IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2021

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No. 24128 of 2021

C.Ramu ... Petitioners

-Vs-

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

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

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of 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 vehicle bearing Registration No.KA 51 AG 4346 forthwith.

For Petitioner : Mr.A.Ganesan

For Respondents : Mrs.V.Yamuna Devi
Special Government Pleader

ORDER

The prayer sought for herein is for 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 vehicle bearing Registration No.KA 51 AG 4346 forthwith.

2. The petitioner is a Tourist Operator having State Wide Contract Carriage Permit to operate throughout State of Karnataka in respect of the vehicle bearing Registration No.KA 51 AG 4345, the said permit is valid upto 26.09.2026 issued by the Karnataka State Transport Authorities, Bangalore. The

petitioner can use to ply the vehicle in the State of Tamil Nadu by special permit after payment of necessary tax to the State of Tamil Nadu according to the usage of the vehicle in Tamil Nadu.

3. In respect of All India Permit Vehicle, the Tamil Nadu State already issued G.O.Ms.No.1122, Transport Department dated 15.07.1992, whereby 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 vehicle in Tamil Nadu State. The said Government Order has already been upheld by this Court. As per the order, the State contract carriage maxi cabs are concerned, the Tamil Nadu State Tax are collected as per the wages of vehicles in the State.

4. It is the further case of the petitioner that, the Tamil Nadu Government enacted Act 13 of 2012 amending the Tami Nadu Motor Vehicles Taxation Act 1974, where the Ninth Schedule has been provided, which reads that, Clause (c) Maxi Cab including in respect of which permit is granted under Section (8) of the Motor Vehicles Act, 1988. (i) If the temporary license is for a period not exceeding 7 days, Rs.75/- per seat entry, (ii) if the temporary license is for a period exceeding 7 days but not exceeding 30 days, Rs.100 per seat entry and (iii) if the temporary license is for a period exceeding 30 days but not exceeding 90 days, Rs.450 per seat entry.

5. Even though as per the said amendment, it gives choice to the operator to pay the Tamil Nadu Tax according to the usage, the respondents however are collecting 7 days tax as per the circular of the first respondent. Therefore, the respondents forcing the permit holders to pay the 7 days tax then the tax collected from the petitioner will exceed the one quarter tax for 90 days.

6. Aggrieved over the same, the petitioner had given a representation to collect the tax as per the schedule by way of tax for 7 days or 30 days or 90 days as the case may be, without insisting tax per each entry, since that request having not been considered, the petitioner has approached this Court by filing the present Writ Petition.

7. Reiterating the aforestated, Mr.A.Ganesan, learned counsel appearing for the petitioner would submit that, the issue raised in this Writ Petition is no more res integra. In support of his contention, the learned counsel would submit that, already the pattern of collecting tax for each entry despite the procedure to impose and collect tax as contemplated under Schedule 9 referred to above has already been deprecated and judgments have been given in this regard following the same in a recent order of this Court dated 16.09.2021 made in W.P.

No. 19671 of 2021 in the matter of K.Sivaprakash vs. The Motor Vehicles Inspector, Hosur, Krishnagiri District, a learned Judge having considered the earlier orders passed in this regard including the Division Bench Judgment which has been upheld by the Hon'ble Supreme Court in this regard has taken a view that, the petitioner therein can be permitted to accept the motor vehicle 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 the vehicle concerned of the petitioner therein.

8. Relying upon this Judgment, the learned counsel appearing for the petitioner would submit that, since the petitioner is also a similarly placed, the same benefit can be extended to the petitioner also.

9. Heard Mrs.V.Yamuna Devi, learned Special Government Pleader appearing for the respondents who would also submit that, since the Ninth Schedule as provided for a particular slab of tax to be levied based on the period for which the license for contract carriage is being given, accordingly, if it is 7 days, a particular slab is fixed and if it is more than 7 days and less than 30 days and beyond 30 days, yet another slab has been fixed

10. The slab fixed is only not for a period but only for per entry. Therefore, if at all the vehicle is given a permit or license as a contract carriage for the period of 7 days, within which, suppose the vehicle has gone out of the State jurisdiction and again comes back to the jurisdiction of the State, they have to pay further tax or second time tax because the tax being collected under Ninth Schedule is not based on the period alone but based on the entry. Therefore, the learned Special Government Pleader justified that, the pattern arrived at and being practiced by the respondents Department in the State of Tamil Nadu is justifiable and sustainable in view of the Ninth Schedule.

11. Therefore, the learned Special Government Pleader would contend that, the present prayer sought for to accept the tax in advance for 7 days or 30 days or 90 days period as the case may be cannot be countenanced and accepted. Hence, the learned Special Government Pleader seeks dismissal of this Writ Petition.

12. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

13. As has been rightly pointed out by the learned counsel appearing for the petitioner that, the issue raised in this Writ Petition or the prayer sought for herein is no more res integra as number of judgments have been passed in this context.

14. The latest judgment in the case of Mr.K.Sivaprakash referred by the learned counsel appearing for the petitioner is the latest addition, where the similar prayer has been dealt with by the learned Judge, who passed the order on 16.09.2021, where the following portion of the order can be usefully referred to hereunder:

> "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.
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> 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.
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> 4. The Division Bench has, inter alia, in paragraph 14 relied on an earlier decision of this Court in V.Swaminathan and others 2 https://www.mhc.tn.gov.in/judis/ W.P. No.5751 of 2021 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.
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> 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. "

15. Having gone through the said judgment, I am of the view that, the prayer sought for in this Writ Petition can be considered and granted, because the petitioner also is similarly placed as that of the writ petitioner whose case was dealt with by the learned Judge in the said order referred to above.

16. Since the schedule mentioned in Ninth Schedule referred above was the Act is referring only to the period for which, if the petitioner comes forward to pay the advance tax voluntarily, the same can be accepted by the respondents and therefore, once such tax is paid even there may be a multiple entry within the period and on the basis of the trip further tax cannot be levied and this has been underlined in the said decision referred to above.

17. In that view of the matter, this Court feels that, this Writ Petition can be disposed of with the following orders:

"that there shall be a direction to the

respondents to collect the tax from the petitioner who comes forward voluntarily to tender the same in advance for 7 days or 30 days or 90 days itself for use in Tamil Nadu in accordance with the Ninth Schedule of the Tami Nadu Motor Vehicles Taxation Act, 1974 in respect of his vehicle in KA 51 AG 4346."

18. With these directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to the Government Pleader, S.R.No.64848

W.P. No. 24128 of 2021

KSM(CO)
SB(14/02/2022)