

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.03.2015

CORAM:

The Honourable Mr. Justice S.VAIDYANATHAN

Writ Petition No. 683 of 2015

RESERVED ON 17.03.2015

K.P.N. Travels India Limited,
No: 23B, Rajaji Street,
Swarnapuri,
Salem 636 004.
Ref. By Managing Director
M/S K.P.Natarajan

.. Petitioner

vs.

The Regional Transport Officer,
Poonamallee.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of WRIT OF CERTIORARIFIED MANDAMUS or any other appropriate writ or order or direction in the nature of a writ calling for the records of the respondent in R.No:B3/96599/2014, dated 18.12.2014 and to quash the same and further direct the respondent herein to forthwith accept the tax for a period of 90 days i.e. from 25.11.2014 to 22.02.2015 and release the petitioner's vehicle bearing Registration No. PY-1/CD-9919

For Petitioner : Mr.S.Radha Gopalan

For Respondent : Mr.P.H.Aravind Pandian,AAG-V

Assisted by Mr.Dig Vijaya Pandian, AGP

ORDER

Aggrieved over the order, dated 18.12.2014 passed by the respondent, in and by which, the petitioner has been directed to pay a sum of Rs.1,08,000/- towards the tax and penalty in respect of its vehicle bearing Registration No.PY01 CD 9919 for the period 25.11.14 to 1.12.2014, 02.12.2014 and from the date of release to 7 days which restricted on or before 31.12.2014, the petitioner has come forward with the present writ petition.

2. According to the learned counsel for the petitioner, tax has been paid for the period from 27.8.2014 to 24.11.2014 in respect of the above said vehicle, however, for the period

commencing from 25.11.2014 to 22.2.2015, the petitioner paid the tax by way of cash, but it was not remitted to the Government and on coming to know the same, a police complaint has been lodged against the Motor Vehicle Inspectors, Elango, Ramkumar and a private broker and a case was also registered. Since the tax was not paid for the above said vehicle was detained by the authority. Aggrieved by the same, the petitioner moved a writ petition in WP No.33146 of 2014 before this Court, which was disposed of by order, dated 15.12.2014, directing the petitioner to produce all the records and to remit the tax payable and to release the vehicle on such remittance. Pursuant to the said order, the respondent has passed the impugned order.

3. While reiterating the averments made in the counter affidavit, learned Additional Advocate General, appearing for the respondent, would submit that already tax has been paid for the vehicle upto 24.11.2014 and pursuant to the orders of this Court in earlier writ petition, the tax payable from 24.11.2014 was worked out as per clause c of IX schedule of the Tamil Nadu Motor Vehicles Taxation Act 1974 (in short, the Act) and it comes to Rs.1,08,000/-. In respect of a circular trip, the Government of Tamil Nadu given higher level concession rate of tax for tourist operators remain in this state exceeding 30 days and not exceeding 90 days for improving tourism and public interest and next level concession rate of tax for tourist operators remain in this state exceeding 7 days and not exceeding 30 days and also fixed tax rate for not exceeding for short time operator. He pointed out that as far as the petitioner is concerned, it had operated its service by multiple entries in this state or to pick up and setting down the passenger within the state and filed the writ petition to avail concession rate of tax given to the tourist operator who remain in the state exceeding 30 days. He would contend that the prayer sought for by the petitioner cannot be granted since if the petitioner operates the vehicle within Tamil Nadu for a period of 90 days, it comes to Rs.19,44,000/- as Rs.600/- per seat for total 36 seats ($600 \times 36 \times 90 = 19,44,000/-$) and while so, if the claim of the petitioner for collection of tax payable for 90 days on 7 days basis, it comes to Rs.2,80,800/- ($600 \times 13 \text{ weeks (90 days)} \times 36 \text{ seats} = 2,80,000/-$) and if collected on 30 days basis, it comes to Rs.1,62,000/- ($1500 \times 3 \text{ months} \times 36 \text{ seats} = 1,62,000/-$) and therefore, when it compares to the collection of tax if the vehicle plies for 90 days which comes to Rs.19,44,000/-, therefore, there would be a considerable loss to the government. He also contended the payment of tax in advance cannot be entertained in view of the order, dated 22.11.2012 made by this Court in W.P.Nos.31008 to 31011 of 2012. He would submit that after the Circular No.32 of 2010 read with G.O.Ms.No.1122 Home (Tr.I) Department, dated 10.7.1992, if the vehicle is found plying within the state of Tamil Nadu without payment of tax, the checking officials are directed to collect penalty equal to the amount to tax payable besides the tax due. Further, the learned Addl.Advocate General pointed out that it is admitted fact that the vehicle was found plying in Tamil Nadu from Chennai to Pollachi by picking up 7 passengers on 2.12.2014 without payment of tax. Hence, the tax and penalty has to be levied

