IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2017

Coram:

The Hon'ble Mr. Justice T.S. Sivagnanam

W.P.No.27154 of 2017

Chennai Micro Print (P) Ltd.,
Represented by its Proprietor V. Ramesh
No.16/1, Gajapathy Garden, Puliyambedu
Thiruverkadu

...Petitioner

Versus

The Secretary,
Regional Transport Authority,
Tiruvallur.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the file made in R.No.B1/32401/2017, dated 20.09.2017 demanding authorization tax (Rs.70,400/-) for the period from 09.01.2013 to 08.01.2017 and to quash the same, consequently direct the respondent herein to issue tax clearance certificate in respect of the Petitioner's Goods Carrier Lorry Reg.No.TN-20/BL-8536, forthwith.

For Petitioner : Mr. K. Hariharan

For Respondent : Mr. R. Rajeswaran,
Special Government Pleader

O R D E R

Heard Mr. K. Hariharan, the learned counsel appearing for the petitioner and Mr. R. Rajeswaran, the learned Special Government Pleader accepting notice on behalf of the respondent.

2. The petitioner was granted a national permit for a goods vehicle and the permit was valid from 09.01.2012 to 08.01.2017. The petitioner did not operate the vehicle outside the State of Tamil Nadu on and after 09.01.2013. Therefore, the petitioner would state that the authorization tax should not be demanded after 08.01.2013. Furthermore, the national permit has also lapsed on 08.01.2017. Therefore, when the petitioner

approached the respondent for issuance of tax clearance certificate, the impugned demand notice has been issued.

3. The learned counsel on either side agreed that an identical issue was considered by this Court in the case of C. Mahendran Vs. The Regional Transport Officer, Tiruvarur (W.P.No. 26401 of 2016) and the said writ petition was allowed on 08.08.2016 following the earlier orders on similar issues, the operative portion of which reads as follows:

> "6. The above said issues were considered by this Court in the case of S.Jaganathan (supra) and in fact identical objection was raised in that case also by the Regional Transport Officer concerned and after taking into consideration of all these factors as well as the circular issued and other orders passed in similar writ petitions, the writ petition was allowed. At this stage, it is useful to refer to the operative portion of the order and direction, which are extracted below:
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> "7. As noticed above, the petitioner's National Permit was valid upto 23.09.2017 and the authorization granted was valid till 23.09.2013. Thereafter, the petitioner did not renew the authorization and did not pay the tax, therefore, technically the vehicle cannot ply outside the state of Tamil Nadu. Thereafter, the petitioner sought to surrender the National Permit and made an application on 20.08.2014, to consider such application, the respondent demanded authorization tax for the period from 24.09.2013 to 23.09.2014 i.e., till the date of accepting the surrender of the permit. The correctness of this demand has to be decided in this writ petition. An identical question arose for consideration before this Court in the case of K.S.Thiagarajan vs. The Regional Transport Officer in W.P.No.17452 of 1991, dated 03.09.1992. In the said case, this Court after taking into consideration the earlier orders passed on similar issue held that the demand of authorization tax was not sustainable and the demand was quashed. The operative portion of the order reads as under:-
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> 6. In my view, the subject matter of dispute is covered by the earlier judgments

of this Court viz., by S.Govindasamy, J., in W.P.Nos.12300 and 12301 of 1990, dated 10.08.1990, and by Kanakaraj,J., in W.P.No.1946 of 1991 dated 21.03.1991 and W.P.No.18675 of 1990, dated 21.01.1991. The learned Judges have held that if no application for authorization is made, no demand could be made. The learned Judges followed the earlier ruling of T.Sathiadev,J., in W.P.No.2067 of 1985, dated 04.11.1987. Since the vehicle has been off the road from March, 1989, in other states, he is not liable to pay any tax or penalty as has been demanded. I have also carefully considered the argument of the learned Additional Government Pleader, who relied on Section 7 of the Tamil Nadu Motor Vehicles Taxation Act and the Rules made thereunder with regard to the issue of national permit and contends that the petitioner is liable to pay the tax and penalty. I am of the view that the impugned demand has got to be set aside for the simple reason that there is no legal basis for making a demand like this. It is also the case of the petitioner that the petitioner has been plying in Tamil Nadu only from March, 1989, for carrying water to Oil and Natural Gas Commission and the Shipping Corporation of India and that the vehicle had not entered into any other State and in fact, the vehicle has been plying only in Tamil Nadu and the tax due to Tamil Nadu had eben pad upto 31.12.1991 and there are no arrears. As the petitioner has not made any application for grant of authorization as required under Rule 87 of the Central Motor Vehicle Rules, 1989, I do not think that the petitioner is liable to pay any tax or penalty due to the other State. The authorization itself has to be issued under Form 47 subject to payment of tax, if any, levied by the concerned State.

