IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.08.2023

PRONOUNCED ON : 13.12.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.16196 of 2021

A.Viswanathan ... Petitioner

vs

1.Union of India,
Rep.by its Union Territory of Puducherry,
Rep.by Transport Commissioner,
Secretariat, Puducherry.

2.Union of India,
Rep.by its Union Territory of Puducherry,
Rep.by the Regional Transport Officer,
Puducherry.

3.The Senior Divisional Manager,
National Insurance Company Limited,
Puducherry Divisional Office,
No.110, J.N.Street,
Puducherry 605 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in Proceedings No.6251/TD/Tax/2020 dated 01.07.2021 and quash the same and further direct the first respondent to forthwith issue the certificate of stoppage of the petitioner's vehicles bearing Registration Nos.PY-01/CD-7299 having permit to ply on the inter-state route " Pondicherry to Chennai" and the spare bus bearing Registration No.PY-01/CE-7299.

For Petitioner : Mrs.Radha Gopalan
for M/s.G.P.Bhargavi

For R1 & R2 : Mr.V.Vasantha Kumar
Addl.Govt.Pleader.

O R D E R

The petitioner has filed this writ petition to quash the impugned order dated 01.07.2021 of the first respondent in his Proceedings bearing reference No.6251/TD/Tax/2020 dated 01.07.2021 and to further direct the first respondent to forthwith issue a certificate of stoppage for the petitioner's stage carrier bearing Regn.Nos.PY-01/CD-7299 and the spare bus bearing Regn.No.PY-01/CE-7299 having permit to ply on the Inter-state route " from Pondicherry to Chennai"

2. This is the second round of litigation before this Court. Earlier, this petitioner had approached this Court in WP.No.7346 of 2021.

3. The said writ petition was disposed by this Court by its order dated 26.04.2021 with the following observations:-

> *"5. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court directs the first respondent to consider the representation of the petitioner dated 26.02.2021, in the light of G.O.MS.No.17/Tr.Sectt/2020 dated 09.12.2020 and Circular dated 17.12.2020 and pass appropriate orders,on merits, within a period of three weeks from the date of receipt of a copy of this Order".*

4. Pursuant to the aforesaid order, the impugned order has been passed by the first respondent, whereby the request of the petitioner for issuance of certificate of stoppage for the vehicles bearing Regn.No.PY-01-CD-7299 (Inter-State) and PY-01-CE-7299 (Spare Bus) has been declined for the period beyond that 30.09.2020. Relevant portion of the impugned order reads as follows:-

" I am to refer to the Orders of the Hon'ble High Court of Judicature at Madras in WP.No.7346 of 2021 dated 26.04.2021 and to state that the Hon'ble Court has given direction to consider your representation dated 26.02.2021, in the light of G.O.Ms.No.17/Tr.Sectt/2020 dated 09.12.2020 and Circular dated 17.12.2020 and pass appropriate orders, on merits.

2. In this regard, the Orders regarding exemption of M.V.tax issued vide G.O.Ms.No.17/Tr.Sectt/2020 dated 09.12.2020 of the Transport Secretariat, Puducherry are reproduced below:

> *" (ii) First and Second quarters of the financial year 2020-21 ie., from 01.04.2020 to 30.09.2020 with respect to Stage Carriages, Contract Carriages including classified as tourist vehicles and Educational Institution vehicles.*
>
> *Subject to the condition that consideration of applications for stoppage of vehicles received by the Transport Department under Rule 9 of Puducherry Motor Vehicles Taxation Rules, 1967 will be subsumed under the exemption relief provided. And furtherance of stoppage of vehicles beyond 30.09.2020 shall not be entertained on Covid-19 reasons.*

3. In this regard, it is stated that as per the said G.O, your vehicles bearing No.PY-01-CD-7299 (inter-state) and PY-01-CE-7299 (Spare

Bus) have been exempted from the payment of M.V.Tax for the period from 01.04.2020 to 30.09.2020. Accordingly, necessary endorsement/certificate was made by this Department in the respective R.C.Books certifying that Tax exempted vide G.O.Ms.No.17/ Tr.Sectt/2020, dated 09.12.2020 from 01.04.2020 to 30.09.2020 on account of Covid-19 related restriction on the mobility and non-operation of vehicles'. Likewise, the same kind of certificate was issued to other Transport Vehicle Operators. As per the stipulations of the said G.O, the stoppages of vehicles beyond 30.09.2020 are not entertained on Covid-19 reasons. Hence, endorsement/certificate regarding non-operation of vehicles was not given to any of the Transport vehicle operators beyond 30.09.2020.

