IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.34663 of 2016

N.R.Pandiyan ... Petitioner

Versus

The Regional Transport Officer,
Tiruvarur .. Respondent

Prayer:- Petition filed under Article 226 of the Constitution of India, seeking for the issuance of a Writ of Mandamus, to forbear the respondent from demanding authorization tax (Rs.33,000/- + Rs.2,200/- towards authorization fees) vide in A.thi.Mu.No.16159/A2/2016, dated 29.06.2016, for the period from 13.07.2014 to 12.07.2016 for accepting surrender of National Permit in respect of the petitioner's goods carrier lorry No.TN50-D-7000, forthwith.

For Petitioner : Mr. K.Hariharan

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

O R D E R

Heard Mr.K.Hariharan, learned counsel for the petitioner and Mr.V.S.Ramesh, learned Government Advocate for respondent. By consent of the learned counsel for both sides, the writ petition is taken up for final disposal.

2. The petitioner holds a Goods Carrier National Permit, issued by the respondent, for his vehicle, bearing Registration No.TN50-D-7000. The permit is valid up to 12.07.2017 and the authorization to ply the vehicle in other States, outside Tamil Nadu, was valid up to 12.07.2014. Since the petitioner did not get any business for transporting goods outside the State of Tamil Nadu, the petitioner did not renew the authorization, beyond 12.07.2014. Subsequently, the petitioner has taken a decision to sell the vehicle and made an application before the respondent, on 28.06.2016, to surrender the permit in Form ACC. However, the application was returned by the respondent, vide

endorsement, dated 29.06.2016, directing the petitioner to pay authorization tax for other States from 13.07.2014 to 12.07.2016, being a sum of Rs.33,000/- (authorization tax) and Rs.2,200/- (authorization fees), as a condition precedent for accepting surrender of the vehicle.

3. The issue as to whether such authorization tax and fees could be demanded at the time of surrender of the permit, when the authorization itself was not renewed, came up for consideration in several cases and in all such cases it was held that such authorization tax / fees cannot be collected, when the authorization itself was not renewed. Ultimately, a circular has been issued by the Transport Commissioner, in Circular No.36 of 2001, dated 03.09.2001. This was followed in several other writ petitions, which were filed subsequently and the writ petitions were allowed.

4. At this stage, it would be useful to refer to the operative portion of the order in the case of S.Jaganathan v. The Regional Transport Officer, Chennai, in W.P.No.26068 of 2014, 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."
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> 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.
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> 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."

5. In the light of the above, this writ petition is allowed and the respondent is restrained from demanding any authorization tax / fees, for the period from 13.07.2014 to 12.07.2016 and shall accept the petitioner's application for surrender of the National Permit, in respect of the petitioner's goods carriage, bearing Registration No.TN50-D-7000 and pass appropriate orders, within a period of two weeks from the date of receipt of a copy of this order.

6. The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

srk

To

The Regional Transport Officer, Tiruvarur

+1cc to Mr.K. Hariharan, Advocate, S.R.No.56273
+1cc to the Government Pleader, S.R.No.56589

SKV(CO)
EU(04/10/2016)

W.P.No.34663 of 2016