IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P. Nos. 11578 and 11581 of 2021

S.S.Abhilash ...Petitioner in W.P.No.11578/2021

K.Suresh ...Petitioner in W.P.No.11581/2021

Vs.

1.The Motor Vehicle Inspector (NT),
Zuzuvadi Check Post, Hosur,
Krishnagiri District.

2.The Motor Vehicle Inspector,
Bagalur Check Post, Hosur,
Krishnagiri District. ...Respondents in both writ petitions

Prayer in W.P.No.11578 of 2021 : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the Respondents herein to accept the Motor Vehicle for Tamil Nadu, Voluntarily tendered by the petitioner in advance for 7 days or 30 days or 90 days use in Tamil nadu in accordance with Ninth Schedule of the Tamil Nadu Motor Vehicles Taxation Act 1974, in respect of the petitioners' vehicles bearing registration Nox. KA 01 C 4451, K 02 AB 3160, KA 01 C 8176 and KA 05 AA 4934.

Prayer in W.P.No.11581 of 2021 : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the Respondents to accept the Motor Vehicle for Tamil Nadu, Voluntarily tendered by the petitioner in advance for 7 days or 30 days or 90 days use in Tamil nadu in accordance with Ninth Schedule of the Tamil Nadu Motor Vehicles Taxation Act 1974, in respect of the petitioner's vehicles bearing registration No.KA 01 C 6952.

For Petitioner : Mr. A.Ganesan

For Respondents : Mr. Sajeev Kumar, Government Counsel

COMMON ORDER

The prayer made in both the writ petitions is to issue a mandamus, directing the respondents to accept the motor vehicles voluntarily tendered by the petitioners in advance for 7 days or 30 days or 90 days use in Tamil Nadu in accordance with Ninth Schedule of the Tamil Nadu Motor Vehicles Taxation Act 1974, in respect of their vehicles.

2. The contention of the petitioners is that they are the Tour Operators, holding All India permits and State wide contract Carriage Permits to operate throughout State of Karnataka in respect of their vehicles. The further contention of the petitioners is that as per G.O.Ms.No.1122 dated 15.07.1992, issued by the Government of Tamil Nadu, other State operators can pay tax at the rate of 7 days or 30 days or 90 days, according to the proposed usage of the vehicles in Tamil Nadu State. Though the petitioners are prepared to pay tax at the rate of 30 days of 90 days, the respondents are not accepting the tax, by relying upon the Enacted Act 13 of 2021, in which amendment was made in the Ninth Schedule of Tamil Nadu Motor Vehicles Taxation Act 1974. According to the petitioners, the above said amendment gives choice to pay the Tamil Nadu Tax according to the usage, however, the respondents are collecting only 7days tax, as per the circular of the first respondent. Hence, these writ petitions.

3. Today, when the matters were taken up for consideration, the learned counsel appearing for both the parties jointly submitted that the issue involved in these writ petitions is covered by a decision of this court in W.P.No.5751 of 2021 dated 24.03.2021, wherein it is held as follows:-

> "Learned Government Advocate would fairly point out that the issue in this matter is covered by an earlier decision of this Court in W.P.No.190 of 2020 dated 09.02.2021, wherein the following order has been passed:
>
>> 'The petitioner, who is a tour operator holding All India Permits and contract Carriage Omni Bus Permits, seeks a Writ of Mandamus directing the respondents to accept Motor Vehicles Tax for Tamil Nadu, which is voluntarily tendered by the petitioner in advance for 7/30/90 days use in Tamil Nadu in accordance with the 9th Schedule of the Tamil Nadu Motor Vehicles Taxation Act, 1974 (in short 'Act') in respect of his vehicle.
>>
>> 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 Nadu 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.Swaminathan'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 petition is allowed. No costs. Connected Miscellaneous Petition is closed.'

2.In light of the aforesaid order, this writ petition is allowed. No costs."

4. Following the above decision, which holds good to the facts of the present case, both the writ petitions are allowed in line with the same. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mst

To

1.The Motor Vehicle Inspector (NT),
Zuzuvadi Check Post, Hosur,
Krishnagiri District.

2.The Motor Vehicle Inspector,
Bagalur Check Post, Hosur,
Krishnagiri District.

+1cc to the Government Pleader, S.R.No.27370

W.P.Nos.11578 and 11581 of 2021

GPL(CO)
RVM(23/08/2021)