4. After obtaining the above tax exemption certificate entry, the M.V.Tax in r/o your vehicles bearing No.PY-01-CD-7299 (Inter State) and PY-01-CE-7299 (Spare bus) was paid for the further periods beyond 30.09.2020 ie., from 01.10.2020 to 30.06.2021. In addition, the restrictions made by the Government for the movement of vehicles from 25.03.2020 due to Covid-19 reasons were also lifted later on 19.05.2020 for intra-state buses and 01.11.2020 for inter-state-buses. Hence, the issuance of the certificate of stoppage/non-operation of your said two vehicles beyond 30.09.2020 does not arise in this Case.

5. It is pertinent to mention that for your similar representation submitted on 21.12.2020, a reply on the above facts regarding the inability of issuance of the certificate of stoppage/non-operation of vehicles was communicated to you vide this Department Letter dated 11.01.2021.

6. In this regard, it is stated that in compliance to the orders of the Hon'ble High Court of Judicature at Madras in WP.No.7346 of 2021 dated 26.04.2021, the representations dated 10.11.2020, 26.02.2021 and 14.06.2021 submitted by you has been considered and disposed of accordingly".

5. The impugned order is based on communication dated 11.01.2021 bearing Ref.No.625`/TD/Tax/2020 of the Transport Department, Government of Puducherry. It reads as follows:-

" I am to inform that the Government of Puducherry has exempted from payment of tax from 01.04.2020 to 30.09.2020, for the stage carriage vehicles etc subject to condition that consideration of the application for stoppage of vehicles received by the Transport Department will be subsumed under the exemption relief provided and also furtherance of stoppage of vehicles shall not be entertained beyond 30..09.2020 on Covid-19 reasons (copy of order enclosed). This department has made the endorsements of exemption from payment of tax for the period from 01.04.2020 to 30.09.2020 and the tax paid for the period from 01.10.2020 to 31.12.2020 for the vehicles and already handed over to you.

The Department of Revenue and Disaster Management has restricted the movement of vehicles from 25.03.2020 due to Covid-19 lock down vide Order No.1703/DRDM/ DM/D2/2020., dated 25.03.2020 and later on lifted the restrictions on the same for intra-state *and Inter State buses from 19.05.2020 and 01.11.2020 respectively.*

In view of the above, this Department is unable to issue the Certificate of Stoppage for the vehicles from 01.04.2020 to 31.12.2020 as requested by you".

6. The two vehicles of the petitioner did not ply on account of Covid-19 Pandemic. The insurance for the respective vehicles reportedly expired on 30.10.2020 and 21.07.2020. The petitioner therefore wants to respondents to make suitable endorsements in the RC Book regarding stoppage of vehicles after these vehicles stopped plying on road on account of Covid-19 pandemic to avoid payment of tax.

7. It is in this back ground, communications were addressed by the petitioner to the respondent with a request for issuance of "Certificate of Stoppage" and for a consequential endorsement in the RC books so that the petitioner can get abatement from payment of tax for the subsequent period.

8. Though the insurance for their respective vehicles expired on

30.10.2020 and on 21.07.2020, the petitioner claims to have however paid tax for the last quarter i.e, between 01.10.2020 and 31.12.2021. The learned counsel for the petitioner has stated that the petitioner will not press for refund of the tax already paid for the third quarter of 2020. This submission of the counsel stands recorded. It is the submission of the learned counsel for the petitioner that the procedure followed in Tamilnadu, is not followed in Puducherry for inspection of the vehicle before issuance of "Certificate of Stoppage".

9. On the other hand, the learned Additional Government Pleader (Pondicherry) for the first and second respondents submitted that the petitioner ought to have filed a prior intimation in accordance with law under Rule 9 of the Puducherry Motor Vehicles Taxation Rules, 1967 for issuance of stoppage certificate.

10. The learned Additional Government Pleader (Pondicherry) for first and second respondents referred to the counter filed. The relevant para of the counter is extracted here under :-

" 13. I respectfully submit that the

petitioners vehicles bearing Regn.No.PY-01-CD-7299 (Inter-State) and PY-01-CE-7299 (Spare) have been exempted from payment of tax for the period from 01.04.2020 to 30.09.2020 as per G.O.Ms.No.17/Tr.Sectt/2020, dated 09.12.2020 and accordingly necessary endorsement were made in the respective Registration Certificates. I further submit that as per the stipulations of the said Government Order, the stoppage of vehicles beyond 30.09.2022 are not entertained on Covid-19 reasons. Hence, certificate/endorsement regarding non-operation of vehicles was not given to any of the Transport Vehicle Operators beyond 30.09.2020.

