IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.4046 of 2023

Rajini Baskaran ... Petitioner

v.

1.The Motor Vehicles Inspector,
Gopalapuram Check Post,
Pollachi,
Coimbatore.

2.The Regional Transport Officer,
Pollachi,
Coimbatore District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records of the 2nd respondent relating to the order in Proc.R.No.26016/B1/2020 dated 31.12.2010 rejecting the application for refund of motor vehicle tax and to quash the same, consequently direct the 2nd respondent to refund the motor vehicle tax for the petitioner's vehicles as applied for.

For Petitioner : Mr.K.Hariharan

For Respondents : Mr.S.Balamurugan
Government Advocate

ORDER

The short question that arises for consideration is as to whether the Motor Vehicle Tax paid by the petitioner for the quarter 30.06.2020 and 30.09.2020 during the lock down due to COVID in respect of the vehicle registered at Pondicherry under Tamil Nadu Motor Vehicle Taxation Act, 1974 (hereinafter referred to as "Act") is eligible for refund in terms of Section 13 of the Act in view of the admitted non-use of the vehicle during the entirety of the above period.

2. The learned counsel for the petitioner would submit that the petitioner is a Tour Operator in Pondicherry and Tamil Nadu and has All India Contract Carriage Omni Bus permit issued by the State Transport Authority, Pondicherry and plies its vehicles on tour in Tamil Nadu. It paid tax under the Act, which provides for levy of tax on every motor vehicle used or kept/ left for use. During the month of February and March 2020, the petitioner had admittedly paid Motor Vehicle tax for a period of 90 days i.e., 30.06.2020 to 30.09.2020 under Section 3 of the Act However, due to Covid-19 pandemic, the Government of India announced a nationwide lock down commencing with 25.03.2020 resultantly, there was complete non-use of the roads. Under the circumstances, a refund application was filed by the petitioner. The same was rejected by the respondents on the premise that the provision relating to refund in particular Section 13 of the Act only

provides for refund to vehicles registered in Tamil Nadu. However, vehicle of the petitioner having been registered in Pondicherry, the Petitioner is not entitled to refund. Admittedly, the roads were not used by the petitioner, however, refund is denied only on the limited ground that the vehicles were not registered in Tamil Nadu. The relevant portion of the impugned order is extracted below:-

> *"Sec 13 of TNMVT Act 1974 is dealt with the refund of tax for the Tamil Nadu based vehicles in which tax has been paid quarterly, half yearly, and yearly or life time. Thus the request of the petitioner could not be consider under section 13 of Tamil Nadu Motor vehicles Taxation Act 1974. If refund of application of the petitioner is not as per section 13 of Tamil Nadu Motor vehicles Taxation Act 1974, the tax adjustment of such amount for future period also does not arise. Hence the Circular issued by the Transport Commissioner regarding refund of tax in circular number 45/2020 is not applicable to the petitioner's request. Hence, in view of the above reasons the representation of the petitioner could not be complied and the request of the petitioner is not feasible."*
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> *(emphasis supplied)*

2.1.To appreciate the issue, it may be useful to refer to Section 13 of the Tamil Nadu Motor Vehicle Taxation Act, 1974, which reads as under:

> *"13. (1) Where, the tax for any motor vehicle has been paid for any quarter, half-year, year or life time and the vehicle has not been used don any public road during the whole of that quarter, half year, year or the life time or a continuous part thereof not being less than one month, a refund of the tax at such rates as may, from time to time, be notified by the Government, shall be payable I on an application made within such period*

as may be prescribed and) subject to such conditions as may be specified in such notification.

(1-A) Where a life time tax for any motor vehicle has been paid and the registration of the vehicle has been cancelled for any reason whatsoever, or the vehicle has been removed to any place outside the state of Tamil Nadu, on account of transfer of ownership or change of address; a refund of the tax at such rate as may from time to time, by notified by the Government, shall be payable on an application made within such conditions as may be specified in such notification. Provided that in the case of removal of a vehicle to any place outside the state of Tamil Nadu on account of transfer of ownership or change of address, the refund of tax shall be considered only after receipt of proof for having effected such transfer of ownership or change of address.

(2) Where any tax is paid by mistake or in excess, the tax so paid or collected shall, on application made within such period, be refunded to such person in such manner and subject to such conditions as may be prescribed. Refund of tax TAMIL NADU MOTOR VEHICLE TAXATION ACT, 1974 11

(3) Where any penalty is paid or collected (a) by mistake, or (b)in excess of, or (c) When such penalty is not due, the penalty so paid or collected shall be refunded to such person, in such manner and subject to such conditions as may be prescribed.

(4) The amount so refundable in respect of a motor vehicle under this section may, on an application made in this behalf, be adjusted towards the amount of tax payable for such vehicle, under this Act for any subsequent period."

2.1. A reading of the above provision would show that “any” motor vehicle in respect of which tax has been paid for any quarter and half year or life time and the vehicle has not been used on any public road during the whole of that quarter, half year and yearly or lifetime the government shall refund the tax. The distinction that is sought to be made on the basis of the State of registration of the vehicle thereby treating vehicles registered in State of Tamil Nadu different from vehicles registered in other States / Union Territories appears to be artificial. Section 13 of the Act which governs refund of tax for non-use of roads does not make any distinction on the basis of the State of registration of the motor vehicle. The expression “any” has on more than one occasion been found to exclude limitation and to be a word of wide implication and equated with the expression “all”.[1] As a matter of fact, a circular was issued by the Additional Chief Secretary/ Transport Commissioner in Circular No. 45/20 dated 07.11.2020 wherein, it was clarified that Motor Vehicle Taxes remitted for the quarter 30.06.2020 to 30.09.2020 by mistake or in excess which was later realized such taxes shall on request be adjusted towards such motor vehicle tax for the subsequent period. Section 13(2) and (4) of the Act stipulates refund or adjustment for the subsequent period and instructions were

1 Associated Indem Mechanical (P) Ltd. v. W.B. Small Industries Development Corpn. Ltd., (2007) 3 SCC 607
R.G. D'Souza v. Poona Employees Union, (2015) 2 SCC 526
Rajinder Singh v. State of Punjab, (2015) 6 SCC 477

issued to adjust motor vehicle tax paid erroneously for non-use of roads accordingly for the subsequent period. The impugned order of the respondent apart from being contrary to Section 13 of the Act is also contrary to the instruction issued by the Commissioner dated 07.11.2020 which does not make any distinction on the basis of the State of registration of the vehicle but only looks to the factum of non-use of the road to determine the eligibility to claim refund. There is no dispute as to the fact that there was non-use of roads in view of the fact the period during which refund is claimed a lock-down was declared due to COVID-19.

3. In view of the same, the impugned order is set aside inasmuch as the reason for denying refund only in view of the fact that the vehicles were registered outside Tamil Nadu is unsustainable. The respondent shall proceed to consider the petitioner's claim/request of refund and pass orders in accordance with the above observations on the scope of refund under Section 13 of Act and the instruction dated 07.11.2020.

4. For all the above reasons, the writ petition stands allowed on the above

terms. No costs.

01.09.2023

Index: Yes/No
Speaking order/ Non speaking order
Neutral Citation : Yes/No
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To
1.The Motor Vehicles Inspector,
Gopalapuram Check Post,
Pollachi,
Coimbatore.

2.The Regional Transport Officer,
Pollachi,
Coimbatore District.

MOHAMMED SHAFFIQ, J.

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