IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.28092 of 2016
&
WMP No.24238 of 2016

M.Senthilkumar ... Petitioner

Vs.

The Regional Transport Officer
Coimbatore (Central),
Coimbatore - 18 ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, to forbear the respondent from demanding authorization tax (Rs.66,000/- + Rs.4,400/- as fees) vide in N.Dis.No.51396/A2/2016, dated 04.08.2016, for the period from 27.04.2016 to 26.04.2016 for accepting surrender of National Permit in respect of the petitioner's goods carrier lorry TN38-AX-0507 forthwith.

For Petitioner : Mr. K.Hariharan

For Respondent : Mr. A.Zakkir Hussain,
Government Advocate

O R D E R

Heard Mr.K.Hariharan, learned counsel for the petitioner and Mr.A.Zakkir Hussain, learned Government Advocate appearing for the respondent and with their consent, the Writ Petition is taken up for final disposal.

2. The petitioner has filed this writ petition praying for the issuance of the Mandamus, to forbear the respondent from demanding authorization tax (Rs.66,000/- + Rs.4,400/- as fees) vide in N.Dis.No.51396/A2/2016, dated 04.08.2016, for the period from 27.04.2016 to 26.04.2016, for accepting the surrender of National Permit in respect of the petitioner's goods carrier lorry TN38-AX-0507 forthwith.

3. The undisputed facts are that the petitioner was granted a National Permit, which was valid till 26.04.2012.

As the petitioner did not ply the vehicle, outside the State of Tamil Nadu, beyond 26.04.2012, he has not renewed the authorization of the vehicle from the said date. Now the petitioner seeks for surrender of the National Permit and when he has approached the respondent, he has been directed to remit the Authorization Tax for the period from 27.04.2012 to 26.04.2016.

4. The case of the petitioner is that, during the said period, the vehicle was not used outside the State of Tamil Nadu and the petitioner did not renew his authorization beyond 26.04.2012 and therefore, the question of payment of Authorization Tax does not arise.

5. This issue was considered by me, in the case of S.Jaganathan v. The Regional Transport Officer, Chennai, in W.P.No.26068 of 2014, after taking into consideration the earlier orders passed as well as the circular of the Transport Commissioner in Circular No.36 of 2001, dated 03.09.2001 and the said writ petition was allowed and the respondent therein was restrained from demanding Authorization Tax for the period during which the vehicle did not ply outside the State of Tamil Nadu. This order has been followed in the case of N.Jaiganesh v. Regional Transport Officer, Tiruvarur, in W.P.No.17103 of 2015 dated 23.06.2015 and in the case of S.Kalyanaraman v. Regional Transport Officer, Tiruvarur, in W.P.No.23331 of 2015 dated 05.08.2015.

6. At this stage, it would be useful to refer to the operative portion of the order in the case of S.Jaganathan, cited supra, which reads thus:-

> "7. That apart, Section 7 of the Tamil Nadu Motor Vehicles Taxation Act will not come to the aid of the state to collect the tax which is due to other state. 'Tax' is defined in the Motor Vehicles Act itself under Section 2(S) of the Act. Section 7 of the Act, if at all, can be applied only to Tamil Nadu and not to other States. In the instant case, the petitioner has paid the tax, due to the State of Tamil Nadu. Hence, I do not think, that Section 7 of the Act can be applied to the facts of this case as contended by the learned Additional Government Pleader that the impugned demand is valid in law, Kanakaraj, J., has considered the earlier decisions in W.P.No.18675 of 1990, dated 21.01.1991 and I am of the view that the issue raised by the petitioner has been decided in favour of the petitioner by Kanakaraj, J., It is useful to extract paragraph 3 of the order in W.P.No.18675 of 1991, dated 21.01.1991.

"The learned counsel for the petitioner cites before me two judgments in support of his contention. In W.P.No.2067 of 1985 (P.Murugesan vs. The State Transport Authority, Madras-5) Sathiadev, J., (as he then was) has held on 04.11.1987 that, if an application had been made for authorization, then it might be for the authorities to consider the application and demand the authorisation fee. But if no application at all had been made for authorisation, then no demand could be made. This judgment of Sathiadev, J., (as he then was) followed by Govindasamy, J., in W.P.No.12300 and 12301 of 1990 (M.Venkatakrishnan vs. The Secretary, Regional Transport Authority, Madras (South), Madras - 32). In that case also, no application had been made for authorisation for the period from 01.04.1989 to 18.07.1990. Therefore, for that period, the learned Judge held that no authorisation fee was payable by the vehicle owner."

8. It is seen from the impugned order that the vehicle owner has paid the home tax upto 31.12.1991, whereas the composite tax has not been paid from 01.10.1989 to 31.03.1990 and authorisation was not renewed from 01.04.1990 to 31.03.1991 and from 01.04.1991 to 31.03.1992. When once no application had been made for authorisation or the period from 01.04.1990 to 31.03.1991 and from 01.04.1991 to 31.03.1992, I am of the view, that no authorisation fee was payable by the vehicle owner.

9. For the fore-going reasons, I held that in this case also the petitioner will be entitled to relief as prayed for. The impugned demand is liable to be quashed. Accordingly, the writ petition is allowed and the impugned demand is quashed. However, there will be no order as to costs."

7. In the light of the above, this writ petition is allowed and the respondent is restrained from demanding any authorization tax for the period from 27.04.2012 to 26.04.2016 and shall accept the petitioner's application for surrender of the National Permit, in respect of the petitioner's goods carriage, bearing Registration No.TN38-AX-0507.

8. The writ petition is disposed of accordingly. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

srk

To

The Regional Transport Officer
Coimbatore (Central),
Coimbatore - 18.

+1cc to Mr.K.Hariharan, Advocate, S.R.No.45999
+1cc to the Government Pleader, S.R.No.46245

W.P.No.28092 of 2016
&
WMP No.24238 of 2016

SR(CO)
CA(23/08/2016)