IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Petition Nos.6985 and 6987 of 2022

M.Dwarakesh .. Petitioner in W.P.No.6985 of 2022

P.Subramani .. Petitioner in W.P.No.6987 of 2022

Vs.

1. The Motor Vehicles Inspector (NT)
Multipurpose Check Post
Zuzuvadi, Hosur
Krishnagiri District.

2. The Motor Vehicles Inspector
Bagalur Check Post
Hosur, Krishnagiri District. .. Respondents in both Wps.

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents herein to accept the Motor Vehicles Tax for Tamil Nadu, voluntarily tendered by the petitioners 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 petitioners' vehicles bearing Registration Nos.KA-51D7191 and KA-05AF2754.

In both WPs.
For Petitioner : Mr.A.Ganesan

For R1 and R2 : Mr.U.Baranidharan
Additional Government Pleader

C O M M O N O R D E R

Writ Petitions are filed for a direction to the respondents to accept the Motor Vehicles Tax for Tamil Nadu, voluntarily tendered by the petitioners 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 petitioners' vehicles bearing Registration Nos.KA-51D7191 and KA-05AF2754.

2.By consent of both the learned counsel appearing for the petitioners as well as Mr.U.Baranidharan, the learned Additional Government Pleader, who takes notice for the respondents, the Writ Petitions are taken up for final disposal at the stage of admission itself.

3.The petitioners are Tour Operators having State vide permits and Contract Carriage Maxi Cab permits in respect of the vehicles bearing Registration Nos.KA-51D7191 and KA-05AF2754 issued by Karnataka State Transport Authority, Bangalore. The permit of petitioner in W.P.No.6985 of 2022 is valid up to 04.11.2024. The permit of petitioner in W.P.No.6987 of 2022 is valid up to 10.11.2026. The petitioners used to ply those vehicles in the State of Tamil Nadu by obtaining permission or special permit after payment of tax to the State of Tamil Nadu according to the usage of vehicle in Tamil Nadu. To operate the said vehicles within the State of Tamil Nadu, the petitioners have to pay tax to the Tamil Nadu State Transport Authority. The Government of Tamil Nadu issued G.O.Ms.No.1122, dated 15.07.1992 whereby other State Operators have to pay tax at the rate of 7 days or 30 days or 90 days according to the usage of vehicle in the State of Tamil Nadu. The said Government Order has been upheld by this Court. The Government of Tamil Nadu enacted Act 13 of 2012 amending the Tamil Nadu Motor Vehicles Taxation Act, 1974. As per the Ninth Schedule of the Act, 13 of 2012, the petitioners have option to pay advance tax either for 7 days or 30 days or 90 days to operate the vehicle within the State of Tamil Nadu. While so, the authorities are collecting tax only for 7 days as per the circular of 1st respondent. By this, the petitioners are forced to pay more tax than payable for the quarter. Hence, the petitioners have come out with the present Writ Petitions.

4.The learned counsel appearing for the petitioners submitted that Tour Operators were permitted to pay tax as per their choice either for 7 days or 30 days or 90 days and prayed for allowing both the Writ Petitions.

5.The learned Additional Government Pleader appearing for the respondents submitted that payment of advance tax and entry tax are different. After payment of advance tax of the vehicle which goes out of Tamil Nadu and re-enters, the operator has to pay entry tax and prayed for dismissal of both the Writ Petitions.

6.Heard the learned counsel appearing for the petitioners as well as the learned Additional Government Pleader appearing for the respondents and perused the entire materials on record.

7.A similar issue was considered by the Division Bench of this Court reported in (2016) 4 MLJ 237 [Pondicherry Contract Carriage Owners' Association and others vs. The State of Tamil Nadu and others] and the relevant paragraphs of the said order read as follows:

> “3. Clauses (a), (b) and (c) of the Ninth Schedule to the Act, respectively cover tourist motor cab, tourist maxi cab and omni bus, including sleeper coaches in respect of which permit is granted under Sub-sections (8) or (9) of Section 88 of the Motor Vehicles Act, 1988. The Ninth Schedule, as it stands amended under Tamil Nadu Act No.13 of 2012, read as follows:
>
> "Contract carriages in respect of which temporary licence is issued -
> (a) Tourist motor cab -
>
> (i) If the temporary licence is for a period not exceeding 7 days - Rs.60.00 per entry
> (ii) If the temporary licence is for a period exceeding 7 days but not exceeding 30 days – Rs.180.00 per entry
> (iii) If the temporary licence is for a period exceeding 30 days but not exceeding 90 days – Rs.450.00 per entry
>
> (b) Tourist maxi cab -
> (i) If the temporary licence is for a period not exceeding 7 days - Rs.75.00 per seat per entry
> (ii) If the temporary licence is for a period exceeding 7 days but not exceeding 30 days – Rs.160.00 per seat per entry
>
> (iii) If the temporary licence is for a period exceeding 30 days but not exceeding 90 days – Rs.450.00 per seat per entry
>
> (c) Omni bus including sleeper coach in respect of which permit is granted under sub-section (8) or (9) of section 88 of the Motor Vehicles Act, 1988-
> (i) If the temporary licence is for a period not exceeding 7 days - Rs.600.00 per seat or berth per entry
> (ii) If the temporary licence is for a period exceeding 7 days but not exceeding 30 days – Rs.1500.00 per seat or berth per entry
> (iii) If the temporary licence is for a period exceeding 30 days but not exceeding 90 days

- Rs.3500.00 per seat or berth per entry."
.. ..
.. ..

