IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.09.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.2713 of 2024 &
W.M.P.No.2989 of 2024

M/s.PNK SRT Travels,
Rep. by its Partner K.Sivaraj,
Son of P.N.Krishnasamy Gounder,
No.372, Dharapuram Road,
Tirupur - 641 604. ... Petitioner

Vs.

1.The State Transport Authoirty,
Chepauk,
Chennai - 600 005.

2.The Joint Commissioner (Rules),
Office of the Transport Commissioner,
Chepauk, Chennai - 600 005.

3.The Regional Transport Officer,
Regional Transport Office,
Tiruppur (North),
Tiruppur. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in R.No.35965/A3/2022, dated 18.12.2023 and quash the same and direct the respondents to accept the surrender applications dated 29.12.2021 and 31.03.2022 for surrendering the petitioner's permits in respect of the Vehicles bearing registration No.TN-39-7878, TN-39-BE-7997, and TN-39-BF-7777, and issue Nil Tax clearance certificate for the periods from 01.10.2021 to 30.09.2022 for the aforesaid vehicles.

For Petitioner : Mr.S.Sarath Kumar

For Respondents : Mr.P.Balathandayutham
Special Government Pleader

ORDER

This writ petition has been filed seeking to quash the order dated 18.12.2023 and to direct the respondents to accept the surrender applications dated 29.12.2021 and 31.03.2022 concerning the permits of the petitioner's vehicles with registration numbers TN-39-BE-7878, TN-39-BE-7997, and TN-39-BF-7777, and to issue Nil Tax Clearance Certificates for the period from 01.10.2021 to 30.09.2022 for these vehicles.

2. The case of the petitioner is that the petitioner owns three contract carriage vehicles bearing registration numbers TN-39-BE-7878, TN-39-BE-7997, and TN-39-BF-7777. The permits for the first two vehicles were valid until 10.09.2022 and until 17.12.2024 for the third vehicle. The petitioner submitted an application for the surrender of the permit for vehicle TN-39-BF-7777 on 29.12.2021. For the other two vehicles, TN-39-BE-7878 and TN-

39-BE-7997, the applications for surrender were submitted on 31.03.2022. However, these applications remain pending without any consideration by the first respondent.

3. During the COVID-19 pandemic, the Government granted an exemption from the payment of tax up to 30.09.2021 through a notification dated 22.09.2021. Although the State Government allowed vehicles to operate at full capacity from 23.10.2021, intermittent restrictions were imposed due to resurgences of COVID-19. As a result, the petitioner could not operate the vehicles at full capacity and applied for permission to stop operating the vehicles under Rule 172(6) of the Tamil Nadu Motor Vehicles Rules, 1989, in conjunction with Rules 254 and 255, after paying the prescribed fees. These stoppage applications were accepted by the authorities. The third respondent, through proceedings dated 18.03.2022, inspected the vehicles and confirmed that they had not been operated from 01.10.2021 to 28.03.2022. Nonetheless, the second respondent, by proceedings dated 08.04.2022, stated that the petitioner's request for a waiver of tax would only be considered for the period from 01.04.2020 to 30.09.2021.

4. The further case of the petitioner is that the petitioner submitted stoppage applications every 20 days from 01.10.2021 to 30.09.2022, along with the prescribed fees, which were duly received by the first respondent. However, after more than six and a half months, the respondent rejected the petitioner's claim on 08.04.2022, stating that there was no provision under the Tamil Nadu Motor Vehicles Act, 1989, for granting such relief and imposed a penalty for the period from 01.10.2021 to 30.09.2022. Aggrieved by the said order the petitioner filed W.P.No.10906 of 2022. This Court, by order dated 13.06.2022, set aside the order dated 08.04.2022, as it had been passed without considering the petitioner's surrender applications and remitted the matter for fresh consideration. Following this, the second respondent, by proceedings dated 12.08.2022, stated that the petitioner had not paid the tax specified in column No.6 and therefore, a tax clearance certificate could not be issued. Again the petitioner challenged the order dated 12.08.2022 by filing W.P.No.24343 of 2022, seeking to quash the order dated 12.08.2022 and direct the respondents to consider the surrender applications and issue a Nil Tax clearance certificate. This Court, by order dated 13.07.2023, set aside the order dated 12.08.2022 and remitted the matter back to the authorities for a final decision. Despite this, the first respondent passed the impugned order dated 18.12.2023, rejecting the petitioner's claim for acceptance of the surrender applications and issuance

of Nil Tax Clearance Certificates without proper consideration. Hence, this writ petition has been filed seeking the relief stated above.

