IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.15606 of 1999

1. D.P.Sharma (Deceased)
   Pro.Sharma Transports,
   328, T.S.P. Road, Fort,
   Bangalore 2

2. Ramakanya Devi
   W/o.D.P.Sharma ... Petitioners

Second petitioner is substituted in the place of deceased sole petitioner as per order dated 16.02.2005 in WMP.No.36609/01

Vs.

1. The State Transport Authority,
   Chepauk, Chennai 5

2. The State of Tamil Nadu,
   Rep.by the Secretary to Government,
   Home (Transport) Dept., Chennai 9

3. The State of Karnataka,
   Rep. By the Secretary to Government,
   Home Affairs Department, Bangalore
   .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India pleased to issue a writ of certiorari calling for the records of the first respondent in Memo R.No.15114/91/E4 and quash the demand notice dated 13.08.1999 made thereon demanding tax and penalty totaling to Rs.42,14,790/- from the petitioner for the period from 01.07.1976 to 30.09.1999.

For Petitioner : Mr. V.T.Gopalan, Senior Counsel
for Mrs.S.Radhagopalan

For Respondents: Mr.Akil Akbar Ali
Government Pleader
for R1 and R2.

ORDER

The prayer sought in this writ petition is to issue a writ of certiorari to call for the records of the first respondent in Memo R.No.15114/91/E4 and quash the demand notice dated 13.08.1999 made thereon demanding tax and penalty totalling to Rs.42,14,790/- from the petitioner for the period from 01.07.1976 to 30.09.1999.

2. The necessary facts which are required to be considered for the disposal of this writ petition are as follows:-

3. The petitioner is a bus operator in Karnataka State. He filed an application dated 26.05.1975 for grant of Inter-State Stage Carriage permit to run a bus on the route, "Bangalore to Villupuram", via Attibale, Krishnagiri and Tiruvannamalai. The permit was granted to the petitioner by the State Transport Authority, Karnataka on 07.04.1976. However, counter signature of the permit in respect of portions lying in Tamil Nadu State, was not given immediately. However, the said counter signature was given only in the month of October 1979. Therefore, the petitioner was plying the vehicle in that route only from 01.10.1979.

4. Since the petitioner's route has not been included in the list of Inter-State routes as agreed by the State of Tamil Nadu and Karnataka through the inter-state agreement, the petitioner had sought for inclusion of the said route, where the petitioner was plying the vehicle in the Inter-State route, so as to avoid double point taxation. Since the said issue has not been decided by the Transport Authority in the State of Tamil Nadu, the petitioner had approached this Court by filing W.P.No.5291/1979 and the said writ petition was finally disposed of on 09.02.1984, whereby, this Court by a learned single Judge's order, dismissed the writ petition.

5. Against the dismissal of the writ petition, the petitioner preferred Intra-Court appeal in WA.No.246/1984. In the said writ appeal, the petitioner filed CMP.No.2867/84 seeking for an interim order of injunction restraining the State Transport Authority from collecting tax till the issue is decided.

6. This Court by order dated 26.07.1984, in the said CMP.No.2867 of 1984, had granted interim injunction restraining the State Transport Authority from demanding motor vehicle tax in Tamil Nadu State in respect of the petitioner vehicle in route Bangalore to Villupuram. Ultimately the said W.A.No. 246 of 1984 was finally disposed of by an order passed by a Division Bench of this Court dated 22.08.1990. In the said

order, the Division Bench has given the following directions which are re-produced herein as follows:-

> " Then the question arises as to how to settle the matter relating to the tax due to the State of Tamil Nadu. Here we find that the final decision as per the directions given in W.P.No.5291 of 1979 has not been taken within the time given. Pending this writ appeal, this Court in C.M.P.No.2867 of 1984, order dated 26.07.1984, has granted injunction restraining the first respondent from demanding the motor vehicles tax in Tamil Nadu State in respect of the Petitioner's vehicle plying on the route Bangalore to Villupuram. In our view that the same position should be continued until the final decision is reached as per the direction given above and communicated to the petitioner and for a further period of eight weeks after the communication of the final decision reaches the petitioner. This writ appeal is ordered in the above terms. No costs."

7. Though a direction was given by the Division Bench to decide the issue of inclusion of the route where the petitioner was plying the vehicle i.e., from Villupuram to Bangalore, in the list of inter-state route and the said order was passed by the Division Bench on 22.08.1990, the State Transport Authority did not take a decision immediately and the issue was kept pending for a quiet long time.

