IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-04-2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP Nos.15878 to 15880 of 2018
And
WMP Nos.18885 to 18887 of 2018

L.Sekar .. Petitioner in WP 15878/2018
Krishnapillai .. Petitioner in WP 15879/2018
P.Muniyan .. Petitioner in WP 15880/2018

vs.

1.The Motor Vehicles Inspector,
Transport Department Check Post (Incoming),
Zuzwadi,
Hosur,
Krishnagiri District.

2.The Motor Vehicle Inspector,
Bagalur Check Post,
Samathuvapuram,
Hosur,
Krishnagiri District. ... Respondents in all WPs

WP No.15878 of 2018 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents herein to accept Motor Vehicles Tax 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 petitioner's Vehicle No.KA-51-C-4347.

WP No.15879 of 2018 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents herein to accept Motor Vehicles Tax 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 petitioner's Vehicle No.KA-01-AA-0880.

WP No.15880 of 2018 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents herein to accept Motor Vehicles Tax 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 petitioner's Vehicle No.KA-51-A-6474.

For Petitioner in all WPs : Mr.K.Hariharan

For Respondents in all WPs : No Appearance

C O M M O N O R D E R

The relief sought for in these batch of writ petitions is to direct the respondents herein to accept the Motor Vehicles Tax 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 petitioners' vehicle bearing Nos.KA-51-C-4347, KA-01-AA-0880 and KA-51-A-6474 respectively.

2. The grievances of the writ petitioners are that after amendment in Ninth Schedule, the benefit of payment of advance for 7 days or 30 days or 90 days are extended for the benefit of users. However, the said benefits are not extended by the Authorities Competent for the reasons not known to the writ petitioners. Contrarily, the writ petitioners are prevented from availing the benefit of 30 days and 90 days and the authorities compelled the writ petitioners to pay tax for 7 days and they collect only for seven days. This caused prejudice to the interest of the writ petitioners. Thus, they are constrained to move these writ petitions.

3. It is brought to the notice of this Court that the issues raised in these batch of writ petitions are covered by the decision of this Court in W.P.No.190 of 2020 dated 09.02.2021 and the said order is extracted hereunder:

> “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 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.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.

4. In view of the fact that similar writ petition was allowed, all these writ petitions stand allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Vehicles Inspector,
Transport Department Check Post (Incoming),
Zuzwadi,
Hosur,
Krishnagiri District.

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

WP Nos.15878 to 15880 of 2018

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srg 01/07/2021