IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.21838 of 2011
and M.P.Nos.1 & 2 of 2011

B.Ramalingam ... Petitioner

Vs.

1. The Special Secretary to
Government (Transport),
Government of Puducherry,
Puducherry.

2. The Licensing Officer,
Transport Department,
Puducherry. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent in Motor Vehicles Taxation Appeal No.11/Tr.Sectt/2011 dated 09.08.2011 confirming the order of the second respondent in No.01/TD/TAX-II/2010 dated 25.08.2010 and to quash the same.

For Petitioner : Ms.Radha Gopalan

For Respondents : Mr.V.Vasantha Kumar
Additional Government Pleader (P)

ORDER

This writ petition has been filed challenging the order dated 09.08.2011 passed by the first respondent, thereby dismissing the appeal filed by the petitioner thereby confirming the demand notice dated 25.08.2010 issued by the second respondent.

2. The petitioner is operating vehicle under the permit issued by the STA, Transport Authority, Puducherry. As far as the vehicle bearing No.PY-01-B-7279 is concerned, the petitioner was served with demand notice dated 25.08.2010, thereby directing the petitioner to pay a sum of Rs.44,000/- as tax arrears as on 30.06.2003 with penalty. According to the petitioner, he already paid the tax and applied for stoppage of vehicle and the same was also accepted by the respondents. Aggrieved by the said demand notice, the petitioner preferred an appeal before the first respondent and the same was dismissed. Hence the petitioner filed the present writ petition.

3. The learned counsel appearing for the petitioner submitted that as per Section 9-A of the Pondicherry Motor Vehicle Taxation

(Amendment) Act, 2003 (hereinafter referred to as "the Act"), the petitioner shall be given opportunity of hearing before issuance of demand of arrears if any. Further as per Section 9-A of the Act, the period of limitation is only five years to make demand. In the case on hand, the petitioner was served with demand notice after the period of seven years.

4. The respondents filed counter and the learned Additional Government Pleader (Pondy) submitted that Section 9-A of the Act was inserted by the Pondicherry Motor Vehicle Taxation (Amendment) Act, 2003, which came into effect only from 20.05.2003. Subsequent to the date on which the motor vehicle tax became due for the quarter ending 30.06.2003 i.e., on 01.04.2003. Therefore, it cannot be given retrospective effect to cure the petitioner's default for the period which had already commenced. The time line stipulated under the Act is mandatory and penalty is also prescribed for late payment. Therefore, the petitioner was issued with demand notice and it cannot be said that the issuance of demand notice is illegal and barred by limitation.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. On perusal of the impugned demand notice dated 25.08.2010, revealed that nothing whispered about the issuance of notice or opportunity of hearing to the petitioner. It is relevant to extract the provision under Section 9 of the Act as follows :-

> *"9. When any registered owner or any person who has possession or control of any motor vehicle used or kept for use in Puducherry is in default in making payment of the tax, the licensing officer may direct that, in addition to the amount of arrears, a sum not exceeding the annual tax payable in respect of such vehicle shall be recovered from him by way of penalty:*
>
> *Provided that before giving any such direction, the registered owner or such person shall be given a reasonable opportunity of being heard."*

Accordingly, before issuance of notice the petitioner must be given an opportunity of hearing.

7. Admittedly, the petitioner was not served with any notice before issuance of demand notice. Therefore, it is clear violation of principles of natural justice. It is also relevant to extract the provision under Section 9-A of the Act as follows :-

> *"Recovery of tax which escaped assessment -*
>
> *9-A. Where for any reason, the whole or any portion of the tax which would have been payable in respect of any motor vehicle under this Act for any period has not been paid, the licensing officer may, at any time, within a period of five years from the expiry of the period to which the tax relates and after issuing a notice to the registered owner or the person having the possession or control of the motor vehicle and making such inquiry as he may consider necessary, direct such owner or other person to pay the whole or any portion of such tax, which has not been paid:*
>
> *Provided that in computing the period of five years for the purpose of this section, the period or periods, if any, during which the collection of such tax has been stayed by an order of any court shall be excluded."*

Thus, it is clear that the licensing officer may claim the arrears of tax within a period of five years from the expiry of the period to which the tax relates and after issuing a notice to the registered owner or the person having the possession or control of the motor vehicle and making such inquiry as he may consider necessary, direct such owner or other person to pay the whole or any portion of such tax, which has not been paid.

8. Admittedly, the arrears of tax commenced from 30.06.2003. Though the Act came into force from 20.05.2003, the petitioner must be given opportunity of hearing. Further the respondents should made demand within a period of five years from the expiry of the period to which the tax relates. Therefore, the demand notice itself is barred by limitation and it is clear violation of provision under Section 9-A of the Act.

9. In view of the above discussions, the impugned orders passed by the respondents 1 & 2 cannot be sustained and liable to be quashed. Accordingly, the order dated 09.08.2011, passed by the first respondent in Motor Vehicles Taxation Appeal No.11/Tr.Sectt/2011, and the order dated 25.08.2010 passed by the second respondent in No.01/TD/TAX-II/2010, are hereby quashed.

10. Accordingly, the Writ Petition stands allowed. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

12.08.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order
rts

To

1. The Special Secretary to
Government (Transport),
Government of Puducherry,
Puducherry.

2. The Licensing Officer,
Transport Department,
Puducherry.

G.K.ILANTHIRAIYAN. J,

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