14. I respectfully submit that after obtaining the above said tax exemption certificate entry, the petitioner herein had paid the motor vehicle tax in respect of his above said vehicles for further period beyond 30.09.2020 (i.e., for the period from 01.10.2020 to 31.12.2021) and same was also endorsed in the respective registration certificates. I respectfully submit that the Government had lifted the restrictions made from 25.03.2020 for movement of vehicles, due to Covid-19 and allowed for operation of Inter-State buses w.e.f.01.11.2020. I further submit that even after lifting the above restrictions, the petitioner herein, though had paid the motor vehicles tax, had not operated his vehicles and hence, the issuance of certificate of stoppage/non-operation of vehicles beyond 30.09.2020 does not arise and the contention of the petitioner herein is not maintainable. Further, as there is no provision under the said Government Order dated 09.12.2020, no such certificates for the non-co-operation of vehicles beyond 30.09.2020 could be given as requested by the petitioner in his *representation dated 26.02.2021.”*

11. By way of re-joinder, the learned counsel for the petitioner submitted that in the absence of a valid insurance, the question of plying vehicle did not arise as the insurance was not renewed after it expired on 31.12.2020 and 21.07.2020. In this connection, a reference was made to Section 5 of the Puducherry Motor Vehicles Taxation Act, 1967.

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader (Pondichery) for the first and second respondents. I have also perused the provisions of the Puducherry Motor Vehicles Taxation Act, 1967 (hereinafter referred to as the “Act”) and the provisions of Puducherry Motor Vehicles Taxation Rules, 1967 (hereinafter referred to as the “Rules”).

13. Section 3 of the Act is the charging section. Under Section 3

(1) of the Act, the Government may, by notification in the Official Gazette, from time to time, direct that a tax shall be levied on every motor vehicle used or for use in the Union Territory of Puducherry. Under Section 5 of the Act, every registered owner or person having possession or control of a motor vehicle shall, at the time of making payment of the tax, produce before the licensing officer a valid certificate of insurance in respect of the vehicle complying with the requirement of Chapeter XI of the Central Act". Section 5 of the Puducherry Motor Vehicles Taxation Act, 1967, which reads as follows:-

Production of Certificate of Insurance

5. Every registered owner or person having possession or control of a motor vehicle shall, at the time of making payment of the tax, produce before the licensing officer a valid certificate of insurance in respect of the vehicle complying with the requirement of Chapeter XI of the Central Act".

14. Section 13 of the Act is the provision for exemption and reduction from payment of tax. For the aforesaid purpose, notification has to be issued by the Government. This case is not concerned with exemption under Section 13 of the Act.

15. Section 13-A of the Act deals with remission of tax. Under Section 13-A of the Act, the Government may by notification, remit, retrospective, prospective and/or the whole or any part of the tax or penalty or both, payable under the Act and Rules made thereunder such remission of tax can be both retrospective.

16. Both Exemption and Remission under the respective provisions are to be in accordance with the notification to be issued by the Government. There is no the provision under the Act for any other mode for exemption from payment of tax.

17. Under section 19 (1) of the Act, the Government has powers to make Rules. It is under this provision the Puducherry Motor Vehicles Taxation Rules, 1967 has been framed by the Government of Puducherry.

18. Rule 9 of the Motor Vehicles Taxation Rules, 1967, contemplates submission of stoppage report by a registered owner of

motor vehicle when not in use.

19. Rule 9 of Puducherry Motor Vehicle Taxation Rules, 1967 reads as follows:

> *" Every registered owner of the motor vehicle kept within Pondicherry shall send a stoppage report to the Licensing Officer concerned whenever the vehicle is not put on use and the tax due is not desired to be paid within the prescribed period. Such stoppage report shall be sent to the Licensing Officer within three days of the date of stoppage of the motor vehicle.*

20. As per Rule 9 of the Motor Vehicles Taxation Rules, 1967, where a registered owner of a Motor Vehicle kept within Pondicherry does not intend put on use such vehicle and desires to not to pay tax within the prescribed period, he shall send a stoppage report to the licensing officer concerned. Such stoppage report is to be sent to the licensing authority within 3 days of the date of stoppage of the Motor

Vehicle.

