IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.5784 of 2020
and
WMP. Nos.6764, 6765 & 6767 of 2020

K.P.Natarajan ... Petitioner

Vs

The Transport Commissioner,
Chepauk, Chennai - 600 005.
... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus, to call for the records connected with the circular of the respondent in R.No.A3/64992/2014 dated 19.12.2014 quash the same and direct the respondent and all officers subordinate to him to accept tax for the petitioner's contract carriages bearing registration numbers KA-51-B-9299 and KA-51-C-9199 for 7 days, 30 days or 90 days when voluntarily tendered at any palce in the state of Tamil Nadu.

For Petitioner : Mr.K.Hariharan
for Mr.R.Natesan
For Respondent : Mr.R.P.Pratap Singh,
Government Advocate

O R D E R

The petitioner, who is a Contract Carriage operator holding permits issued by the Transport Authorities in southern states of India and Union Territory of Pondichery, seeks a Writ of Certiorarified Mandamus to quash the circular of the respondent in R.No.A3/64992/2014 dated 19.12.2014 and directing the respondents to accept the tax, which is voluntarily tendered by the petitioner in advance for 7/30/90 days use in Tamil Nadu.

2. This very issue has come to be discussed by a Division Bench of this Court in Pondicherry Contract Carriage Owners' Association and others V. State of Tamil Nau and another ((2016) 4 MLJ 237. There was an amendment made to the 9th Schedule of the Act which imposes tax on slab rates for omni buses hired on contract carriage basis wherein the levy of tax was 'Per entry

of the vehicle'. The validity of this amendment was challenged on the ground that such a levy would be confiscatory. This argument was accepted by the Bench, which held the use of the phrase 'per entry' unconstitutional.

3. The sum and substance of the decision is that in case where licences/permits are obtained for the period of 7/30/90 days, multiple entries of the vehicles would be permitted during the licence/permit period.

4. The Division Bench has, inter alia, in paragraph 14 relied on an earlier decision of this Court in V.Swaminathan and others V. Motor Vehicle Inspector (W.P.No.10879 of 1992 and batch dated 04.12.1992) to the effect that once a tax is paid for a particular period, it is not open to the authorities to demand tax for any part of that period additionally on the sole ground that the vehicle has gone out of State and re-entered during that very period.

5. Paragraph 9 of the decision in V.Swamitnathan's case holds unambiguously that once tax has been remitted for a particular period, multiple entry of that vehicle is permitted into and out of the State of Tamil Nadu. Thus, after issuing a temporary licence for a contract carriage for a period of 7/30/90 days, it is not open to the State to levy tax on the basis that multiple entries are impermissible treating each entry as requiring a separate payment of tax.

6. The challenge to the aforesaid decision appears to have been rejected by the Supreme Court in SLP.Nos.16933 and 16935 of 2016 by order dated 07.10.2016.

7. It is brought to my notice that the aforesaid decision of the Division Bench has been taken note of by a learned single Judge of this Court who has allowed a batch of Writ Petitions seeking an identical prayer as before me in W.P.No.17658 of 2016 and batch by order dated 21.12.2020. As on date, the aforesaid order of the learned single Judge has not been challenged.

8. The argument of Mr.Prathap to the effect that the permit holders have violated the permits and conditions for permit has also been taken note of by the Division Bench in paragraph 13 referring to the decision of the Supreme Court in Hardev Motor Transport V. State of Madhya Pradesh (AIR 2007 SC 839), wherein the Supreme Court rejected the same argument stating that any violation of terms and conditions of permit should be addressed applying applicable rules and regulations for which consequences would follow. However, such violations cannot be addressed by the imposition of a tax, since tax is compensatory in nature and not punitive or confiscatory.

9. On the basis of the discussion as above, a mandamus, as sought for is issued, This Writ Petitions is allowed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

rkp

To
The Transport Commissioner,
Chepauk, Chennai - 600 005.

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CP(CO)
RMP(02/03/2021)