to the petitioner's vehicle on 7 days basis. It is also contended that if at all the petitioner wishes to pay tax for the period of 90 days from 22.11.2014, it can be allowed subject to the condition that the tax paid is applicable for a circular entry only and the vehicle should not pick up and set down the passenger within Tamil Nadu as per Rule 85(1)(3) of Central Motor Vehicles Rules 1989 and if any violation is found later, the petitioner has to pay the tax equal to the amount already paid with due penalty. With these contentions, the learned Addl. Advocate General prayed for dismissal of the writ petition.

4. Heard the learned counsel for the petitioner and the learned Additional Advocate General-V appearing for the respondent.

5. The Central Government allowed certain All India permits to be granted by each of the States in the Union of India. There is certain quota of All India Tourist permits to be granted by each State for the purpose of promoting free flow of passenger transport vehicles throughout the territory of India and the permit granted by one State is operative in other States without there being any requirement of counter-signature of those States. By virtue of the power provided under (sic Section 88(11)(iii) of Motor Vehicles Act, 1988 corresponding to) Section 63(1)(iii) of the Motor Vehicles Act, 1939, the Central Government framed the Central Motor Vehicles Rules, 1989 (in short, 'Rules 1989').

6. Rule 85 of the said Rules deals with additional conditions of tourist permits. Sub-rule (3) of Rule 85 envisages that the tourist vehicle shall either commence or end its journey in the Home State and shall not remain outside the Home State for a period of three months. The permit holder shall see that the tourist vehicle must report to the authority, which issued the permit, on its return to Home State. Proviso to Rule 85(3) says that if the contracted journey ends outside the Home State, the vehicle shall not be offered for hire within that State or from that State to any other State, except for the return journey to any point in the Home State.

7. It is thus clear that a tourist vehicle to which a national permit has been granted to ply from one point to another is required to follow the conditions as mentioned in Rule 85 of the Rules, 1989 and as already mentioned above such tourist vehicle can be operated only as a contract carriage and not otherwise. Sub Rule (5) of Rule 85 specifies that the permit holder shall issue a receipt to the hirer, which implies that such vehicle cannot be engaged by more than one hirer.

8. It is relevant to state that sub-rule (2) of Rule 83 of the Rules, 1989 empowers the Transport Authorities of the States in India to issue authorization to ply the vehicles in their states though they belong to other states, subject to payment of tax or fee as prescribed by the concerned State. Proviso to sub-rule (2-A) of Rule 83 of the Rules, 1989 enables the permit holder to pay tax directly to the concerned State Transport Authority at the time of

entry into such State, permit holder will have to undertake to pay such tax. Sub-rule (3) of Rule 83 restricts the validity of an authorization not to exceed one year at a time.

9. By Act 13 of 2012, the State Government of Tamil Nadu, by way of amendment to the Tamil Nadu Motor Vehicles Taxation Act, 1974, has prescribed the taxes to be paid by the permit holder at the time of entry into the State of Tamil Nadu. In Ninth Schedule of the Tamil Nadu Motor Vehicles Taxation Act, 1974, it has been specifically mentioned in respect of payment of tax pertaining to a tourist vehicle and it is relevant to extract the same as under:

NINTH SCHEDCULE

Contract Carriages in respect of which temporary licence is issued-

(a) Tourist motor cab-

....

(b) Tourist maxi cab -

....

(c) Omni bus including sleeper coach in respect of which permit granted under sub-section (8) or (9) of Section 88 of Motor Vehicles Act, 1988-

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

(ii) If the temporary licence is for a period of not exceeding 7 days, but not exceeding 30 days - Rs.1500 per seat or berth per entry

(iii) If the temporary licence is for a period of not exceeding 30 days, but not exceeding 90 days - Rs.600 per seat or berth per entry

