IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.10558 & 10942 of 2013
and
M.P.Nos.1 & 2 of 2013
and
W.M.P.No.20787 of 2017

W.P.No.10558 of 2013

C.Mahendran ...Petitioner

Vs

The Regional Transport Officer,
Dharmapuri. ...Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records of the respondent in Memo R.No.9615/A1/2008 dated 27.12.2012, directing the petitioner to pay the arrears of Tax of Rs.6,04,500/- for the period from 01.04.2008 to 31.03.2009 and to quash the same.

For Petitioner : Mr.K.Hariharan

For Respondent : Mr.V.Veluchamy
Government Advocate

W.P.No.10942 of 2013

M/s.Shriram Transport Finance Company limited,
879, T.H.Road, Theradi Bus Stop Thiruvottiyur,
Chennai - 600 019. ...Petitioner

Vs

1.Regional Transport Officer,
Dharmapuri.

2.Mr.C.Mahendran
3.Mrs.V.Nirmal Priya
4.S.Harridass ...Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records on the file of the first respondent, made in Memo No.9615/A1 2008 dated Nil-12-2012 and quash the same.

For Petitioner	:	Mr.Venkatesan For M/s.K.S.Ramakrishnan
For Respondent	:	Mr.V.Veluchamy Government Advocate [For R1] Mr.K.Hariharan[For R2] R3 & R4 - Dismissed vide court order dated 10.03.2020

COMMON ORDER

W.P.No.10558 of 2013:

The order passed by the Regional Transport Officer in proceedings dated 27.12.2012, directing the petitioner to pay tax is under challenge in this writ petition.

2. The petitioner was a contract carriage omni bus operator, having an omni bus permit issued by the State Transport Authority, Chepauk, Chennai - 5, which was valid upto 02.10.2011 and the same was cancelled under Section 86(1)(c) of Motor Vehicles Act, 1988 with effect from 31.03.2009 by the State Transport Authority, Chennai in proceedings dated 09.06.2009, in view of the fact that the petitioner, who was the permit holder, was not in a possession of the vehicle.

3. The petitioner states that he had paid the Motor Vehicles Tax in respect of the said vehicle upto 30.06.2008. The said vehicle was financed by M/s.Cholamandalam DBS Finance Limited, Chennai. The petitioner entered into an agreement with one Ms.Nirmal Priya for transferring the vehicle and the said Ms.Nirmal Priya has also taken possession of the vehicle. But the permit in respect of the said vehicle continued to remain with the petitioner. In the month of February 2008, the said Ms.Nirmal Priya approached the Shriram Transport Finance Company Limited for closing the hire purchase agreement with M/s.Cholamandalam DBS Finance Limited, Chennai and the said Shriram Transport Finance Company Limited stepped into the shoes of M/s.Cholamandalam DBS Finance Limited, after clearing the hire purchase amount with M/s.Cholamandalam DBS Finance Limited. From then on M/s.Shriram Transport Finance Limited., Chennai has become the financier and a fresh hire purchase agreement was entered into with them.

4. The said M/s.Shriram Transport Finance Limited seized the vehicle of the petitioner on 30.05.2008 and the said fact was admitted by the said company. Thus, from 30.05.2008 onwards, the petitioner was not in possession of the vehicle and consequently, the petitioner was not able to ply the vehicle. M/s.Shriram Transport Finance Limited took possession of the vehicle as the dues were not paid and under the hire purchase agreement, the financier is entitled to seize the vehicle. As far as the permit was concerned, the permit continued to remain with the petitioner. The petitioner states that he could not get back the vehicle from M/s.Shriram Transport Finance Limited. Thus, he decided to surrender the permit and therefore, applied for stoppage of service as well as surrender of permit in the month of June 2008 before the State Transport Authority, Chennai. The State Transport Authority, Chennai instead of passing orders on the surrender application, directed the Regional Transport Officer, Chennai, North East to submit a vehicle verification report as to whether the vehicle has been kept in the address given by the petitioner. The Regional Transport Officer verified the fact with regard to the stoppage of the vehicle in the address, the financier M/s.Shriram Transport Finance Company Limited sold the vehicle to one Thiru.Haridoss of Maduravoyil without the knowledge and consent of the petitioner.

5. In this backdrop, the learned counsel for the petitioner made a submission that the petitioner was not in possession of the vehicle from 01.06.2008 onwards and the permit was cancelled with effect from 31.03.2009.

6. The learned counsel for the petitioner reiterated that when the vehicle was not in his possession with effect from 01.06.2008, the petitioner is not liable to pay Motor Vehicle Tax. Further, the said vehicle seized from the petitioner, was sold by M/s.Shriram Transport Finance Private Limited in favour of one Mr.Harridass of Maduravoyil. Further, the permit was cancelled by the competent authority on 31.03.2009. This being the factum, the demand made against the petitioner to pay Motor Vehicle Tax from 01.07.2008 to 31.03.2009 is unsustainable. With regard to the possession of vehicle, the State Transport Authority, Chennai, in proceedings dated 09.06.2009 itself referred the intimation letter given by the petitioner by stating that the permit holder has intimated in his letter dated 07.07.2008 that the omni bus was seized by the financier namely Tvl.Shriram Transport Finance Private Limited, No.393, GVR Bhavan, T.H.Road, Thiruvottiyur, Chennai - 19 with effect from 30.05.2008 for hire purchase dues and the vehicle was garaged at the same address. The permit holder has sent a permit surrender application and stoppage application in the office of the State

Transport Authority and the said application was received on 07.07.2008.

7. This being the factum admitted by the respondents, this Court is of an opinion that if at all the Tax due is to be paid, the dues are to be recovered either from the Finance Company or from the person, who purchased the vehicle from the Finance company. However, the petitioner was not in possession of the vehicle with effect from 01.06.2008 and his application, which was filed in July 2008 was disposed of by cancelling the permit on 31.03.2009 and the delay in disposal of the application cannot be held against the petitioner. Thus, the very demand made is contrary to the facts and circumstances established by the petitioners and with reference to the period from 01.07.2008 to 31.03.2009, the petitioner is not liable to pay Motor Vehicle Tax and the respondents are at liberty to recover the Motor Vehicle Tax for the said period either from the Finance Company or from the person, who purchased the vehicle from the Finance company namely Mr.Harridass.

8. With these findings, the impugned order passed by the respondent in proceedings in Memo R.No.9615/A1/2008 dated 27.12.2012 is quashed and the writ petition in W.P.No.10558 of 2013 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

W.P.No.10942 of 2013

9. In view of the orders passed in W.P.No.10558 of 2013, no further adjudication needs to be undertaken as the Writ petition in W.P.No.10942 of 2013 filed by the Finance Company namely M/s.Shriram Transport Finance Company Limited, challenging the very same order of demand passed by the respondent. In the said order, the petitioner M/s.Shriram Transport Finance Company was directed to pay tax from 01.04.2008 to 31.03.2009 and in this regard, the possession of the vehicle during the relevant point of time either with the petitioner Finance company or with the purchaser/Mr.Harridass is to be verified and accordingly, suitable demand is to be made for recovery of Motor Vehicles Tax.

10. With these observations, the writ petition in W.P.No.10942 of 2013 stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Regional Transport Officer,
Dharmapuri.

+1cc to the Government Pleader, Sr.No.32574

W.P.Nos.10558 & 10942 of 2013

CP(CO)
RVM(09/08/2021)