8. However, after nine years of the order passed by the Division Bench, as stated supra, the State Government issued G.O.2D No.140 (Home Tr. VI) dated 02.07.1999 whereby the request of the petitioner to include the petitioner's inter-state route i.e., Bangalore to Villupuram, in the inter-state reciprocal agreement dated 01.05.1973, was rejected. Pursuant to the said rejection order, the State Transport Authority issued a demand notice dated 13.08.1999 by which they demanded motor vehicle tax as well as penalty for a sum of Rs.42,14,790/- from the petitioner for the period from 01.07.1976 till 30.09.1999.

9. Challenging the said rejection order made in G.O.2D No.140 Home (Tr.VI) dated 02.07.1999 and also challenging the demand notice dated 13.08.1999, the petitioner has filed two writ petitions i.e., W.P.No.15605 of 1999 and 15606 of 1999 respectively.

10. It is the case of the petitioner that, since their request for an inclusion of the inter-state route "Bangalore to Villupuram", was rejected through the said G.O.2D No.140 Home (Tr.VI) dated 02.07.1999, they subsequently paid the motor vehicle tax to the authorities. During the pendency of these two writ petitions, in the year 2008, ultimately the State Authority had included the inter-state route of the petitioner. By this

action the route has been included atleast from 2008 onwards. When the said factor was brought to the notice of this Court, the learned Judge of this Court by order dated 27.07.2009 in W.P.No.15605 of 1999 has passed the following orders by disposing the said writ petition.

> " In view of the above position, the writ petition is disposed of recording that third supplemental inter state Agreement dated 07.01.2008 has been entered into between the Government of Karnataka and the Government of Tamil Nadu in which the stage carriage permit No.03/76-77 of the petitioner for route between Bangalore and Villupuram has been included. No Costs. Consequently connected miscellaneous petition is closed".

11. Therefore with regard to the two issues raised in the said two petitions, atleast one issue i.e., inclusion of inter-state route, has been resolved in the year 2008 and the same has been recorded in the aforesaid order and one writ petition was disposed of accordingly. In so far as the other issue is concerned, ultimately the payment of tax as well as the penalty demanded via notice issued by the respondents dated 13.08.1999 is concerned, it is the submission of the learned Senior Counsel appearing for the petitioner that, though the petitioner had obtained inter-state permit from Karnataka state, unless the same is counter signed by the counter part i.e., the Tamil Nadu State, the vehicle cannot be plied in an inter-state route. Therefore, that request was made by the petitioner for getting counter signature from the Tamil Nadu Transport Authority. However, the Tamil Nadu State Transport Authority had given this counter signature on the inter-state permit of the petitioner only on 18.10.1979. This factor has been mentioned by the petitioner in the grounds of the affidavit filed in support of this writ petition which are extracted hereunder:-

> " As my application for counter signature was rejected and the matter was pending either before the Appellate Tribunal or before this Hon'ble Court and the same was granted to me for the first time on 18.10.1979 only on payment of double tax, i.e., tax to Tamil Nadu State also, the period mentioned in S.No.2, viz., 01.04.1978 to 31.03.1983 also is factually wrong which will not clothe the authority with power to demand payment of tax since I have paid tax from the date of counter signature viz 18.10.1979.

12. It is the further argument advanced by the learned Senior Counsel for the petitioner that, in so far as the demand of tax as well as penalty, as has been demanded through the impugned demand notice is concerned, which comes about Rs.16,01,326/- as per the impugned demand notice, the petitioner

has paid the tax in full and therefore, there can be no quarrel for paying the said tax and the respondents also cannot dispute the said payment of tax of Rs.16,01,326/-. However, the learned Senior Counsel submitted that, in so far as the demand of penalty is concerned, (Rs.26,13,464/-) from 01.07.1976 till 18.10.1979, the petitioner's inter-state permit was not counter signed by the Tamil Nadu State Transport Authority. As a result, the petitioner had not plied the vehicle in the said inter-state route and only after getting such endorsement or counter signature the vehicle was started plying only from October 1979.

