IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25219 of 2011
and
M.P.No.1 of 2011

P.Viswanathan ... Petitioner

Vs.

1.The Government of Puducherry,
Rep by its Special Secretary to Government,
Government Transport Department,
Puducherry.

2.The Transport Commissioner,
Transport Department, Pondicherry.

3.The Regional Administrator - cum
Licensing Officer, Mahe,
Puducherry. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of demand issued by the 3rd respondent dated 29.11.2010 in No.1/TD (M) Tax/2004 and the final order dated 11.05.2011 on the file of the 1st respondent and quash the same as illegal and direct the respondents to collect the tax from the petitioner at the rate of Rs.340/- per passenger for interstate stage carrier only from the date 01.04.2002 being the date of operation of G.O.Ms.No.30/2002 (Tr) Transport Department Wing.

For Petitioner : Mr.T.S.Baskaran
For Respondent : Mr.A.V.Ramalingam
Additional Government Pleader (Pondy)

O R D E R

This Writ Petition has been filed against the impugned demand notice dated 29.11.2011 issued by the third respondent bearing reference No.1/TD (M)/Tax/2004 and the subsequent final order dated 11.05.2011 passed by the first respondent in M.V.T.A.No.215/Tr.Sectt./2010.

2.By the impugned demand notice dated 29.11.2011, the petitioner has been called upon to pay the tax arrears of Rs.5,06,080/- for the period commencing from 25.11.1987 to 31.12.2003 and the 100% penalty of the aforesaid amount for the aforesaid period immediately.

3.By the final order dated 11.05.2011, the first respondent waived the penalty but has ordered the petitioner to pay the tax amounting to Rs.5,06,080/-

4.The dispute in the present Writ Petition has a chequered history. The petitioner's father was originally running a Stage Carriage Vehicle, for which, the Inter-State permit was granted in Permit No.3/PY/1977. It appears that the petitioner's father late Sankaran had been regularly paid tax as per the G.O.Ms.No.33/79 dated 04.09.1979. According to the petitioner, as per the said G.O., there were no arrears of tax.

5.During the interregnum, the petitioner's father transferred the permit to the petitioner on 17.11.2000. During the same period several G.Os., were issued which revised tax rate of tax per seat per quarter. Details of the G.Os. are as follows:-

Sl.No	G.O.No.	Date	Existing tax rate per seat per quarter	Revised tax rate per seat per quarter
1	G.O.Ms.No.28	30.09.1977	Rs.100/-	Rs.180/-
2	G.O.No.43	24.09.1990	Rs.180/-	Rs.220/-
3	G.O.No.14	01.04.1992	Rs.220/-	Rs.280/-
4	G.O.No.80/Leg/97	14.05.1997	Rs.280/-	Rs.300/-
5	G.O.No.8/99	01.04.1999	Rs.300/-	Rs.320/-
6	G.O.No.30/2002	24.05.2002	Rs.320/-	Rs.340/-

6.After 2000, the last mentioned G.O.No.30/2002, dated 24.05.2002 came to be issued, tax per quarter was enhanced from Rs.320/- per seat from Rs.340/- per seat. In 2004, when the petitioner approached the second respondent for renewal of the permit, the petitioner was issued with notice dated 10.02.2004, wherein, the petitioner was called upon to pay arrears of tax and the petitioner was informed as under:-

The stage carriage permit No.3/PY/1977 valid upto 28.02.2007 covered by the vehicle registration No.Py 03/729 (seating capacity: 43 in all), received by this of five vide reference cited have been scrutinised. It is observed that an amount of Rs.3485/- (Rupees three thousand four hundred and eight five only) have been paid by the said permit holder towards the payment of tax in respect of the said stage carriage is not in accordance with the Pondicherry Motor Vehicles Taxation Act, 1967 and Rules thereunder. The amount paid is Rs.85/- (Rupees Eighty five only) per seat/Qtr. Whereas the permit issued on the Intra State route, the rate of tax is Rs.250/- (Rupees two hundred and fifty only) per seat/Qtr. The tax assessment have to be examined, since 1999 and the arrears of tax with penalty have to be paid by the said permit holder.

2.It is therefore, the permit holder, Thiru P.Viswanathan, Mahe is hereby directed to report before the Regional Administrative Officer-cum-licensing officer, Transport Department, Mahe for the above purpose and to re-submit his R.C.Book and Insurance returned herewith before expiry of the permit after payment of tax arrears.

7.The petitioner thereafter preferred an appeal before the first respondent vide M.V.T.A.No.1/2004 which came to be disposed by an order dated 15.07.2005. By the said order, the first respondent held as under:-

In view of the above, I do not find any justification in the contention of the appellant that the said G.O.Ms.No.33/79 still holds good. Further as per sub section (1) of Section 3 of the Pondicherry Motor Vehicles Taxation Act, 1967, the tax levied in the Union Territory of Pondicherry extends to the whole of Union Territory of Pondicherry. In my opinion, there is no infringement of Article 14 of the Constitution, in as much as the condition of the operators in the region of Mahe is not in any way less favourable to that of Pondicherry and hence there would be no justification in granting or continuing to grant any concession to the operators of Mahe region.

