IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.17935 of 2016
&
W.M.P.No.15629 of 2016

H.Ramesh ... Petitioner

vs.

The Regional Transport Officer
Chennai (South-West)
No.47 & 49, Kaliamman Koil Street
Sai Nagar
Virugambakkam
Chennai - 600 082 ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus forbearing the respondent from seeking authorization tax as authorization fees for the period from 07.04.2013 till 07.04.2016 for accepting surrender of National permit in respect of petitioner's goods carrier Lorry No.TN10 AC 4077.

For Petitioner : Mr.A.Srinivasan

For Respondent : Mr.S.Diwakar
Special Government Pleader

O R D E R

Heard Mr.A.Srinivasan, learned counsel for the petitioner and Mr.S.Diwakar, learned Special Government Pleader for the respondent.

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2. The petitioner is a owner of the lorry bearing Registration No.TN 10 AC 4077 and had obtained a National Permit for the said vehicle, which was valid till 07.04.2016. The authorization to ply the vehicle in other States was valid upto 07.04.2013. However, since the petitioner did not have any booking to transport goods to other States, he did not renew his authorization beyond 07.04.2013 and has been plying the lorry only in Tamil Nadu and paying the tax payable to Government of Tamil Nadu till 04.05.2016. The petitioner appears to have

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approached the authority to surrender the National Permit dated 27.04.2012 by appearing before the respondent on 25.04.2016. However, the respondent has refused to accept the surrender of the permit and has demanded authorization fee from the period from 07.04.2013 till 07.04.2016.

3. The learned Special Government Pleader appearing for the respondent submitted that the respondent instructed the petitioner to pay the authorization fee in the light of the audit objection. Admittedly, there is no record to show that the vehicle, as a matter of fact, was plied in other States though the petitioner did not obtain authorization. The audit objection, without records to establish the fact that vehicle was used in the other States, cannot be a valid ground to demand authorization fee for the said period.

4. The question which would arise for consideration in this writ petition is whether the respondent could have directed the petitioner to pay the authorization fee for the said period when the petitioner did not apply for authorization to ply the vehicle in other States though he possessed a National Permit, which was valid upto 07.04.2016. This issue no longer res integra and has been considered by this Court in R.Palaniappan Vs. The Regional Transport Officer reported in (1995) 1 CTC 191. The facts of the said case was also somewhat identical and the Court considered as to whether the permit holder could be called upon to pay authorization fee when admittedly he did not apply for authorization. While considering the said question, the Court took the following decision:-

> "8. If the permit ceases to be valid on account of the holder of the permit not applying for authorization, the vehicle in respect of which the permit has been issued, cannot be plied in the other States. If the vehicle is not authorized for use in the other States and is not kept for use in any of those States, the need for collecting tax payable to the other states mentioned in the permit does not arise.
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> 9. In has therefore to be held that the petitioner is not liable to pay composite tax for the period subsequent to 1-4-1990 in view of the fact that the vehicle was not covered by a valid authorization. This however is not to say that if it is found as a matter of fact that the vehicle had been used in the other States the States concerned is not competent to take action as also recover the tax for such use in the State. The authority which issued the permit cannot however assume that the vehicle had been used in the other States contrary to the terms of the permit, when

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the permit itself has ceased to be effective by reason of the period for which authorization had been issued having comes to an end.”

5. Taking into consideration the above decision, if the petitioner's vehicle was not authorized to be used in the other States and is not kept for use in those States, the need for collecting tax payable to the other States mentioned in the permit does not arise. Further, there is no record produced by the respondent to show, as a matter of fact, the vehicle had been used in the other States. However, it is only an oral instruction given by the respondent when the petitioner appeared before him to surrender the National Permit with willingness to pay the tax for the use of the vehicle in the State of Tamil Nadu. Thus, the respondent cannot insist upon payment of authorization fee from the petitioner for the period from 07.04.2013 to 07.04.2016, when admittedly no authorization was granted for plying the vehicle in other States.

Accordingly, this writ petition is allowed and the respondent is directed to accept the petitioner's request for surrender of National Permit in respect of the vehicle (lorry) bearing Registration No. TN10 AC 4077 without insisting upon payment of authorization fee for the period from 07.04.2013 to 07.04.2016. Consequently, the connected miscellaneous petition is closed. No costs.
gpa

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

The Regional Transport Officer
Chennai (South-West)
No.47 & 49, Kaliamman Koil Street
Sai Nagar
Virugambakkam
Chennai - 600 082

+ 1 cc to Mr.A.Srinivasan, Advocate SR 31655

+ 1 cc to Govt.Pleader SR 31920

bvr(co)
prk21/6

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