BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.09.2021
CORAM
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.16385 of 2021 and
WMP(MD) Nos.13238 & 13239 of 2021

M/s. Hamad Transport,
Rep by its Proprietor Musthafa
S/o Mohamed Hanifa,
Now Residing at Jail Road,
Kohima Nagaland,
Permanent residing address
No.47A, Railway Station Road,
Ayyampetttai,Papanasam Taluk,
Thanjavur District. ...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,
Virudhunagar, Virudhunagar District.

4.The Motor Vehicle Inspector Grade I,
DTC Office (Enforcement),
Virudhunagar,
Virudhunagar District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certitorari, calling for the records of the third respondent relating to the impugned Check Slip No.175257 dated 04.09.2021 and quash the same.

For Petitioner : Mr.A.Shajahan
For R1 : Mr.K.Sankararaman
Centrtal Government Advocate
For R2 to R4 : Mr.D.Ghandiraj
Government Advocate

ORDER

The prayer sought for in this Writ Petition is for a Writ of Certitorari, to call for the records of the third respondent relating to the impugned Check Slip No.175257 dated 04.09.2021 and quash the same.

2. The short facts which are required to be noticed for disposal of this Writ Petition are as follows:-

The petitioner is the owner of sleeper bus bearing Registration No. NL 01 B 1829. The vehicle was registered before the Regional Transport Office, Kohima at Nagaland State. The petitioner got All India Tourist Vehicle Authorization Certificate and National Permit in Form No.47 from the proper authority of the State Transport Authority at Kohima, Nagaland State on 31.08.2020 to 30.8.2021. The above stated authorisation has been obtained for plying the vehicle in number of States including the State of Tamil Nadu.

2.1. After obtaining All India Tourist Authorisation Certificate and All India Permit as per All India Tourist Vehicles Rules 2021, since this is valid till 26.11.2021 and 26.11.2024, when the vehicle was operating as tourist vehicle, on 04.09.2021, when the vehicle was plying from Chennai to Thisayanvilai with 22 passengers on board, it was intercepted by the fourth respondent Transport Authority. Though the driver of the vehicle has produced the copy of the Authorisation, Permit, Insurance Certificate etc., the respondent has not accepted the same and gone to an extent of issuing a Check Slip, whereby, the respondent has stated that the vehicle was used as a state carriage vehicle by issuing tickets carrying nine passengers, by this act it misused the permit condition, hence, the vehicle is banned until the payment of the tax is made. Accordingly, the vehicle has been seized and has been kept in the custody of the third respondent.

3.Aggrieved over the same and against the impugned Check slip, the present Writ Petition has been filed with the aforesaid prayer.

4.The learned counsel appearing for the petitioner having reiterated the above stated would submit that, since the petitioner is having All India Tourist Vehicle Authorization Certificate as well as National Permit, within the meaning of the Rules referred to above, there is no necessity for paying any tax to the local State and this has been specifically made in the rule, when that being so, the third respondent is not justified in demanding the tax under Tamil Nadu Motor Vehicle Taxation Act or Rules made thereunder, therefore, the respondents may be directed to release the vehicle.

5.Heard the learned Standing Counsel for the Central Government for 1st respondent and the learned Government Counsel appearing for other respondents.

6. In this context, a similar issue came up for consideration before my Court on 17.08.2021, in W.P.(MD)No.14641 of 2021, in the matter of R. Bhavani Vs Union of India, Ministry of Road Transport and Highways, New Delhi and others, where I have considered the issue raised in this Writ Petition, which was raised therein also in detail and passed the following order.

> ***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."_
> ***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.*

7. Insofar as the present case is concerned, though the vehicle of the petitioner has not been impounded, the Transport authorities demanded or directed the petitioner to make the demanded amount of tax payable to the Tamil Nadu State, even though it is an All India Permit vehicle, without considering the authorisation as well as the permit which was issued under the Central Rules in favour of the petitioner's vehicle.

8. Since the authorisation as well as permit under rule 2 (1)(b) and 2(1) (d) is available with the petitioner, the State authority cannot demand for any tax and this has been decided in the aforesaid case, and therefore, this Court feels that this petitioner would be entitled to get a similar relief, thereby, the impugned order is liable to be interfered with.

9. Accordingly, this Writ Petition is disposed of with the following order:- that the impugned order is quashed, as a sequel, there shall be a direction to the respondents not to demand any tax from the petitioner for the vehicle in question, namely All India Tourist Vehicle with registration number NL 01 B 1829 and since the vehicle was not impounded and the demand now made through the

impugned order, since has been quashed there can be no impediment for the petitioner to ply the vehicle. 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)

vrn/tmg

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,
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,
Virudhunagar, Virudhunagar District.

4.The Motor Vehicle Inspector Grade I,
DTC Office (Enforcement),
Virudhunagar,
Virudhunagar District.

+1 CC to M/s.GP (SR-28834[F] dated 13/09/2021)
+1 CC to M/s.A.SHAJAHAN, Advocate (SR-28728[F] dated 09/09/2021)

W.P.(MD)No.16385 of 2021 and
WMP(MD) Nos.13238 & 13239 of 2021
Dated 09.09.2021

KM(CO)
TR/JGP/SAR-IV(16.09.2021) 5P 7C