IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2016

CORAM:

THE HONOURABLE Mr.JUSTICE.R.MAHADEVAN

W.P.No.1128 of 2016

S.Kumar ... Petitioner

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.51,800/- as authorization fees vide அ.தி,மு.No.42975/அ2/2015, dated 07.01.2016 for the period from 23.12.2012 to 22.12.2015 for accepting surrender of National Permit in respect of petitioner's Goods Carrier Lorry No. TN-50-H-8195.

For Petitioner : Mr.A.Ganesan

For Respondents : Mr.A.Rajaperumal
Government Advocate

O R D E R

This writ petition has been filed by the petitioner seeking for issuance of a writ of mandamus to forbear the respondent from demanding authorization tax Rs.51,800/- as authorization fees vide அ.தி,மு.No.42975/அ2/2015, dated 07.01.2016 for the period from 23.12.2012 to 22.12.2015 for accepting surrender of National Permit in respect of petitioner's Goods Carrier Lorry No. TN-50-H-8195.

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-H-8195 and the authorisation to ply in throughout the territory of India was valid up to 23.12.2015, and

authorisation to ply throughout Territory of India was valid upto 23.12.2012. It is his further submission that the petitioner has incurred loss in the lorry business and therefore, he decided to sell the vehicle. Hence, he made an application to surrender the permit in Form ACC before the respondent, but, the respondent returned his application on 07.01.2016, directing him to pay the authorisation tax for other States and renewal of authorization fee, 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.
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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.

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.A.Rajaperumal, 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 to pay other State Tax of Rs.48,500/- and the renewal of authorisation fee of Rs.3,300/- for accepting the surrender the permit in respect of the petitioner's Goods Carrier Lorry - TN-50H-8195 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 petitioner to pay other State Tax of Rs.48,500/- and the renewal of authorisation fee of Rs.3,300/-, for accepting the surrender of National Permit since the petitioner did not even renew the authorisation from 23.12.2012. No costs

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpa

To

The Regional Transport Officer
Tiruvarur.
+1 cc to Mr.A.Ganesan, Advocate, sr.2104

W.P.No.1128 of 2016

jsv co, kra 18.01.2016