10. Keeping the above, when the case on hand is examined, it reveals that the petitioner's vehicle, viz., All India contract carriage, Omni bus, bearing Regn.No.PY 01 CD 9919 has a permit to ply in the states specified therein, valid upto 20.8.2019. It is not in dispute that the petitioner has paid the tax for the period from 27.8.2014 to 24.11.2014. However, during the inspection made by the Motor Vehicles Inspector at Koyambedu on 02.12.2014, it was found that the vehicle had committed certain irregularities, viz., it was used within Tamil Nadu state, from Chennai to Pollachi by picking up 7 passengers by violating permit conditions, no tax receipt was produced for payment of Tamil Nadu road tax for the current period and that the payment of tax for the period from 25.11.2014 to 22.2.2015 is suspicious. Based on these irregularities, the vehicle was detained. However, pursuant to the order of this Court in W.P.Nos.33144 to 33153 of 2014, the respondent has passed the impugned order, dated 18.12.2014, directing the petitioner to pay the tax including penalty thereof, a sum of Rs.1,08,000/-.

11. According to the petitioner, for the period commencing from 25.11.2014 to 22.2.2015 has been paid in cash handing over to the concerned Motor Vehicles Inspectors, however, the said officials had not tendered the same to the Government and in this regard, a criminal case was also lodged by the petitioner and hence, it should be construed that the payment of tax for the said period has been paid and therefore, question of penalty does not arise. Though the story of the petitioner that the tax was paid by way of cash to the officials who in turn committed misappropriation, etc., appears to be reasonable, but it cannot be accepted until and unless it has been proved by way of adducing evidence before the Court of law where criminal proceedings were pending. Therefore, as on date, it has to be construed that the vehicle was plying without payment of tax on and from 25.11.2014. `

12. It is not in dispute that the vehicle was plying in the state of Tamil Nadu without payment of tax on and from 25.11.2014 and hence, the respondent has levied tax and penalty on 7 days basis prescribed in Clause (c) of the Ninth Schedule extracted supra. I do not find any irregularity or illegality in the imposition of the tax and penalty by the respondent in the impugned order. In fact, before making entry into the other state, it is for the permit holder to choose payment mode whether for 90 days on quarterly or monthly or for ninety days basis and after making payment of tax alone, he has to get the entry of the vehicle. The petitioner is in the field of touring business for the years together and generally it knows well the consequences of plying the vehicle without making payment of tax. As regards the violation of permit conditions, the petitioner has not stated or contended that the vehicle had not violated any of the permit conditions. It is the specific case of the respondent that the vehicle was found with 7 passengers proceeding from Chennai to Pollachi and it was used as a stage carriage. Being a owner of the tourist vehicle, the permit holder has to comply with the conditions of the permit and in accordance with Rule 85 of the Rules, 1989 and it is needless to say that if any violation takes place, law will take its own course.

13. It is not in dispute that the petitioner has plied its vehicle multiple entries in this state from 25.11.2014 onwards. Therefore, the petitioner is liable to pay tax construing that the temporary licence was for a period of not exceeding 7 days and since no tax paid, penalty has been levied thereon. The petitioner cannot be permitted to make payment of tax for the period of 90 days since it had violated the permit conditions by using the vehicle as stage carriage and not as a contract carriage. Further, as already held by this Court by its order, dated 22.11.2012 in W.P.No.31008 to 31011 of 2012, that payment of tax voluntarily in advance cannot be sustained, the petitioner cannot be permitted to make payment of tax in advance.

14. For the foregoing reasons, I do not find any scope to interfere with the impugned order passed by the respondent. The decisions upon which the learned counsel for the petitioner placed

reliance on viz., order passed by this Court (Srinivasan J.) in W.P.Nos.10879, 11194 etc. of 1992, dated 11.12.1992, another order of this Court (R.Sudhakar, J.) in W.P.Nos.31008 to 31011 of 2012, "Praveen Travels versus RTO, Salem-7" reported in 2008(1) TN MAC 538, "M.Narasimhaiah versus Deputy Commissioner for Transport, Bangalore, reported in 1987(Supp) SCC 452, on a perusal of the same, I am of the view that those decisions are not applicable to the facts of the present case since they dealt with the circumstances where there was no dispute that the liable tax was paid by the respective travel agents, but on stray occasions, the vehicles were found to have carried few more passengers than the number permitted under the permit and considering the same, it was held that imposition of additional tax is bad. In the instant case, the facts are quite different where, while making entry into this State, the permit holder has not paid any tax.

In the light of the above discussion, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Suk

The Regional Transport Officer, Poonamallee.

+ 1 cc to Mrs.S. Radha Gopalan, Advocate SR.17671

ALA(CO)
EU 31.03.2015

सत्यमेव जयते

W.P.NO.683 OF 2015

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