IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.2071 of 2021
and
W.M.P.No.2346 of 2021

A.Ramachandran .. Petitioner

Vs.

1. The Transport Commissioner/
State Transport Authority,
Chepauk, Chennai.

2. The Regional Transport Officer,
Tiruvannamalai District,
Tiruvannamalai.

3. The Regional Transport Officer,
Arni. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, for a direction forbearing the respondents from collecting the tax for the quarter commencing from 01.10.2020 to 31.12.2020 with 25% penalty in respect of all the vehicles of the petitioner omni buses.

For Petitioner : Ms.Radha Gopalan

For Respondents: Mr.S.Ravikumar
Special Government Pleader

O R D E R

(The matter is heard through "Video-conferencing/hybrid" mode)

This Writ Petition is filed for a direction forbearing the respondents from collecting the tax for the quarter commencing from 01.10.2020 to 31.12.2020 with 25% penalty in respect of all the vehicles of the petitioner omni buses.

2.According to the petitioner, he is a contract carriage operator operating both All India Permits to ply in all States in India and also contract carriage permits to ply in the State of Tamil Nadu. Due to Covid lock down, the petitioner submitted stoppage reports as per Rule 172 (6) of the Tamil Nadu Motor Vehicle Rules, 1989, informing the respondents about stopping of vehicles in the prescribed form. The petitioner has to state the reasons for not operating the vehicle and inform about the place where the vehicle is stopped. On receipt of said report, the Regional Transport Officer will depute the Motor Vehicle Inspector to verify whether the vehicle was not used and he has to submit a report called Permit Verification Report (PVR) to the Regional Transport Officer, who in turn shall forward the same to the 1st respondent. On receiving the same, the 1st respondent will issue 'Nil Assessment', marking a copy of the same to the Regional Transport Officer, where operator has to pay the tax. Unless and until the Permit Verification Report and the letter of 'Nil Assessment' is received, the operator cannot pay the tax and run the vehicle on road. In the present case, the petitioner sent stoppage reports in respect of all his vehicles and Motor Vehicle Inspector of the Regional Transport Office, Arni, inspected the place where it was stopped and submitted the report to the effect that vehicle was not operated. In the report, the Motor Vehicle Inspector has stated that the vehicle was not operated on the route.

3.The learned counsel appearing for the petitioner submitted that when the petitioner wanted to pay the tax in 'Vahan' website, it was shown that the petitioner has to pay a sum of Rs.3,41,400/- for each vehicle which includes 25% penalty. The learned counsel appearing for the petitioner submitted that unless 'Nil Assessment' report is issued, the petitioner cannot pay the tax and cannot operate the vehicle on the road. The petitioner can pay the tax only in the Vahan website and cannot pay the tax directly to the Regional Transport Office by Demand Draft. The petitioner has not operated the vehicles from 01.10.2020 to 31.12.2020 and he is not liable to pay any tax. The tax payable is only compensatory and not confiscatory. In respect of the petitioner's vehicles, when he checked Vahan website before 'Nil Assessment' was issued, the tax to be paid for the period from 01.04.2020 to 31.12.2020 was shown without penalty and now, after the 'Nil Assessment' report, when the petitioner wanted to pay the tax, he found the tax for the quarter ending from 01.04.2020 to 30.09.2020 was not reflecting and it was showing only the amount of tax to be paid for the period from 01.10.2020 to 31.03.2021, which included penalty of 25%. The learned counsel appearing for the petitioner further submitted that 'Nil Assessment' order dated 29.12.2020 was issued only on 04.01.2021 and before that the petitioner could not pay the taxes from 01.10.2020 to 31.12.2020 and could not operate the vehicle and hence, the petitioner is not liable to pay the taxes as well as penalty and has come out with the present Writ Petition for the relief sought for above.

4.The respondents filed counter affidavit.

