IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2017

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.34291 of 2004

C.Kavitha ... Petitioner

Vs.

1.The Transport Commissioner
Ezhilagam, Chepauk, Chennai - 5.

2.The Deputy Transport Commissioner,
Chennai Zone, Chennai - 23.

3.The Regional Transport Officer,
Chennai - Central, Chennai - 23. ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the Transport Commissioner, Chennai, first respondent herein, passed in R.No.3564/D2/2004 dated 30.7.2004 and quash the same, thereby direct the Regional Transport Officer, Chennai - Central, the third respondent herein to refund to the petitioner the Motor Vehicles Tax collected for the period 22.9.99 to 31.3.2001 in respect of the vehicle TN-59-Y-5656 forthwith.

For Petitioner : Mr.K.Hariharan
For Respondents: Mr.A.Zakir Hussain
Government Advocate

O R D E R

The petitioner has filed this writ petition seeking issuance of Certiorarified Mandamus, calling for the records of the Transport Commissioner, Chennai, first respondent herein, passed in R.No.3564/D2/2004, dated 30.07.2004 and quash the same, thereby direct the Regional Transport Officer, Chennai - Central, the third respondent herein to refund to the petitioner the Motor Vehicles Tax collected for the period 22.09.1999 to 31.03.2001 in respect of the vehicle TN-59-Y-5656 forthwith.

2.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents.

3.The petitioner is the owner of the omni bus bearing Registration No.TN-59-Y-5656 and she made application for refund of tax already paid for the period from 22.09.1999 to 31.03.2001 since through out that period, the said omni bus was not operated, though she paid tax upto 31.03.2001. The said application was rejected by the third respondent on 18.12.2002 on the ground that the petitioner has not surrendered the licence and the request of the applicant is contrary to Rule 14 (a) and (b) of the Tamil Nadu Motor Vehicle Rules and on another ground that non usage of the vehicle was not intimated to the Regional Transport Officer and for the further reason that the refund application was filed after a lapse of a period of nearly 1-1/2 years. Aggrieved by the above said order, the petitioner preferred appeal before the second respondent and the second respondent also confirmed the order passed by the third respondent. Thereafter, a revision was preferred by the petitioner before the first respondent. The revisional authority also confirmed the orders passed by the original authority, against which, the present writ petition has been filed.

4.The learned counsel appearing for the petitioner would submit that the impugned order has to be quashed in view of the un-reported judgment of this Court rendered in W.P.No.9284 of 1982 dated 09.08.1990 (Rasipuram Union Motor Service (P) Limited Vs. The State of Tamilnadu represented by the Secretary to Government, Home Department, Fort.St.George, Madras-9 and others). The learned counsel has also produced a copy of the report of the Inspector of Motor Vehicles, Grade - I, Kumbakonam, dated 12.10.2001, which states that the vehicle was not operated from 22.09.1999 to 11.10.2001.

5.It is useful to extract the relevant portions of the order made in W.P.No.9284 of 1982 dated 09.08.1990 (Rasipuram Union Motor Service (P) Limited Vs. The State of Tamilnadu represented by the Secretary to Government, Home Department, Fort.St.George, Madras-9 and others):

> "6.A careful consideration of the above referred provisions will go to show that the character of tax is not changed and that it continues to be a compensatory levy. Section 13 confers a right of refund of tax conditioned upon the non-user of any public road by the vehicle during the period in question in a particular case. When the Legislature left the discretion with the Government to prescribe conditions, the terms and conditions so prescribed should be to regulate the procedure and assist the

grant of refund than prescribe conditions which are destructive of the very right secured under the statute. Though the form of rule 11 was different and though the provisions like rule 14 were not under consideration then in the cases decided by the learned Judges referred to supra the sum and substance of the conditions under consideration before the learned Judges could not be said to be either basically or substantially different. In the first of the judgments referred to above, the learned Judge considered the various conditions stipulated for compliance before securing a refund of which condition No.1 provided for surrender of licence, condition No.5 for giving intimation of the stoppage of the vehicle and surrendering of the registration certificate, tax licence and permit and condition No.3 which stated that no refund shall be made in cases where the tax is paid only after its non-payment has been detected. It is with reference to such conditions the learned Judge categorically found that the conditions referred to are not reasonable and that they are destructive of the very right to obtain a refund as provided under Section 13 of the Act and consequently violative of the rule making power of the State Government. The learned Judge also observed as follows:-

> "Undoubtedly, the Government have power to prescribe conditions subject to which a refund shall be payable. But the conditions so prescribed cannot be used as to defeat, destroy or annihilate the very right to get a refund. I have already referred to the fact that section is of the Act, providing for the refund of tax already paid in the event of the non-user of public roads, is an essential and integral part of the scheme of taxation provided in the Act. As a matter of fact, one of the factors that go to make the tax leviable under the Act a compensatory tax is the existence of a provision for the refund of tax in the case of non-user of public roads. Certainly this right, which is provided by the section, which is so essential to determine the character of the tax itself, cannot be diluted or whittled down or rendered nugatory by imposing conditions which are impossible of fulfilment in practice. It may be that the conditions contemplated by the section are intended to regulate the procedure for applying for and obtaining refund. But they cannot be so

onerous or oppressive as to destroy the very right to obtain a refund."

It is this reasoning of the learned Judge which found favour of acceptance with the two other learned Judges. This Court considers that notwithstanding certain amendments to the rules made subsequently, the ratio of the decision referred to above which is based on the competency of the rule making authority to frame a rule which is destructive of the very right conferred under the statute, still enures to support the claim of the petitioner in this case. This Court considers that instead of taking the extreme course of striking down the very rules themselves stipulating conditions which are destructive of the very right of refund, it will be enough if in their operation and application the rules are read down and reasonably construed as merely relevant and guiding factors in determining the correctness of the claim made for refund in an individual case. That it should be the reasonable course to be adopted is best illustrated by the experience gained from the case under consideration. Here is a case where even in the counter affidavit the Department admits that during the relevant period the vehicle in question did not use any public road. If even in such a case the terms of rules 11 and 14 have to be construed and enforced so as to deny the claim of the petitioner for refund, it will have the inevitable consequence of rendering the rules themselves arbitrary, un-reasonable and violative of Article 14 of the Constitution of India, besides being in excess of the rule making powers of the State. As stated already, the drastic consequence of striking down the rule could be avoided by reasonably restricting their application atleast to cases where, as in this case, the Department and the authorities entrusted with the task of enforcing the statute themselves are satisfied factually that the vehicle did not use any public road during the relevant period in question.

7.For all the above reasons, the impugned proceedings are quashed and this writ petition is allowed. There will be in direction as prayed for by the petitioner. But in the circumstances, there will be no order as to costs."

6.On a perusal of the above judgment, it is clear that when the vehicle is not used for a particular period and the same is also certified by the Inspector of Motor Vehicles vide its inspection report dated 12.10.2001, the refund cannot be denied and on perusal of Rule 14 of the above said Rules, the discretion left to the legislator and the terms and conditions so prescribed should be to regulate the procedure and assist the grant of refund.

7.In view of the above said legal position, I am inclined to extend the benefit which was given in the order cited supra, to the petitioner. Accordingly, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Transport Commissioner
Ezhilagam, Chepauk, Chennai - 5.

2.The Deputy Transport Commissioner,
Chennai Zone, Chennai - 23.

3.The Regional Transport Officer,
Chennai - Central, Chennai - 23.

+ 1 cc to Mr.K. Hariharan, Advocate Sr.58703
+ 1 cc to Government Pleader Sr.59503, 59918

W.P.No.34291 of 2004

VGII(CO)
EU 6.09.17