13. The learned Senior Counsel submitted that, as far as penalty demanded by the respondents through the impugned order from the period 18.10.1979 till 10.09.1999 is concerned, the petitioner is not liable to pay the penalty for the reason that, the Division Bench of this Court had granted injunction on 26.07.1984 restraining the first respondent State Transport Authority from demanding the Motor Vehicle tax from the petitioner. The said injunction order was directed to continue till the decision is taken by the respondents authorities with regard to the request of the petitioner's for inclusion of its inter-state route. Since such decision was taken by the authority by issuance of G.O.2D.No.140 Home (Tr.VI) dated 02.07.1999 and there is a breathing period for eight weeks has also been provided by the Division Bench of this Court in the final order made in W.A.No.246/1984 dated 22.08.1990, if at all any belated payment for tax is made by the petitioner beyond the said period, i.e., after the completion of eight weeks from 02.07.1999, only for the said period the respondents would be entitled to seek for penalty. The learned Senior counsel for the petitioner further submitted that, subsequent to the said period i.e., after 02.07.1999 motor vehicle tax since have been paid by the petitioner, there shall be no scope for demanding penalty as has been demanded through the impugned demand notice.

14. Per contra, the learned Government Advocate appearing for the respondents authorities submitted that, in so far as the impugned demand notice is concerned, it was claimed only from 01.07.1976 till 30.09.1999. Since the petitioner got the interstate permit from 01.07.1976 and the petitioner was continuously plying the vehicle all along and the decision not to include the said Inter-State route of the petitioner was taken on 02.07.1999, rightly a demand of tax as well as the penalty was made through the impugned order.

15. In this regard, the learned Government Advocate would submit that, whether the petitioner has paid the tax for the said period i.e., from 01.07.1976 till 30.09.1999, as claimed by the petitioner counsel across the bar, itself is in question. As for the said period, the petitioner has not paid the tax, such a demand was issued by the respondents seeking to pay the

tax as well as the penalty. It was submitted that, once the tax is not paid, the imposition of penalty will follow, which cannot be avoided by the petitioner.

16. The learned Government Advocate also submitted that, even in respect of the arguments advanced by the petitioner's side that they had not obtained the counter signature on the permit till 18.10.1979 and therefore they have not plied the vehicle till such time, is concerned, it is the matter of record to prove that the petitioner has not plied the vehicle till such time. The learned Government Advocate also submitted that, even in respect of the stay period i.e., from 26.07.1984 is concerned, the delay caused by the respondent in taking a decision by passing G.O.2D No.140 Home (Tr.VI) on 02.07.1999 cannot be attributable towards the State Authorities. Since the reason itself had been given in the impugned demand notice that the inter-state route of the petitioner had not been included either in the original interstate agreement or in the supplemental agreement, such a plea made by the petitioner to include it, could not be considered by the respondent and that is the reason why no decision was taken on the said demand. In this regard, the learned Government Advocate relied upon the following passage of the impugned order.

> " The Government have examined the request of the individual a fresh in detail. The petitioner's inter-state route from Bangalore to Villupuram was not included not only in 1973 agreement between Tamil Nadu and Karnataka but also in the supplemental agreement concluded in 1975. But the petitioner's route found place in the draft second supplemental reciprocal agreement published by the Karnataka in the Karnataka Government Gazette dated 15.05.1995.
>
> However the Government of Tamil Nadu did not included the private operators in the second supplemental reciprocal agreement published by them in G.O.1826 Home Transport Department dated 06.12.1995, in view of the policy of nationalisation. The Government of Tamil Nadu and Karnataka agreed to rescind the second supplemental reciprocal Agreement on 25.06.1998 in which private operators have been excluded.
>
> In view of the Government's policy of Nationalisation of Passengers Transport Services and the approval of district area scheme under the Motor Vehicle Act in the State of Tamil Nadu operation of transport services particulars on the inter-state route is not permissible. Therefore the request of the individual for inclusion of this inter-state route either in the 1973 agreements or in the subsequent agreements cannot be admitted. Accordingly the request of Thiru.D.P.Sharma for inclusion of his inter-state route Bangalore to

Villupuram in the year 1973 inter-state agreements or in the subsequent agreement is hereby rejected by the Government in the reference cited".

17. Therefore the learned Government Advocate submitted that, the petitioner is liable to pay, if at all already paid the tax, the penalty, as has been demanded through impugned notice.

18. I have considered the said rival submissions made by the learned Senior Counsel and the learned Government Advocate appearing for both the parties and have perused the materials placed before this Court.

19. It is not in dispute that, as against the non inclusion of the inter-state route of the petitioner, i.e., from Villupuram to Bangalore Via Tiruvannamalai, the petitioner had approached this Court by filing a writ petition. As stated above, the petitioner suffered with an order before the learned Single Judge and in an intra-Court appeal, the petitioner obtained an interim order of injunction in CMP.No.2871 dated 26.07.1984.

20. It is also not in dispute that, the said interim order continued till the disposal of the writ appeal i.e., on 22.08.1990. Even in the final order passed in W.A.246 of 1984 dated 22.08.1990, the said interim order was directed to continue till a decision is taken by the respondent. The said portion of the order made by the Division Bench has already been extracted herein above.

