IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

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THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.19671 of 2021

K.Sivaprakash ... Petitioner

-Vs.-

The Motor Vehicles Inspector
Check Post, Zuzuvadi
Hosur, Krishnagiri District. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent 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 petitioners vehicle KA-03/AE-3050, forthwith.

For Petitioner : Mr.K.Hariharan
For Respondent : Mr.NRR.Arun Natarajan
Government Advocate

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O R D E R

Mr.K.Hariharan, learned counsel on record for writ petitioner and Mr.NRR.Arun Natarajan, learned State counsel who accepts notice on behalf of lone respondent are before this Court, with the consent of both sides, the main writ petition is taken up as there is no disputation that this matter is covered by earlier orders made by two other Hon'ble judges. One is order dated 15.04.2021 made in W.P.Nos.20782 of 2018 etc., batch and the other is order dated 09.08.2021 made in W.P.No.16488 of 2021, which read as follows:

Order dated 15.04.2021 made in W.P.Nos.20782 of 2018 etc., batch:

'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 No.KA01AF3777.

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. No costs. Consequently, connected miscellaneous petitions are also closed.'

Order dated 09.08.2021 made in W.P.No.16488 of 2021:

'Mr.N.R.R.Arun Natarajan, learned Government Advocate accepts notice for the respondents and is armed with instructions to proceed with the matter finally. Hence, by consent of both sides, this Writ Petition is taken up for final disposal even at the stage of admission.

2.The petitioner has sought a mandamus directing the respondents i.e. Motor Vehicles Inspectors of

Krishnagiri District to accept Motor Vehicles Tax for Tamil Nadu voluntarily tendered by the petitioner in advance for 7/30/90 days use in Tamil Nadu in accordance with the 9th Schedule of Tamil Nadu Motor Vehicles Taxation Act, 1974 in respect of his vehicles bearing No.KA05 AD 5660. Both learned counsels would point out that the issue is covered by earlier decisions of this Court, wherein the following order has been passed:

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 9 th 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 9 th 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.

3.In the light of identity of facts and legal position, the above order is taken to be passed in the present matter as well and the mandamus as sought for is issued. This writ petition is allowed. No costs.'

2. Learned State counsel very fairly submits that the above orders of two Hon'ble single judges have been given quietus and they are now holding the field.

3. Therefore, captioned Writ Petition is allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Motor Vehicles Inspector
Check Post, Zuzuvadi
Hosur, Krishnagiri District.

W.P.No.19671 of 2021

KSM(CO)
A.SK(20.09.2021)