BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **17.08.2021**
CORAM
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.14641 of 2021
and
W.M.P(MD).Nos.11573 and 11575 of 2021
(Through video conference)

R.Bhavani .. Petitioner

-Vs-

1.The Union of India,
Rep. by Secretary,
Ministry of Road Transport and Highways,
New Delhi.

2.The Secretary to Government,
Transport Department,
St.George Fort, Secretariat, Chennai-9.

3.The Regional Transport Officer,
Office of the Regional Transport Office,
Tenkasi,Tenkasi District.

4.The Motor Vehicle Inspector, Grade-I,
Tenkasi, Tenkasi District.

5.The Sub Inspector of Police,
Tenkasi Police Station,
Tenkasi,Tenkasi District. .. Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records of the 4th respondent relating to the impugned Check Slip No.B189313, dated 05.08.2021 and the letter No.24164/B1/2021, dated 09.08.2021, issued by the third respondent and quash the same.

For Petitioner : Mr.A.K.Baskarapandiyan

For Respondents : Mr.T.Tirupathy
Standing Counsel
for R1

Mr.D.Ghandiraj
Government Advocate
for R2 to R5

ORDER

Prayer sought for herein is for a Writ of Certiorari, calling for the records of the 4th respondent, relating to the impugned Check Slip No.B189313, dated 05.08.2021 and the letter No.24164/B1/2021, dated 09.08.2021, issued by the third respondent and quash the same.

2.The case of the petitioner is that, the petitioner's vehicle with All India authorisation and permit bearing Registration number of the State of Nagaland, that is, NL-01-B-1396, is an All India Permit Tourist Vehicle. Since the same was plying in the State of Tamilnadu on 05.08.2021, from Alangulam to Coimbatore with 19 passengers on board, it was intercepted, and the fourth respondent, having checked the documents pertaining to the vehicle concerned, was on the *prima facie* satisfaction that the vehicle was not plying with the relevant documents and without paying the tax payable to the State of Tamilnadu in violation of All India Permit in terms of All India Tourist Vehicles (Authorisation or Permit) Rules, 2021, [in short, 'the Rules'], therefore, at 11.00 p.m. on that date, the fourth respondent seized the vehicle. Thereafter, the vehicle has been handed over to the police for safe custody.

3.In this context, it is the claim of the petitioner that, the petitioner's vehicle is an All India Tourist Permit vehicle and under the Rules, if the vehicle concerned has obtained an authorisation as defined under Rule 2 (1) (b), no doubt a vehicle must pay the tax payable to the State Government, when it plies within the territory of the State concerned. However, if All India Permit vehicle is having a permit issued as defined under Rule 2(1) (d) of the said Rules, then, no such fee or tax shall be levied by any State or Union Territory throughout the country wherever the vehicle plies.

4.Therefore, according to Mr.A.K.Baskarapandiyan, learned counsel appearing for the petitioner, the petitioner's vehicle is having both authorisation as well as permit issued under Rule 4(4) of the said Rules in Form 2 and Form 3, and the same is readily available with the petitioner at any time, and a copy of the same has also been filed in the typeset of papers. Therefore, relying upon the same, the learned counsel for the petitioner would submit that, on verification of the authorisation as well as the permit, which the petitioner's vehicle is having, the vehicle should have been released then and there, without insisting any fee or tax, however, the third respondent, by the impugned order, dated 09.08.2021 has stated that, since the petitioner was having only the authorisation issued under Rule 4(4) in Form 2 as explained under Rule 2(1)(b) and not the permit, therefore, tax due for the Tamil Nadu State has to be paid, accordingly, the alleged tax due of

Rs.35,200/- was calculated and it was directed to be paid. Unless and until that amount is paid, that vehicle shall not be released to the petitioner, that order was passed by the third respondent, against which, the present writ petition has been filed.

5.Therefore, the learned counsel for the petitioner seeks indulgence of this Court, against the impugned order, in view of the said provisions of the Rules as well as the permit and authorisation that the petitioner vehicle is having, to issue a direction to the respondents to consider those documents, which the petitioner is readily keeping it available to be produced before the third respondent at any time.

