

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM:

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.37098 of 2006
and
MP.No. 1 of 2016

C.Nagammal

....Petitioner

-vs-

The Regional Transport Officer,
Salem.

....Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari calling for the records of the respondent herein relating to the demand notice in R.No.91915/B1/2006 dated 06.09.2006 directing the petitioner herein to remit a sum of Rs.1,65,000/- being tax in respect of vehicle PY.01.Q.7747 for the quarter ending with 30.09.2006 and to quash the same.

For Petitioner: M/s. S.Radthagopalan

For Respondent: Mr.G.B.Rajesh, Government Advocate

O R D E R

The demand notice dated 06.09.2006 directing the petitioner to remit a sum of Rs.1,65,000/- being tax in respect of the vehicle PY.01.Q.7747 for quarter ending with 30.09.2006 is under challenge in the present writ petition.

2. The writ petitioner is a contract carriage operator having a permit issued by the State Transport Authority, Pondichery in respect of his vehicle PY.01.Q.7747. The learned counsel appearing on behalf of the writ petitioner states that the allegations set out in the demand notice is that during the check, it was found that 31 students from Meylam Engineering

College, Thindivanam, 6 students from PRS Engineering College, Villupuram, 6 students from IFET Engineering College, Villupuram, 3 Students from Elumalai Polytechnic, Villupuram and it was also found that some other persons were picked up from various places. Thus, the writ petitioner had misused the temporary permit issued by the Secretary, Regional Transport Authority, Pondichery.

3. The learned counsel for the writ petitioner relying on the judgement of this Court contended that even in case of any misuse of temporary permit issued by the Competent Authority actions shall be taken to suspend the temporary permit or to cancel the permission by providing opportunity to the persons concerned. Contrarily, payment of tax cannot be ordered and the tax being unconnected with such misuse or violation, the impugned demand notice is bad in law. To substantiate the above said contentions, the learned counsel for the writ petitioner relied upon the judgement of this Court dated 23.08.2018 passed in WP.No.7616 of 2005 and similar issues are decided in that writ petition in the following paragraphs:-

" I have considered rival submissions. Admittedly, earlier for the very same violation, the first respondent has issued a demand notice demanding a sum of Rs.10,800/- as tax. Challenging that order, the petitioner filed a writ petition, by me this Court in WP.No.2035 of 2005 and this Court by order dated 04.03.2008, has allowed the said writ petition. The relevant portion of the said order is as follows:-

A perusal of the impugned order reflects that based on the check report dated 05.12.2004, the petitioner has been directed to pay the tax with penalty. It is apparent that the petitioner has not been given any opportunity to put forth his defence in respect of the alleged violation of the permit conditions, as found by the checking officer on 05.12.2004. The contention of the petitioner that there was a valid permit issued by the State Transport Authority, Pondicherry for a period of one week from 04.12.2004 to 10.12.2004 has not been disputed by the respondents by filing any counter affidavit. The Supreme Court has time and again, held that if there is any violation of the permit conditions, it is open to the competent authority to take recourse to the cancellation or suspension of the permit conditions, as the case may be."

4. In the present case also no notice or opportunity was provided to the writ petitioner before issuing the impugned demand notice. This being the factum of the case, the writ petition is to be considered in favour of the writ petitioner.

5. Accordingly, the impugned demand notice issued by the respondent in R.No.91915/B1/2006 dated 06.09.2006 is quashed and the writ petition stands allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

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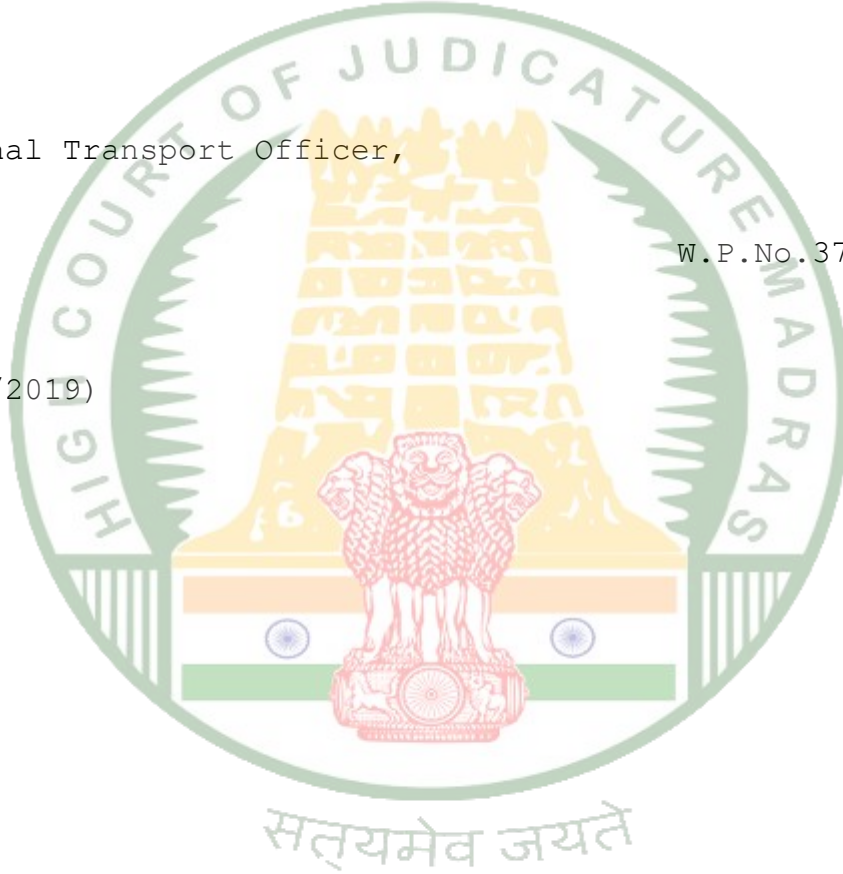
Sub Assistant Registrar

To

The Regional Transport Officer,
Salem.

W.P.No.37098 of 2006

SAI (CO)
KAK (11/01/2019)



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