I, the Appellate Authority under the Pondicherry Motor Vehicles Taxation Act, 1967 hereby order that the appellant shall pay the tax at the statutorily notified rates from time to time with effect from the date of issuance of his permit.

In as much as the duty to pay the tax vests upon the owner, for non-payment of the tax as notified from time to time the owner is liable to pay penalty under Rule 9 of the Pondicherry Motor Vehicles Taxation Act. The Licensing Officer also ought to have taken steps to collect the correct amount of tax from the quarter concerned. There is failure on both the sides. Therefore I remit the matter regarding imposing of penalty to the Licensing Officer.

8.Subsequent to the aforesaid order dated 15.07.2005, a demand notice dated 26.10.2005 was issued by the third respondent. The third respondent demanded a sum of Rs.5,06,080/- as the arrears of tax from the petitioner for the period commencing from 25.11.1987 to 31.12.2003 together with interest equivalent to the amount of arrears of tax.

9.The petitioner challenged the order of the first respondent dated 15.07.2005 and the consequential demand notice dated 26.10.2005 issued by the third respondent who is the Transport Authority in W.P.No.3723 of 2006 before this Court. By an order dated 21.06.2010, W.P.No.3723 of 2006 along with W.P.No.3724 of 2006 was however dismissed for non prosecution.

10.Pursuant to the above disposal of the said writ petition, the petitioner was also issued with separate demand notice dated 26.08.2010 as it evident from the demand notice dated 29.11.2010 of the third respondent.

11.After the said writ petition was dismissed, the petitioner filed another appeal before the first respondent which has culminated in the impugned order dated 11.05.2011 and the demand notice dated 29.11.2010 of the third respondent.

12.Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Pondy).

13.The Government has issued several Government orders which revised rate of tax. The demand notice dated 10.02.2004 merely directed the petitioner to report to the Regional Administrative Officer-cum-Licensing Officer, Transport Department, Mahe as only Rs.85/- was whereas the permit issued on the Intra State route, the rate of tax was Rs.250/- (Rupees Two hundred and fifty only) per seat/Qtr. The tax assessment have to be examined, since 1999 and the arrears of tax with penalty have to be paid by the said permit holder. Instead of giving any reply, Petitioner straight away filed an appeal before the first respondent who by order dated 15.07.2005 has confirmed the proposal. There should have been proper assessment by the second respondent before the Appellate Authority could have entertained and dismissed the appeal. The order of the first respondent dated 15.07.2005 seems to indicate that it is predicated on the assumption.

14.That the petitioner is liable to pay tax as per G.O.Ms.No.30/2002 dated 24.05.2002. The consequential demand notice of the third respondent dated 26.10.2005 has quantified a sum of Rs.5,06,080 for the period from 25.11.1987 to 31.12.2003 and 100% penalty of Rs.5,06,080 for the period from 25.11.1987 to 31.12.2003 as arrears of tax. The petitioner had unsuccessfully filed W.P.No.3723 of 2006 and allowed it to be dismissed for non prosecution on 21.06.2010. The impugned demand confined only reiterate demand confined earlier. Prima facie, the rates in G.O.Ms.No.30/2002 dated 24.05.2002 cannot be applied retrospectively. There is no clarity either in the stand of the petitioner nor in the stand of the respondent.

15.Therefore, to meed end of the justice, one more opportunity to be given to the petitioner, provided the petitioner deposits 80% of the amounts confined vide order dated 11.02.2006 in W.P.No.3723 of 2006 within a period of four weeks from the date of receipt of a copy of this order. The aforesaid amount to be paid by the petitioner will be treated as the amount paid under protest and shall be appropriated subjected the final outcome of the proceedings.

16.The 3rd respondent shall give the details of the calculations for collecting the aforesaid amount from the petitioner citing the relevant G.Os., which have been now produced before this Court. The 3rd respondent shall issue a proper notice to the petitioner informing the basis on which the aforesaid amount is payable by the petitioner by considering the relevant G.Os. as in force from time to time.

17.The petitioner shall file reply, if any, for the same within a period of 30 days thereafter. The The Regional Administrator - cum Licensing Officer namely the 3rd respondent shall thereafter pass appropriate orders on merits after hearing the petitioner within a period of 30 days thereafter. Needless to state, before passing such order, the petitioner shall also to be heard in person.

18.Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Special Secretary to Government,
Government of Puducherry,
Government Transport Department,
Puducherry.

2.The Transport Commissioner,
Transport Department, Pondicherry.

3.The Regional Administrator - cum
Licensing Officer, Mahe,
Puducherry.

+1cc to Mr.T.S.Baskaran, Advocate, S.R.No.20486
+1cc to the Government Pleader, S.R.No.20792

W.P.No.25219 of 2011
and
M.P.No.1 of 2011

Sr II(CO)
SB(14/07/2021)