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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.4314 of 2022

V.Shankar ... Petitioner

Vs.

The Motor Vehicles Inspector,
Income Check Post, Zuzuvadi,
Hosur, Krishnagiri District. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondent to accept Motor Vehicles 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 petitioner's vehicle KA-59/-2616, forthwith.

For Petitioner : Mr.K.Hariharan

For Respondent : Mr.S.Ravichandran
Additional Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the respondent to accept Motor Vehicles 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 petitioner's vehicle KA59 2616, forthwith.

2. The petitioner is having All India Tourist Vehicle, for which, All India Permit has already been given and if such All India Tourist Vehicle is to be plied in the State of Tamil Nadu as per the law which is in vogue, tax can be collected for 7 days or 30 days or 90 days as the case may be depending upon the owner of the vehicle to come forward to make the payment.

3. In this context, when the petitioner wanted to pay the tax for the vehicle of the petitioner, which is having All India Permit in respect of vehicle No.KA592616, the same is being refused by the respondent as they insisted only for the payment of tax for one week i.e., 7 days. Therefore, in order

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to permit the petitioner to pay the tax for 30 days, he needs a direction to be issued to the respondent for the said prayer, the present writ petition has been filed.

4. Reiterating the aforestated, Mr.K.Hariharan, learned counsel appearing for the petitioner would submit that, when similar request had come, number of orders have already been passed by this Court, where, directions have been issued to the Transport Authority to collect the tax for 30 days, if the owner of the vehicle comes forward to make such payment.

5. I have heard Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondent, who would submit that, in view of the earlier orders passed by this Court, which have been quoted by the petitioner side, the respondent would consider the request of the petitioner and based on the merits, that would be decided as to whether tax for the longer period more than 7 days i.e., for 30 days can be collected from the petitioner and accordingly, the tax would be collected.

6. I have considered the said submissions made by the learned counsel for both sides and have perused the materials placed before this Court.

7. As rightly pointed out by the learned counsel for the petitioner, the issue raised in this writ petition has already been engaged by this Court in more than one occasion and I had an occasion to consider similar matters, where, one such order cited by the learned counsel for the petitioner is in W.P.No.24128 of 2021 dated 07.12.2021 in the matter of C.Ramu Vs. The Motor Vehicles Inspector, Krishnagiri District and another, where, I have passed the following order:

> “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

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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 (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

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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."

8. In view of the said order passed by this Court, prior to which, some more orders have already been passed on similar circumstances, I am of the view that, the benefit given in those orders can be extended to the petitioner also in the present case.

9. Accordingly, there shall be a direction to the respondent to collect the tax from the petitioner if he comes forward to voluntarily tender the said tax 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 Vehicle Registration No.KA592616.

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10. With this direction, this Writ Petition is ordered accordingly. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Motor Vehicles Inspector,
Income Check Post, Zuzuvadi,
Hosur, Krishnagiri District.

+1cc to Mr.K.Hariharan, Advocate, S.R.No. 13626
+1cc to the Government Pleader, S.R.No. 13394

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