IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NOS.9566 & 9569 OF 2022

Manjunath
... Petitioner in WP.No.9566 of 2022

M.N.Chandrashekar
... Petitioner in WP.No.9569 of 2022

Vs

The Motor Vehicles Inspector,
Incoming Check Post, Zuzuvadi,
Hosur, Krishnagiri District.
... Respondent in both WPs

Prayer in WP.No.9566/2022: 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 Tamilnadu, voluntarily tendered by the petitioner in advance for 7 days or 30 days or 90 days use in Tamilnadu in accordance with Ninth Schedule of the Motor Vehicles Taxation Act, 1974, in respect of petitioner's vehicle KA-51/A-4135, forthwith.

Prayer in WP.No.9569/2022: 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 Tamilnadu, voluntarily tendered by the petitioner in advance for 7 days or 30 days or 90 days use in Tamilnadu in accordance with Ninth Schedule of the Motor Vehicles Taxation Act, 1974, in respect of petitioner's vehicle KA-42/A-1315, forthwith.

In both WPs
For Petitioner : Mr.K.Hariharan
For Respondent : Mr.M.Muthusamy
Government Advocate

COMMON ORDER

These petitioners are having All India Permit Tourist Vehicles with the Registration Nos.KA-51/A-4135 and KA-42/A-1315 respectively.

2. Though they are having All India Permit, when they want to ply the vehicle in the Tamil Nadu State, to pay the tax either for 7 days or 30 days or 90 days as the case may be depending upon the desire of the vehicle owner to ply the vehicle on temporary basis within the State of Tamil Nadu.

3. In this context, it is the case of the petitioners that, when they want to ply the vehicles for 7 days, for which, if they have to pay tax for 7 days at the rate or slab made in this regard by the concerned legislation of the State, the respondent Transport Authority insisted the petitioners to pay the tax for either 30 days or 90 days, therefore, seeking a direction to the respondent to permit the petitioners to pay the tax for the period they desire either for 7 days or 30 days or 90 days as the case may be as per the slab fixed in the Schedule, the petitioners have filed these writ petitions.

4. Heard Mr.K.Hariharan, learned counsel appearing for the petitioners and Mr.M.Muthusamy, learned Government Advocate for the respondent.

5. The issue raised in these writ petitions is no more res integra as number of such plea raised by various All India Permit Owners to pay tax according to their desire has been considered in number of cases and orders were passed, where, directions were given to the respondent Transport Authorities therein.

6. In this context, I had an occasion to consider a similar writ petition in W.P.No.24128 of 2021, where, in the matter of C.Ramu Vs. The Motor Vehicles Inspector (NT), Zuzuvadi Check Post, Hosur, Krishnagiri District and another, I have passed an order on 07.12.2021. The relevant portion of the order reads thus:

> "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.

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 Tami Nadu Motor Vehicles Taxation Act, 1974 in respect of his vehicle in KA 51 AG 4346."

7. The issue raised in the present writ petitions also is similar to that of the earlier one decided and following the said decision, number of such orders have been passed, since I

am of the view that, the said benefit can be extended to the present petitioners also with the same terms. Accordingly, these writ petitions are disposed of with the following orders:

> That there shall be a direction to the respondent to collect the tax from the petitioners who come 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-51/A-4135 and KA-42/A-1315.

8. With these directions, both the Writ Petitions are ordered accordingly. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Sgl

To

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

+1cc to the Government Pleader, S.R.No.26961, 26959
+1cc to Mr.K.Hariharan, Advocate S.R.No.27085(15/06/2022)

W.P.Nos.9566 & 9569 of 2022

GMR(CO)
PM/22/04/2022