IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.31984 of 2016

R.Annamalai ... Petitioner

Versus

The Regional Transport Officer,
Ulundurpet. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondent herein to forthwith take back the application of the petitioner dated 23.8.2016 which was returned by the proceedings of the respondent in No.Aa.Thi.Mu.No.18674/ E1/ 2016 dated 23.8.2016 directing the petitioner to apply for renewal of authorization in respect of National Permit for Goods Carrier Vehicle bearing Registration No.TN-34/E-9979 for a further period from 30.5.2014 and to issue the tax clearance certificate for the said vehicle as prayed for by the petitioner in his application dated 23.8.2016.

For Petitioner : Mr.S.Radha Gopalan

For Respondent : Mr.V.S.Ramesh,
Government Advocate

ORDER

Heard both sides. By consent, the writ petition itself is taken up for final disposal.

2. In this writ petition, the petitioner challenges an order passed by the respondent dated 23.8.2016 directing the petitioner to pay the authorization fee/ tax till the date of expiry of the permit for him to be entitled for a tax clearance certificate.

3. The undisputed facts are that the national permit for the petitioner's goods carrier vehicle bearing Registration No.TN-34/E-9979 expired on 30.5.2016 and it is no

longer valid, as the petitioner did not apply for renewal. So far as the authorization is concerned, the same came to an end on 30.05.2014, after which, the authorization has not been renewed.

4. Therefore, the question of demanding authorization fee/tax from the petitioner to be entitled for tax clearance certificate does not arise. Some what, similar issue, though not arising out of tax clearance certificate but with regard to surrender of national permit was considered by this Court by order dated 11.8.2016 in W.P.No.28092 of 2016 in the case of M.Senthilkumar Vs. the Regional Transport Officer, Coimbatore (Central), Coimbatore - 18.

5. In the said case, when the permit holder appeared before the Licensing Authority to surrender this national permit, he was called upon to pay authorization fee/tax till the date of surrender. When the case of the permit holder was that the authorization expired long back and was not renewed, the Court, taking into consideration the earlier orders passed in the case of S. Jaganathan Vs. The Regional Transport Officer, Chennai, in WP No.26068 of 2014, which order was passed after taking into consideration the circular of the Transport Commissioner in Circular No.36 of 2001, dated 03.09.2001, allowed the writ petition and directed the Authorities to accept the surrender of national permit vehicle without insisting upon the authorization tax for a period during which the authorization was not valid. At this stage, it would be beneficial to the quote the operative portion of the said order :

> "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.Nos.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."

6. The legal principle which has been stated in the above referred to order would apply with full force to the case on hand and if applied, the only conclusion would be that the petitioner cannot be insisted upon to pay authorisation tax till the date of expiry of national permit.

7. Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the respondent for fresh consideration, who shall accept the petitioner's application without insisting upon the payment of any authorisation tax and issue the tax clearance certificate in the appropriate form within a period of three weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmi

To

The Regional Transport Officer,
Ulundurpet.

+1cc to Mr.S.Radha Gopalan, Advocate, S.R.No.53422
+1cc to the Government Pleader, S.R.No.53105

W.P.No.31984 of 2016

VD(CO)
CA(27/09/2016)