IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13605 of 2004
and
W.M.P.No.15957 of 2004

G.Sampath ... Petitioner

Vs.

1. The Regional Transport Officer,
   Kancheepuram.

2. The Sub Inspector of Police,
   Taluk Police Station,
   Kancheepuram. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the first respondent from demanding collecting the penalty at 100% instead of 50% tax for the quarter ending 31.03.2004 in respect of the petitioner's mini bus TCJ 7277 for the route poosivakkam to Kancheepuram.

For Petitioner : Mr.P.V.Sachidanandam

For Respondents : Mr.A.Srijayanthi,
Special Government Pleader

O R D E R

Heard Mr.P.V.Sachidanandam, learned counsel for the petitioner and Ms.A.Srijayanthi, learned Special Government Pleader appearing on behalf of the respondents.

2. The petitioner seeks for issuance of Writ of mandamus to forbear the 1st respondent from demanding, collecting the penalty at 100% instead of 50% tax for the quarter ending 31.03.2004 in respect of the petitioner's mini bus permit No.TCJ 7277.The petitioner was granted the Mini Bus permit to ply the vehicle in the route of Possivakkam to Kancheepuram. The petitioner remitted the Motor Vehicle Tax for the quarter ending 31.03.2004 by means of demand draft dated 30.03.2004. The 1st respondent

while accepting that the demand draft was dated 30.03.2004 would state that the same was received in the office of the respondent only on 05.04.2004 and therefore, as per the Tamil Nadu Motor Vehicle Taxation Act, 1974 and Rules framed thereunder, 100% of the tax amount has to be levied as penalty. It is true that the statute does not provide for any discretion, since, if the tax is paid on the 91st day after the end of the quarter, 100% of the tax has to be levied as penalty, which is sought to be imposed on the petitioner. The petitioner had paid the tax along with 50% of the tax as penalty on the ground that the demand draft was drawn before the expiry of ninety days. The respondent in their counter affidavit have reiterated the above stand and stated that the petitioner has to pay 100% tax as penalty.

3. However, in the instant case, one factual aspect shall be borne in mind viz., that the petitioner had drawn the demand draft in favour of the 1st respondent dated 30.03.2004, along with penalty of 50% of the tax amount which was sent by the petitioner through a Courier service and received by the office of the first respondent on 30.03.2004. This aspect of the matter has been specifically certified by the Courier Company by their letter dated 30.03.2004. However, the seal of the office of the first respondent has been affixed only on 05.04.2004. Hence, I find that factually the demand draft has reached the office of the first respondent on 30.03.2004 and therefore, the petitioner is liable to pay the penalty of 50% of the tax amount and 100% penalty cannot be demanded from the petitioner.

4. This order has been passed considering the peculiar facts and circumstances of the case and shall not be treated as a precedent.

5. For all the above reasons, the writ petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.



Sd/-
Assistant Registrar(CS III)



//True Copy//

Sub Assistant Registrar

sk/maya

To

1. The Regional Transport Officer,
   Kancheepuram.

2. The Sub Inspector of Police,
   Taluk Police Station,
   Kancheepuram.

+1cc to the Government Pleader, S.R.No.66234

W.P.No.13605 of 2004

KGK(CO)
CA(16/11/2017)