21. Pursuant to the direction issued by the Division Bench of this Court, whether the reason for delay in taking the decision is attributable to the respondent or not, it is a fact that a decision was taken only on 02.07.1999 by issuing a G.O.2D No.140 Home (Tr.VI) on 02.07.1999. Therefore, till next eight weeks from the date of such decision is taken, the interim order granted by the Division Bench of this Court referred to above, was in force and therefore, there can be no much quarrel on the fact that the petitioner enjoyed the stay from 26.07.1984 till the impugned demand notice is issued, as the date of impugned demand notice i.e., 13.08.1999 falls within the period of eight weeks from the date of decision i.e., 02.07.1999.

22. Therefore when the respondents makes payment of tax as well as the penalty for the period prior to issuance of such demand notices, whether the petitioner is liable to pay the penalty for the said period is to be looked into. In this regard, it is the submission of the learned Senior Counsel appearing for the petitioner that the period covered under the impugned demand notice i.e., from 01.07.1976 to 30.09.1999 is

concerned, the petitioner could not ply the vehicle because of want of counter signature from Tamil Nadu State Transport Authority and the said counter signature was obtained only on 18.10.1979. It is the further case of the petitioner that, though the inter-state permit was given by the State of Karnataka earlier, for want of counter signature the vehicle was not plied in the route till September 1979 and only after getting the counter signature, the petitioner started plying the vehicle in the route on payment of Double taxation only from 01.10.1979.

23. It is the fact that the stay has been granted by this Court on 26.07.1984, therefore during such period since the respondents have been restrained or injuncted from collecting the tax due, the question of paying the tax within the time by the petitioner for the said period till the stay/injunction expires some time in August 1999, does not arise. Therefore if at all any tax liable to be paid by the petitioner the same ought not to have been paid till these period i.e., from 26.07.1984 to 13.08.1999. The said non payment of tax cannot invite any penalty and therefore during such period the respondents cannot demand penalty as has been claimed through impugned demand notice.

24. In this regard, the learned Government Advocate also made submission that, assuming that the petitioner obtained counter signature only in the month of October 1979, and thereafter only they started plying the vehicle, atleast from that date till the date of interim order by the Division Bench dated 26.07.1984 there is no proof to show that the petitioner has paid the tax in time. Though this issue raised by the learned Government Advocate is emphatically denied by the learned Senior Counsel appearing for the petitioner with rider that, tax has been paid even for the said period without any delay, these all are borne out from record and since no records have been produced by both sides to substantiate the same, that issue can be left open to the parties to resolve by exchanging their records to substantiate their contents.

25. Considering the above facts and circumstances, the following orders are passed in this writ petition.

1. The impugned demand notice in so far as claiming of tax as well as penalty from the period 01.07.1976 to 13.09.1999 is concerned, the same is quashed in so far as the period from 01.07.1976 till 30.09.1979 and also from the period 26.07.1984 till 30.09.1999.
2. With regard to the period between 01.10.1979 and 25.07.1984 is concerned, it is open to the petitioner to produce the records to the respondents authority to establish that they have paid the tax for the said period without delay.
3. If the tax had been paid for this period also without any

delay, the respondent cannot claim any penalty over the said period also, otherwise if the tax for the said period has not been paid in time, the respondent can claim the penalty as per calculation.

4. Since the tax claim under the demand notice has already been paid as claimed by the petitioner and the same has been recorded by the Division Bench of this Court in W.A.No.2057 of 1999 by order dated 12.04.2000, the said position can very well be verified by the respondents authority and if the same has already been paid, the tax liability would not lie on the petitioner and therefore the demand of tax made in the impugned order would go.

5. The respondents/authorities are at liberty to issue a notice if they still find that some tax component/penalty is not paid by the petitioner for the said period from 18.10.1979 to 26.07.1984 and on receipt of such summon/notice, if any, from the respondents/authorities, the petitioner shall be at liberty to resist the same by producing the records available with them.

26. With these above directions the writ petition is allowed to the terms indicated above. No costs.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

dpq

To

1. The State Transport Authority,
Chepauk, Chennai 5

2. The Secretary to Government,
The State of Tamil Nadu,
Home (Transport) Dept., Chennai 9

3. The Secretary to Government,
The State of Karnataka,
Home Affairs Department, Bangalore

+1cc to M/s.S.Radha Gopalan, Advocate sr.no.87798

W.P.No.15606 of 1999

nr 23/01/2018