21. Rule 9 of the Motor Vehicles Taxation Rules, 1967 is intended to exempt an owner of a registered vehicle from payment of tax due under the Act. It is an independent power under the Puducherry Motor Vehicles Taxation Rules, 1967 not specifically traceable to grant Exemption and Remission under Sections 13 and 13 A of the aforesaid Act although its impact is same on an assessee.

22. The Government has itself exempted Registered Owner from payment of tax as mentioned above by Notification in G.O.Ms.No.17/Tr.Sectt/2020 dated 9.12.2020 due to outbreak of Covid-19 Pandemic.

23. Stage Carriages, Contract Carriages including those classified as Tourist and Vehicle belonging to Educational Institutions were also exempted from payment of Motor Vehicles Tax for the 1st and 2nd quarters of the financial year 2020-21, i.e from 1.4.2020 to 30.9.2020.

24. G.O.Ms.No.17/Tr.Sectt/2020 dated 9.12.2020 of the Government of Puducherry dated 9.12.2020 stipulated that application received for stoppage of vehicles received by the Transport Department under Rule 9 of the Rules will be subsumed under the exemption. G.O.Ms.No.17/Tr.Sectt/2020 dated 09.12.2020 also clarified that stoppage of vehicles beyond 30.9.2020 shall not be entertained on account of Covid 19 reasons.

25. In this case, the insurance for the respective vehicles reportedly expired on 13.10.2020 and 21.7.2020. This was during the period when the country was still under intermittent lock down due to outbreak of Covid 19 pandemic. Transportation being essential service provided, the transporters were allowed to operate their vehicles. However, use of such vehicles for transportation was permissable only if both insuance and tax was paid.

26. As per Section 5 of the Act, without an insurance cover,

question of either plying the registered vehicle or paying Motor Vehicles Tax does not arise.

27. Production of a valid and subsisting certificate of insurance is also a *sine qua non* for payment of tax under Section 5 of the Act. If the vehicle was not covered by a valid insurance policy, question of payment of tax does not arise. If the insurance was valid and subsisting and yet tax is not paid, the vehicle can be subject to penalty under Section 9 of the Act.

28. Fact remains that, the petitioner has not renewed the insurance for the period thereafter, though has paid the tax for the 3rd quarter ending on 31.12.2020. If the vehicle was found plying without renewal of insurance or payment of tax, it is liable to be seized under Section 10 of the Act. There are no records to show that the petitioner has put to these two vehicles to use during the 3rd quarter of 2020-21 or thereafter.

29. The procedure contemplated in Rule 9 of sending a stoppage report within 3 days from the date of stoppage of the motor vehicle to the licensing officer concerned whenever the vehicle is not put on use and the tax is not desired to be paid within the prescribed period is to be construed to be only directory and not mandatory under the peculiar facts and circumstances of case as the petitioner has not renewed the insurance cover.

30. In this case, failure to file stoppage report as contemplated under Rule 9 of the Rules therefore cannot be fatal for grant of relief in the form of exemption/remission under Rule 9 of the Motor Vehicles Taxation Rules, 1967, as procedures are nothing but hand maids of justice and not mistress of law. Although, the petitioner has been negligent in not complying with the requirements of Rule 9 of the Rules, the substantial benefit of Rule 9 of the aforesaid Rules cannot be denied to the petitioner as the petitioner could not have used the vehicle without renewal of the insurance.

31. Since these vehicles were not in use in absence of renewal of insurance, the petitioner could have neither paid tax nor plyed the vehicle. Therefore, substantial benefit of Rule 9 of the Motor Vehicles Taxation Rules, 1967 cannot be denied to the petitioner.

32. In view of the above, impugned order is quashed and this writ petition is allowed by directing the first respondent to grant relief to the petitioner under Rule 9 of thee Motor Vehicles Taxation Rules, 1967. This exercise shall be carried out within a period of two weeks from the date of receipt of a copy of this order. No costs.

13.12.2023

Index : Yes/No
Neutral citation : Yes/No
vv/kkd

To

1.The Transport Commissioner,
Union Territory of Puducherry,
Secretariat, Puducherry.

2. The the Regional Transport Officer,
Union Territory of Puducherry,
Puducherry.

3.The Senior Divisional Manager,
National Insurance Company Limited,
Puducherry Divisional Office,
No.110, J.N.Street,
Puducherry 605 001.

C.SARAVANAN, J.

kkd

Pre-delivery Order in
W.P.No.16196 of 2021

13.12.2023