5.Mr.S.Ravikumar, learned Special Government Pleader appearing for the respondents submitted that the Government issued G.O.(D).No.616 Home (Transport I) Department dated 14.05.2020, extending the time for payment of tax till 30.06.2020. Aggrieved with the G.O., the Tamil Nadu Omni Bus owners' Association, in which the petitioner is also a member, filed W.P.No.8071 of 2020 to quash the said G.O and direct the respondents to accept the tax as and when they resume the service of operation of the buses. Initially, this Court granted interim stay. While the Writ Petition was pending, the 1st respondent issued circular No.16/2020 dated 22.06.2020, instructing the Regional Transport Officers and other Subordinate Officers to accept stoppage report from the operators and condone the delay if any and also make necessary 'Nil Assessment' of taxes for non-operation period for all the Transport vehicles. Recording the instruction of the 1st respondent, this Court disposed of the Writ Petition, holding that payment of penalty does not arise. In view of order of this Court, petitioner sent stoppage report in respect of all his vehicles and Motor Vehicle Inspector of Regional Transport Office, Arni was also deputed to inspect the place where the vehicles were stopped. After verification by the Motor Vehicle Inspector, the report was sent to the 1st respondent that vehicles were not operated from 01.04.2020 to 30.09.2020. Accepting the said report, the 1st respondent ordered 'Nil Assessment' of taxes for all the Omni buses of the petitioner for the period from 01.04.2020 to 30.09.2020. On receipt of 'Nil Assessment' order from the 1st respondent, the 3rd respondent issued 'Nil Assessment' to the petitioner on 04.01.2021. The petitioner has not followed the legal provisions under the Tamil Nadu Motor Vehicle Rules 1989 and so all the Omni buses of the petitioner are not considered to be under stoppage. In the mean while, the Government issued G.O.(D)No.1385 Home (Transport I) Department dated 24.11.2020 and extended time for payment of taxes till 31.12.2020 by making it clear, that this will be the last extension for payment of taxes. The petitioner did not pay the taxes and also not submitted stoppage report. Due to the bifurcation of Tiruvannamalai Regional Transport Office and upgrading Unit Office functioned at Arni as Regional Transport Office, Arni, there was some administrative and technical problem in uploading the 'Nil Assessment' and tax payable by operators. The learned Special Government Pleader contended that the 'Nil Assessment' order was personally served on the petitioner on 29.12.2020 and petitioner could have paid taxes on 30.12.2020 to Arni Regional Transport Office and prayed for dismissal of the Writ Petition.

6.Heard the learned counsel appearing for the petitioner as well as the learned Special Government Pleader appearing for the respondents and perused the entire materials available on record.

7.The issue to be decided in the present Writ Petition is whether the petitioner is liable to pay tax with 25% penalty for the quarter commencing from 01.10.2020 to 31.12.2020.

8.From the materials placed before this Court as well as the contention of the learned counsel for the petitioner and learned Special Government Pleader appearing for the respondents, it is seen that contract carriage operator has to pay the tax fixed by the authorities and then only they can operate the vehicles. If vehicles are operated without payment of taxes, it is illegal and action will be taken against the operators. Due to the improvement of technology, the taxes payable by an operator is uploaded in the Vagan website. The operator cannot pay the taxes directly to the Regional Transport Office even by way of DD. Further, without paying taxes, he cannot operate the vehicle. When an operator is not plying the vehicle, he has to submit stoppage report as per Rule 172 (6) as per the forms prescribed. The operator has to mention the period for which the vehicle is not operated and where the vehicles are stopped. On receipt of such a report from the Motor Vehicles Inspector deputed by Regional Transport Officer, the Regional Transport Officer shall inspect and forward the Permit Verification Report along with the permit and other documents to the 1st respondent. On verification of all the documents submitted by Regional Transport Officer, the 1st respondent issues 'Nil Assessment' report and forwards the same to the concerned Regional Transport Office where the permit holder has to pay the taxes. On receipt of such order, the Regional Transport Officer uploads in the Vagan website the tax payable by permit holders. Then only, the permit holder can pay the taxes through Vagan website and he cannot pay the taxes directly to the Regional Transport Office. This is the admitted procedure and there is no dispute about this procedure. The fact that an operator can pay the taxes only through Vagan website is not disputed by the respondents.