14. Though it is contended by Mr.AL.Somayaji, learned Advocate General that the object of the levy was to tax multiple trips made on the basis of a single licence and that same cannot be construed as a penalty, the said argument cannot stand in the light of settled principles. As pointed out by Mr.M.Srinivasan,J (as he then was) in V.Swaminathan & Others v. Motor Vehicle Inspector (W.P.No.10879 of 1992 etc. batch dated 04.12.1992], 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 on the only ground that the vehicle has gone out of the State once or twice and entered the State again during that period. The learned Judge also pointed out in paragraph 9 of his decision that once tax is paid for a particular period, the owner of the vehicle is entitled to enter the State of Tamil Nadu as many times as he wants during that period. Therefore, after issuing a temporary licence for a contract carriage for a period of seven days, it is not open to the State to levy tax on the basis that multiple entries are made during the period.
.. ..
.. ..

56. Therefore, in fine, we are of the considered view that the challenge to the expression "per entry" indicated in the second column of the Ninth Schedule relating to the contract carriages in respect of which temporary licence is issued, insofar as omni buses covered by Clause (c) of the Ninth Schedule are concerned, has to be sustained.

57. Accordingly, the writ petitions are allowed and the expression "per entry" appearing along with the rate of tax indicated in the second column of the Ninth Schedule to the Tamil Nadu Motor Vehicles Taxation Act, 1974, as against Clause (c) therein covering contract carriages of omni buses, is declared ultra vires and unconstitutional. There will be no order as to costs. Consequently, connected M.Ps. are closed.”

8.Following the above said order of the Division Bench of this Court, this Court passed the following orders in the respective Writ Petitions.

(i) Order dated 21.12.2020 made in W.P.No.17658 of 2016 [N.Sivabakkiam vs. The State Transport Authority, Chepauk, Chennai-600 005];

> "3.It would necessarily follow as a natural consequence of the aforesaid authoritative pronouncement which holds the field that once the petitioner has remitted the entire amount of tax due for the specified period and holds valid permit, the respondent cannot require the petitioner to pay further amount as tax for every entry of the said omni bus into the State of Tamil Nadu till the end of that period, and there shall be an order of restraint against the respondent in that regard."

(ii) Order dated 07.12.2021 made in W.P.No.24128 of 2021 [C.Ramu vs. The Motor Vehicles Inspector (NT), Zuzuvadi Check Post, Hosur, Krishnagiri District and another];

> "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."

(iii) Order dated 09.02.2021 made in W.P.No.190 of 2020 [S.C.Venkatesan vs. The Motor Vehicles Inspector, Incoming Check Post, Athibele, Zuzuwadi, Krishnagiri District and another];

> "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 license 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. .. ..
>
> 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.
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> 8. .. ..
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> 9.On the basis of the discussion as above, a mandamus, as sought for is issued. This Writ Petition is allowed.....

9.From the materials on record and the order of the Division Bench of this Court reported in (2016) 4 MLJ 237 [Pondicherry Contract Carriage Owners' Association and others vs. The State of Tamil Nadu and others] and the orders of the learned Single Judge following the said order of the Division Bench of this Court, it is seen that the issue of payment of advance tax by Tourist Operator who had an option either for 7 days or 30 days or 90 days is no longer res integra. This issue has been considered by the Division Bench of this Court in paragraph Nos.3, 14, 56 and 57 and that the said order is squarely applicable to the facts and circumstances of the present case. In view of the same, the respondents are directed to collect tax from the petitioners in advance for 7 days or 30 days or 90 days, for use in Tamil Nadu, in accordance with Ninth Schedule of the Tamil Nadu Motor Vehicles Taxation Act 1974, in respect of petitioners' vehicles bearing Registration Nos.KA-51D7191 and KA-05AF2754 respectively.

10.With the above direction, both the Writ Petitions stand allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kj

To

1. The Motor Vehicles Inspector (NT)
   Multipurpose Check Post
   Zuzuvadi, Hosur
   Krishnagiri District.

2. The Motor Vehicles Inspector
   Bagalur Check Post
   Hosur
   Krishnagiri District.

+1cc to the Government Pleader, S.R.No.20331

W.P.Nos.6985 and 6987 of 2022

SSD(CO)
SU(04/04/2022)