IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 23-02-2022

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.3683 of 2022

V.Kannan ... Petitioner

-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 Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 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 petitioner's vehicle bearing Registration No. KA 03 AK 6666 forthwith.

For Petitioner : Mr.A.Ganesan

For Respondents : Mr.S.Ravichandran, AGP

ORDER

The prayer sought for in herein is for a writ of mandamus, directing the respondents 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 petitioner's vehicle bearing Registration No. KA 03 AK 6666 forthwith.

2. The petitioner is running a all India permit for tourist purpose operating the same throughout the State of Karnataka in respect of vehicle bearing Registration No. KA 51 AK 6666. The said permit is valid up to 09.02.2027 issued by the Karnataka State Transport Authority at Bangalore.

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

4. In respect of the All India Permit vehicle, the State of Tamil Nadu 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 the Tamil Nadu State and accordingly ply the vehicle for the said period. The validity of the said Government Order has already been upheld by this Court.

5. It is the further case of the petitioner that, the Tamil Nadu Government, enacted the Act 13 of 2012 amending the Tamil Nadu Motor Vehicle Taxation Act, 1974. The Ninth schedule of the said Act reads that clause (b) maxi cab in respect of which, permit is granted under Section 8 of the Motor Vehicles Act, 1988 (i) if the temporary licence is for a period not exceeding 7 days which is Rs.75/- per seat entry (ii) if the temporary licence is for a period exceeding 7 days but not exceeding 30 days would be Rs.160/- per seat entry and (iii) if the temporary licence is for for the period exceeding 30 days but not exceeding 90 days which is Rs.450/- per seat entry.

6. Though the said amendment gives a choice or option to the operator to pay the tax, according to the period for which the All India Tourist permit vehicle is going to run or being plied in the State of Tamil Nadu, the respondents forced to pay the 7 days tax than the tax collected from the petitioner exceed the one quarter tax for 90 days. Though the petitioner prepared to pay one month or one quarter tax, the respondents are not accepting the same.

7. Therefore, in order to give a direction to the respondents to accept the tax as per the period chosen by the petitioner either 7 days or 30 days or 90 days as the case may be, he has filed the present writ petition.

8. Heard Mr.A.Ganesan learned counsel appearing for the petitioner who would submit that, the said issue raised in this writ petition has already been raised in W.P.No.24128 of 2021 in the matter of C.Ramu v. The Motor Vehicles Inspector, Krishnagiri District and another, where this Court after having considered the issue raised therein which is similar to that of the present issue, has passed a detailed order permitting the petitioner therein to pay the tax as per his willingness either for 7 days or 30 days or 90 days as the case may be.

9. Relying upon the said Judgment, the learned counsel appearing for the petitioner seeks indulgence of this Court in the present writ petition also, to issue a similar direction.

10. I have heard Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondents who would submit that, since already the issue has been considered and a detailed order has been passed by this Court in the Judgment referred to above, following the same, an order can be passed in this regard giving option to the petitioner to make the payment as per the Ninth schedule of the said Act and accordingly, the writ petition can be disposed of, he contended.

11. I have considered the said submissions made by both sides and have perused the materials placed before this Court.

12. As has been rightly pointed out by the learned counsel appearing for the petitioner, the issue raised in this writ petition had already been considered in the said W.P.No.24128 of 2021 in C.Ramu's case, by the order, dated 07.12.2021, where I have passed the following order :

> "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.
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> 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:
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> > “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. "

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 Tamil 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."

13. Since the issue raised in this writ petition is similar to that of the issue decided in the said writ petition, I feel that the very same relief can be given to the petitioner herein also.

14. Accordingly, this writ petition is disposed of with the following order :

"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 Tamil Nadu Motor Vehicles Taxation Act, 1974 in respect of his vehicle in KA 03 AK 6666."

15. With this direction, this Writ Petition is ordered accordingly. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(DIGITS)

//True Copy//

Sub Assistant Registrar

TSVN

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. 12794

W.P.No.3683 of 2022

GP (CO)
TE (02/03/2022)