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, which means, the tax leviable under 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. So, I am not above to agree with the learned Addl. Govt. 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.

8. It is further seen that the Transport Commissioner, Chennai had issued a circular in Circular No.36 of 2001, dated 03.09.2001, wherein a circular has been issued to the Regional Transport Officers to accept the surrender of permits without insisting proof of payment of tax and payment of composite tax, if authorization expired. The stand taken by the respondent in the counter affidavit stating that the circular is only a executive order issued in 2001, cannot be a valid stand to state that the circular need not be complied with. The circular having been issued by the Head of Department, namely, the Transport Commissioner, unless it is withdrawn, modified or cancelled, is bind on the all subordinate officers including the respondent also. Therefore, the circular No.36 of 2001, binds the respondent and as per the circular, such demand of authorization tax is not tenable.

9. The decision rendered in W.P.No.17452 of 1991, dated 03.09.1992, referred supra, was rendered after referring to several earlier orders, which have also been cited in the said order. Therefore, the order cannot be ignored stating that it will be applicable only for that petitioner, though the benefit may be applicable to the individual petitioner, yet this Court is entitled to see the law laid down in the decision to apply the same in similar cases.

10. As stated above in the counter affidavit that the respondent has admitted that the authorization has not been renewed beyond 23.09.2014. Thus, by following the decision referred above and the circular of

> the Transport Commissioner, it is held that the respondent is not justified in demanding the authorization tax of Rs.16,500/- for the period from 24.09.2013 to 23.09.2014.
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> 11. Accordingly, the Writ Petition is allowed and the respondent is restrained from demanding authorization tax (Rs.16,500/-) vide in N.Dis.No.A1/46562/2014, dated 04.09.2014, for the period from 24.09.2013 to 23.09.2014, for accepting surrender of National permit in respect of petitioner's goods. No costs. Consequently, connected miscellaneous petition is closed."
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> 7. The above decisions squarely applicable to the facts and circumstance of the present case, as the petitioner did not renew the authorization beyond 07.07.2012. Therefore, it is deemed that the vehicle was not operated outside the territory of State of Tamil Nadu though the vehicle had a National Permit.
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> 8. In the light of the above, the writ petition is allowed and the respondent shall not demand authorization tax (Rs.82,500/-, + 5,500/- as fees) as demanded in the proceedings dated 15.07.2016 for the period form 08.07.2012 to 07.07.2016 for accepting Surrender of National Permit in respect of the petitioner's Goods Carrier Lorry bearing Registration No.KA-01/B-2417 by accepting the petitioner's application dated 07.06.2016 which shall be represented by the petitioner along with a copy of this order."

4. The learned Special Government Pleader appearing for the respondent does not dispute the fact that the above decision would cover the case on hand.

5. The only distinction that has to be mentioned in the instant case is that the petitioner has not sought for surrender of the national permit, since the permit itself had lapsed on and after 08.01.2017. Therefore, all that is required to be given to the petitioner is a tax clearance certificate.

6. Accordingly, this Writ Petition is allowed, the impugned order is set aside with the direction to the respondent to consider the petitioner's application for the issue of tax clearance certificate and pass appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Secretary,
Regional Transport Authority,
Tiruvallur.

+1cc to Mr.Hariharan.K, Advocate sr.74881

W.P.No.27154 of 2017

ss(26/10/2017)