6.Per contra, Mr.D.Ghandiraj, learned Government Advocate appearing for the respondents, by relying upon the averments made in the impugned order, dated 09.08.2021, would submit that, at the time of their vehicle was intercepted, no such documents or the permit under 2(1)(d) was made available to the fourth respondent, therefore, the vehicle was seized and had been handed over, therefore, based on such factual matrix, the third respondent passed the order impugned, dated 09.08.2021, stating that, by merely having an authorisation issued under 2(1)(b), the petitioner's vehicle cannot be released without paying the tax payable to the State Government and therefore, the tax having been calculated was demanded through the impugned order, hence, the learned Government Advocate submits that, after paying the tax, the vehicle, in question of the petitioner, can very well be released, he contended.

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

8.Insofar as the Rule position is concerned, Rule 2(1)(b) and 2 (1)(d) reads thus:

> "(b) "Authorisation" means an authorisation granted by the Transport Authority to enable tourist vehicles operator/owner to ply tourist vehicle throughout the territory of India subject to the payment of taxes or fees, if any, levied by the State or Union territory through which it plies;"
>
> (d) "Permit" means a permit issued by the Transport Authority to enable a tourist vehicle operator/owner to ply tourist vehicle throughout the territory of India without payment of taxes or fee levied by the State or Union territory through which it plies;"

Rule 4(4) of the Rule reads thus:

> "4(4). The authorisation and permit shall be granted in Form 2 and Form 3, as the case may be, and shall be valid for a period of three months or its multiples

thereof not exceeding five years at a time."

9.Therefore, what is meant by "authorisation", has been defined under Rule 2(1)(b) and, what is meant by "permit", has been defined under Rule 2(1)(d), as referred to above. If such an authorisation or permit is issued, that shall be issued only in Form 2 and Form 3 under Rule 4(4) that has also been referred hereinabove.

10. In respect of the petitioner's vehicle, the authorisation in Form 2 under Rule 4(4) was issued, which is valid even up to 2022, where the seating capacity is 39 passengers for the vehicle concerned with a A1 authorisation, like that, in Form 3, All India Tourist Permit also under Rule 4(4) was issued, that still also have the validity up to 2022. Copy of the authorisation as well as the permit issued under Form 2 and Form 3 respectively, under Rule 4(4) of the Rules, had been filed in the typeset of papers for perusal.

11. On perusal of the same, this Court *prima facie* feel that the vehicle in question belongs to the petitioner, since had been issued the authorisation and permit, and according to the learned counsel for the petitioner, the original authorisation and permit is always available with the vehicle, and that can be produced at any time, on demand, from the third respondent, this Court feel that, the present reason stated by the third respondent in the impugned order, dated 09.08.2021, stating that the petitioner was having only authorisation, therefore, he has to pay the tax payable to the State Government is concerned, it requires a reconsideration and in this regard, it is open to the third respondent to verify the original authorisation as well as the permit of the petitioner's vehicle concerned, and after verifying the same, a decision can be taken in accordance with law.

12. In that view of the matter, this Court is inclined to pass the following order in this writ petition:

> 'that the impugned order is hereby quashed and the matter is remitted back to the third respondent for reconsideration. While reconsidering the same, the petitioner shall produce the original authorisation as well as the permit and any other documents, which are relevant under the Motor Vehicles Act, 1988, and the Rules made thereunder, including the referred Rules, and after having verified those documents, necessary orders shall be passed by the third respondent, with regard to the plea of the petitioner for releasing the vehicle, and such order shall be passed within a period of four weeks from the date of receipt of a copy of this order."

13. With these directions, this writ petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Secretary,
The Union of India,
Ministry of Road Transport and Highways,
New Delhi.

2.The Secretary to Government,
Transport Department,
St.George Fort,
Secretariat,
Chennai-9.

3.The Regional Transport Officer,
Office of the Regional Transport Office,
Tenkasi,
Tenkasi District.

4.The Motor Vehicle Inspector, Grade-I,
Tenkasi,
Tenkasi District.

5.The Sub Inspector of Police,
Tenkasi Police Station,
Tenkasi, Tenkasi District

+1 CC to M/s.A.K.BASKARAPANDIYAN, Advocate (SR-26543[F] dated 17/08/2021)
+1 CC to M/s.GP (SR-26648[F] dated 18/08/2021)

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RD(14.09.2021) 5P 8C