9.In the present case, the petitioner has given stoppage report as per Rule 172 (6) of the Tamil Nadu Motor Vehicles Rules for the period from 01.06.2020 to 30.09.2020. On receipt of the said report, the Regional Transport Officer, Tiruvannamalai, deputed Motor Vehicle Inspector who inspected the vehicle at the parked place and gave Permit Verification Report, after receiving permit and other documents from the petitioner. The Motor Vehicle Inspector also took sworn affidavit from the petitioner to the effect that the vehicles are not operated from 01.06.2020 to 30.09.2020. After such verification, the Regional Transport Officer forwarded the report on 12.11.2020 to the 1st respondent. The 1st respondent did not take immediate action on the report received by him from the concerned Regional Transport Officer, but only after 1½ months, issued 'Nil Assessment' report dated 29.12.2020 on 04.01.2021. In the mean time, Arni has been bifurcated from Tiruvannamalai Regional Transport Office and Unit Office functioned at Arni has been upgraded as the Regional Transport Office, Arni/the 3rd respondent. On receipt of the 'Nil Assessment' order from the 1st respondent, the 3rd respondent issued 'Nil Assessment' only on 04.01.2021 and uploaded the same in the Vagan website. These dates and events are not in dispute. The contention of the petitioner that when he verified in the Vagan website, it was shown that the petitioner has to pay the taxes from 01.06.2020 to 30.09.2020 and no penalty was mentioned therein. On 04.01.2021, the period from 01.06.2020 to 30.09.2020 was deleted and taxes payable from 01.10.2020 only was mentioned. The respondents have not denied this contention that earlier no penalty was mentioned in the Vagan website. In view of the 1st respondent issuing 'Nil Assessment' dated 29.12.2020 and 3rd respondent uploading the same only on 04.01.2021, the contention of the learned counsel appearing for the petitioner that petitioner could not operate the vehicle from 01.10.2020 to 31.12.2020 and hence he is not liable to pay the taxes with penalty for the said period has considerable force and is acceptable.

10.When the Writ Petition was heard, the learned Special Government Pleader submitted that due to administrative and technical problem, 'Nil Assessment' order was physically served on 29.12.2020 to the petitioner and petitioner could have very well paid the taxes on 30.12.2020 or 31.12.2020, within the time limit fixed by the Government. These contentions of the learned Special Government Pleader are not in the counter affidavit filed by the respondents. Further, the respondents have not produced any document to show that 'Nil Assessment' was served on the petitioner on 29.12.2020 itself and petitioner ought to have paid the taxes directly either on 30.12.2020 or 31.12.2020 is without merits. The 'Nil Assessment' was uploaded in the Vagan website only on 04.01.2021. Due to the delay of the respondents in issuing 'Nil Assessment', the petitioner contended that he did not operate the vehicles from 01.10.2020 to 31.12.2020. It is pertinent to note that it is not the case of the respondents that the petitioner, without paying the tax, was operating his vehicles from 01.10.2020. In view of the above materials, the petitioner is entitled to the relief sought for in the Writ Petition and the Writ Petition is ordered accordingly as prayed for.

For the above reason, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Transport Commissioner/
State Transport Authority,
Chepauk, Chennai.

2. The Regional Transport Officer,
Tiruvannamalai District,
Tiruvannamalai.

3. The Regional Transport Officer,
Arni.

+1cc to M/s.S.Radha Gopalan, Advocate, S.R.No.14441

W.P.No.2071 of 2021

RSI(CO)
SU(11/03/2022)