In the High Court of Judicature at Madras

Dated : 08.11.2016

Coram:

The Honourable Mr.Justice T.S.SIVAGNANAM

WP.Nos.38802 & 38803 of 2016

N.Seenivasan ...Petitioner in WP.38802/2016

S.Venkatesh Kumar ...Petitioner in WP.38803/2016

Vs

The Regional Transport Officer,
Tiruvarur. ...Respondent in WP.38802/2016

The Regional Transport Officer,
Nagapattinam. ...Respondent in WP.38803/2016

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Mandamus (i) forbearing the respondent herein from demanding authorization Tax (Rs.17,600/-) vide in Na.Ka.No.26778/A2/2016 dated 17.10.2016 for the period from 22.1.2016 to 21.1.2017 for accepting surrender of National Permit in respect of the petitioner's goods carrier lorry Reg.No.TN-28/AU-7075 forthwith and (ii) forbearing the respondent herein from demanding authorization Tax (Rs.32,200/-) vide R.No.22137/A2/2016 dated 25.10.2016 for the period from 5.10.2015 to 5.10.2016 for accepting surrender of National Permit in respect of the petitioner's goods carrier lorry Reg.No.TN-28/AH-5323 forthwith.

For Petitioners : Mr.K.Hariharan
For Respondents : Mr.S.Diwakar, SGP

COMMON ORDER

Heard the learned counsel for the petitioners.

2. The petitioners seek a direction to the respective respondent not to demand authorisation tax to the tune of Rs.17,600/- for the period from 22.1.2016 to 21.1.2017 and Rs.32,200/- for the period from 5.10.2015 to 5.10.2016 and accept the petitioners' respective applications for surrender of

national permits with regard to the goods carrier lorries bearing Regn.Nos. TN-28/AU-7075 and TN-28/AH-5323 respectively.

3. It is pointed out by the learned counsel for the petitioners that an identical issue was considered by this Court in the case of M.Senthilkumar Vs. RTO [W.P.No.28092 of 2016 dated 11.8.2016] wherein this Court, following the earlier orders, held that the authorisation tax should not be demanded while accepting the surrender of national permits, when the national permit authorisation was not renewed beyond a particular date.

4. The operative portion of the order dated 11.8.2016 reads as follows:

> "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."

5. In the instant case, the petitioners were issued with the national permit authorisations, which came to an end respectively on 21.1.2016 and 4.10.2015 and beyond the dates namely 21.1.2016 and 4.10.2015, the national permit authorisation was not renewed. Therefore, there is no justification in demanding the authorisation tax for the said periods.

6. Accordingly, the writ petitions are disposed of by directing the respective respondent not to demand authorisation tax to the tune of Rs.17,600/- (Rupees seventeen thousand and six hundred only) as demanded in the memo dated 25.10.2016 for the period from 22.1.2016 to 21.1.2017 and Rs.32,200/- (Rupees thirty two thousand and two hundred only) as demanded in the memo dated 17.10.2016 for the period from 5.10.2015 to 5.10.2016 and to accept the petitioners' respective applications for surrender of national permit with regard to their respective

goods carrier lorries bearing Regn.Nos.TN-28/AU-7075 and TN-28/AH-5323, within a period of two weeks from the dates, on which, the respective applications are represented.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Regional Transport Officer, Tiruvarur.
2.The Regional Transport Officer, Nagapattinam.

+2cc to Mr.K. Hari Harur, Advocate, S.R.No.63626
+1cc to the Government Pleader, S.R.No.64390

ks(CO)
md(01/12/2016)

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