IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2015

CORAM:

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

W.P.Nos.35006 to 35009 of 2015

P.Venkatesan .. Petitioner in W.P.Nos.35006 to 35008 of 2015

R.Gunasekaran .. Petitioner in W.P.No.35009 of 2015

Vs.

The Regional Transport Officer,
Tiruvarur. .. Respondent in all the W.Ps

Writ petitions filed under Article 226 of the Constitution of India for the issuance of writ of mandamus forbearing the respondent from demanding authorization tax (Rs.34,200/-,Rs.34,200/-, Rs.34,200/- and Rs.70,400/- respectively) vide Ku.AA.Nos.32777/A2/25015, 32777/A2/25015, 32777/A2/25015 and dated 29.09.2015, A.Thi.Mu.No.35860/A2/20251 dated 16.10.2015 for the period from 17.12.2013 to 16.12.2015, 15.12.2013 to 14.12.2015, 23.12.2013 to 22.12.2015 and 02.06.2012 to 01.06.2016 respectively for accepting surrender of National Permit in respect of petitioners' Goods Carrier Lorry - TN-50-E-5928, TN-50-E-5990, TN-50-E-6004 and TN-50-J-2625 respectively forthwith.

For Petitioner : Mr.K.Hariharan in all the W.Ps

For Respondent : Mr.R.Muthukumar, GA, in all the W.Ps

COMMON ORDER

These writ petitions have been filed by the petitioners seeking a writ of mandamus forbearing the respondent from demanding authorization tax (Rs.34,200/-,Rs.34,200/-, Rs.34,200/- and Rs.70,400/- respectively) vide Ku.AA.Nos.32777/A2/25015, 32777/A2/25015, 32777/A2/25015 and dated 29.09.2015, A.Thi.Mu.No.35860/A2/20251 dated 16.10.2015 for the period from 17.12.2013 to 16.12.2015, 15.12.2013 to 14.12.2015, 23.12.2013 to 22.12.2015 and 02.06.2012 to 01.06.2016 respectively for accepting surrender of National Permit in respect of petitioners' Goods Carrier Lorry - TN-50-E-5928, TN-50-E-5990, TN-50-E-6004 and TN-50-J-2625 respectively forthwith.

2.Learned counsel appearing for the petitioners submitted that the petitioners are holding goods carriage National Permit issued by the respondent in respect of Vehicles bearing Regn. Nos. TN-50-E-5928, TN-50-E-5990, TN-50-E-6004 and TN-50-J-2625 respectively and the said permits are valid upto 15.12.2015, 15.12.2015, 22.12.2015 and 01.06.2016 respectively. He has further stated that the authorisation to ply in other States was valid up to 16.12.2013, 14.12.2013, 22.12.2013 and 01.06.2012 respectively. Since the petitioners did not get any booking to their lorries to transport goods to other States, they did not renew the authorisation from 17.12.2013, 15.12.2013, 23.12.2013 and 02.06.2012 respectively and they have been plying their lorries only in Tamil Nadu from 17.12.2013, 15.12.2013, 23.12.2013 and 02.06.2012 respectively by paying home state tax upto 31.12.2015. Due to loss in business, the petitioners decided to sell the vehicles. Hence, on 16.10.2015, they made applications to surrender the permit in Form ACC before the respondent, but, the respondent returned their applications with a direction to pay the authorisation tax for other States from 17.12.2013 to 16.12.2015, 15.12.2013 to 14.12.2015, 23.12.2013 to 22.12.2015 and 02.06.2012 to 01.06.2016 respectively as a pre-condition for accepting the surrender of permits. Assailing the approach adopted by the respondent, learned counsel would submit that the renewal of authorisation to ply the vehicle is optional and only if the authorisation is renewed, the vehicle can be used in other States and if it is not renewed, 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.
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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. "

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 petitions.

4. Mr.R.Muthukumar, 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. From 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 authorization tax of Rs.34,200/-, Rs.34,200/-, Rs.34,200/- and Rs.70,400/- respectively for the period from 17.12.2013 to 16.12.2015, 15.12.2013 to 14.12.2015, 23.12.2013 to 22.12.2015 and 02.06.2012 to 01.06.2016 respectively for accepting surrender of National Permit in respect of petitioners' Goods Carrier Lorry - TN-50-E-5928, TN-50-E-5990, TN-50-E-6004 and TN-50-J-2625 respectively 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, these writ petitions stand allowed and the respondent is directed not to demand the authorization tax of Rs.34,200/-, Rs.34,200/-, Rs.34,200/- and Rs.70,400/- respectively for the period from 17.12.2013 to 16.12.2015, 15.12.2013 to 14.12.2015, 23.12.2013 to 22.12.2015 and 02.06.2012 to 01.06.2016 respectively for accepting the surrender of National Permit since the petitioners did not even renew the authorisation from 17.12.2013, 15.12.2013, 23.12.2013 and 02.06.2012 respectively. No costs.

Sd/-
Assistant Registrar(CS-II)

True Copy

Sub Assistant Registrar

To

The Regional Transport Officer,
Tiruvarur.

+4ccs to Mr.K.Hariharan, Advocate Sr.59670
+1cc to The Government Pleader sr.60094

W.P.Nos.35006 to 35009 of 2015

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srg 6/11/2015