IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.7268 & 7271 of 2022

1.K.Kiran Kumar ...Petitioner in W.P.No.7268 of 2022

2.C.Ramu ...Petitioner in W.P.No.7271 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 W.Ps

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue 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 Nos. KA 51D 2688, KA 03 AK 6676 and KA 51 AG 5355 respectively.

For petitioners (in both W.Ps) : Mr.A.Ganesan

For Respondents (in both W.Ps) : Mr.G.Nanmaran Special Government Pleader

COMMON ORDER

The petitioners had filed this petition seeking direction to 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 Nos. KA 51D 2688, KA 03 AK 6676 and KA 51 AG 5355.

2. The petitioners are having an All India Permit Tourist Vehicle bearing Registration Nos. KA 51D 2688, KA 03 AK 6676 and KA 51 AG 5355. That the said vehicles are to be plied in the State of Tamil Nadu. Under the provisions of Tamil Nadu Motor Vehicles Taxation Act, 1974, especially under Schedule IX, they have to pay tax either for 7 days or for 30 days or for 90 days as the case may be and depending upon the number of days, if the tax is paid, the slab for paying the tax also gets varied.

3. In this context, it was an attempt made by the petitioners to pay the tax for 30 days or more. However, the respondents insisted only to pay tax for 7 days and not for 30 days.

4. Such kind of refusal to pay the tax for 7 days or 30 days or 90 days as the case may be, if the petitioner comes forward voluntarily to make a payment for the purpose of plying the vehicle in the State of Tamil Nadu, according to the petitioner, is unlawful and unjustifiable. Therefore, the learned counsel for the petitioner seeks indulgence of this Court for issuance of Writ of Mandamus as he relied upon the earlier order passed by this Court on similar circumstances in the matter of C.Ramu Vs. The Motor Vehicles Inspector (NT) and another in W.P.No.24128 of 2021 dated 07.12.2021.

5. Heard Mr.G.Nanmaran, learned Special Government Pleader appearing for the respondents, who would submit that, in view of the earlier orders passed by this Court, especially the order referred above by the petitioner side, the request of the petitioner would be considered in the same line. Accordingly, these writ petitions can be disposed of, he contended.

6. This Court, considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

7. Insofar as the issue raised in these writ petitions is concerned, it is no more res integra as number of orders on similar circumstances have been passed by this Court.

8. One such order is the said case in C.Ramu Vs. The Motor Vehicles Inspector (NT) and another (cited supra), where, this Court has passed the following orders :

> "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.
>
> 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 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.
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> 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 2 https://www.mhc.tn.gov.in/judis/ W.P. No.5751 of 2021 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 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 no order as to costs."

9. In view of the said order having been passed, following which, number of orders have been passed, subsequently also, this Court inclined to dispose of these writ petitions in the same line, following the said judgment.

10.Accordingly, these writ petitions are disposed of with the following orders:

(i) 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 their vehicles in KA 51D 2688, KA 03 AK 6676 and KA 51 AG 5355.

11.Accordingly, these writ petitions are disposed of with the aforesaid direction.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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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 Government Pleader SR. Nos.20623, 20622

W.P.No.7268 & 7271 of 2022

GPL (CO)
PR (18/04/2022)