taken up for disposal at the admission stage itself.

2. This writ petition has been filed by the petitioner seeking writ of mandamus forbearing the respondent from demanding Authorization Tax (Rs.52,800/-) vide A.Thi.Mu.No.34816/A2/2015 dated 09.10.2015 for the period from

09.12.2012 to 08.12.2015 for accepting surrender of petitioner national permit in respect of the Goods Carrier Lorry - TN-50/H-7717 forthwith.

3. Learned counsel appearing for the petitioner submitted that the petitioner is holding goods carriage National Permit issued by the respondent in respect of Vehicle TN-50/H-7717 and the said permit is valid upto 08.12.2015. He has also further stated that the authorisation to ply in other states was valid up to 08.12.2012. However, as the petitioner did not get any booking to his lorry to transport goods to other states, he did not renew the authorisation from 09.12.2012 and he has been plying his lorry only in Tamil Nadu from 2015 by paying home state tax upto 31.12.2015. It is his further submission that the petitioner has incurred loss in the lorry business and therefore, he decided to sell the vehicle. Hence, on 09.10.2015, he made an application to surrender the permit in Form ACC before the respondent, but, the respondent returned his application on 09.10.2015 directing him to pay the authorisation tax for other states from 09.12.2012 to 08.12.2015 as a pre-condition for accepting the surrender of permit. Assailing the approach adopted by the respondent, 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. He would further submit that the issue in question is squarely covered by the decisions rendered by this Court in catena of decisions and one of such writ petition is W.P.No.23330 of 2015 dated 05.08.2015 and hence he prayed for similar relief. Learned Government Advocate has also agreed that the issue is no longer res integra.

4. This Court, in identical circumstances, in W.P.No.23330 of 2015, by an order dated 05.08.2015, following the earlier orders of this Court, has allowed the said writ petition and directed the respondent therein not to demand the authorisation tax of Rs.52,600/- as authorisation fee for the period from 29.06.2012 to 28.06.2015 for accepting the surrender of National Permit since the petitioner therein did not even renew the authorisation from 29.06.2012.

5. At this juncture, it is useful to extract below the relevant paragraphs of the said order dated 05.08.2015 made in W.P.No.23330 of 2015:-

> "2. Learned counsel appearing for the petitioner submitted that the petitioner is holding goods carriage National Permit issued by the respondent in respect of Vehicle No.TN-50/D-5721 and the said permit is valid upto 28.06.2016. He has also further stated that the authorisation to ply in other states was

valid up to 29.06.2012. However, as the petitioner did not get any booking to his lorry to transport goods to other states, he did not renew the authorisation from 29.06.2012 and he has been plying his lorry only in Tamil Nadu from 2012 by paying home state tax upto 30.06.2015. It is his further submission that the petitioner has incurred loss in the lorry business and therefore, he decided to sell the vehicle. Hence, On 11.06.2015, he made an application to surrender the permit in Form ACC before the respondent, but, the respondent returned his application on 07.07.2015 directing him to pay the authorisation tax for other states from 29.06.2012 to 28.06.2015 as a pre-condition for accepting the surrender of permit. Assailing the approach adopted by the respondent, 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 this regard, 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 and held that authorisation tax cannot be demanded or collected for the non-renewed period. He has also drawn the attention of this Court to one such order passed in W.P.No.26068 of 2014 in the case of S.Jaganathan Vs. The Regional Transport Officer dated 30.10.2014. in this regard, it is relevant to extract the relevant paragraphs of the said order 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 a 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.

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.

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. "

3. In addition, he 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 circular also goes as follows:

"Secondly, whether the demanding of composite tax relating to goods carriages of National permits, incases 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 sought for allowing the writ petition.

4. Mr.M.L.Mahendran, the learned Government Advocate appearing for the respondent also taking note of the circular issued by the Transport Commissioner, Chepauk, Chennai, agreed that the issue is no longer res integra.

5. A mere reading of the circular and the observation made by this Court in W.P.No.17452 of 1991 dated 03.09.1992 in the case of K.S.Thiagarajan Vs. The Regional Transport Officer, it is clear that the stand taken by the respondent demanding authorisation tax of Rs.52,600/- as authorisation fee for the period from 29.06.2012 to 28.06.2015 for accepting the surrender of national permit in respect of the petitioner's Goods Carrier Lorry - TN-50/D-5721 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.

6. Therefore, in the light of the circular and by virtue of the earlier order passed by this Court, this writ petition stands allowed and the respondent is directed not to demand the authorisation tax of Rs.52,600/- as authorisation fee for the

period from 29.06.2012 to 28.06.2015 for accepting the surrender of National Permit since the petitioner did not even renew the authorisation from 29.06.2012".

6. In view of the above, following the order dated 05.08.2015 in W.P.No.23330 of 2015, this Writ petition is also allowed, by directing the respondent not to demand authorization tax (Rs.52,800/-) as authorization fee for the period from 09.12.2012 to 08.12.2015 for accepting surrender of National Permit in respect of petitioners Goods Carrier Lorry - TN-50/H-7717, since the petitioner did not renew the authorization from 09.12.2012. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Regional Transport Officer,
Tiruvarur.

+1 cc to Mr.K.Hariharan,Advocate(sr.58081)
+1 cc to GovernmentPleader(sr.59057)

W.P.No.34056 of 2015

KJI(co)
cp 30/10/2015