5. The learned counsel for the petitioner submits that the fitness certificates for the petitioner's vehicles expired in 2020. Furthermore, the permits for the first two vehicles lapsed in 2022, and the permit for the third vehicle will expire in December 2024. It is further submitted that following an application to stop the vehicles, the third respondent, through proceedings dated 18.03.2022, confirmed that all three vehicles had not been operated from 01.10.2021 to 28.03.2022. The learned counsel also contend that the petitioner submitted applications for the surrender of the permits on 29.12.2021 and 31.03.2022. Despite this, the surrender applications remain pending and have not progressed. The learned counsel argues that although this Court had issued directions in earlier proceedings, these directions did not address the expiration of the fitness certificates or the pending surrender applications. Consequently, the impugned order was passed without considering these aspects. Furthermore, if the vehicles were left idle, it would deteriorate and become unfit for future use. Therefore, the learned counsel prays for the impugned order to be set aside and a nil tax certificate to be issued.

6. *Per contra*, the learned Special Government Pleader appearing for the respondents would submit that, in the present case, until the arrears are cleared, including any outstanding amounts up to the date of the surrender application, the application for surrender cannot be considered. He would further contend that all dues must be settled before the application for surrender can be processed. He would also submit that there is no provision for a waiver of tax for the period in question. He would further argue that the purpose of the inspection conducted by the third respondent was to verify whether the vehicles were operated and to determine whether the permits should continue or be cancelled. Therefore, under these circumstances, the impugned order was issued on the basis that unless arrears are paid up to date, the application for surrender cannot be processed. Hence, the learned Special Government prayed for dismissal of the writ petition.

7. I have given due consideration to the submissions made by the learned counsel for the petitioner and the learned Special Government appearing for the respondents.

8. The primary issue to be resolved in this matter is whether the petitioner is liable to pay tax under Section 3 of the Tamil Nadu Motor Vehicles Taxation Act, 1974, up to the date of surrender of the permits and, if applicable, until the payment of any arrears. At this juncture, it would be useful to refer Section 3 of the Tamil Nadu Motor Vehicles Taxation Act, 1974: -

> "Subject to the provisions of sub-section (2), tax shall be levied on every motor vehicle used or kept for use in the State of Tamil Nadu at the rate specified for such vehicle in the First Schedule, the Second Schedule, the Third Schedule, or the Fifth Schedule, as applicable."

A perusal of Section 3 of the Tamil Nadu Motor Vehicles Taxation Act, 1974, it could be seen that the tax applies to motor vehicles that are either used or kept for use within the State of Tamil Nadu. The applicable tax rate is determined based on the vehicle's category as specified in one of the relevant schedules.

9. The primary question, however, is whether the vehicles in question were actually in use during the relevant period. According to the petitioner's counsel, the vehicles were not in use, as evidenced by the expiration of their

fitness certificates and the submission of stoppage and surrender applications. On the other hand, the learned Special Government Pleader argues that the vehicles were kept in use and therefore subject to tax.

10. To resolve this issue, it is necessary to verify whether the vehicles were actually operational. A vehicle cannot be legally operated if its fitness certificate has expired, regardless of whether it has a valid permit. The fitness certificate ensures that the vehicle meets safety and environmental standards, which is critical for road safety. In this case, the fitness certificates for the vehicles expired on 01.08.2020, 31.07.2020, and 02.09.2020. According to Section 56 of the Motor Vehicles Act, 1988, and Rule 62 of the Tamil Nadu Motor Vehicles Rules, 1989, a valid fitness certificate is required for a vehicle to be legally used on public roads. Since these certificates were not renewed, the vehicles could not have been legally operated after these dates. The argument by the learned Special Government Pleader that the vehicles were used despite the expired fitness certificates is not supported by evidence. Just having valid permits does not prove that the vehicles were in use if the fitness certificates had expired. Therefore, the respondents' claim that the vehicles were operational is not consistent with the legal requirement for a valid fitness certificate.

11. The petitioner's stoppage applications, submitted as per Rule 172(6) of the Tamil Nadu Motor Vehicles Rules, 1989, were accepted. The inspection report dated 18.03.2022 confirms that the vehicles were not in use from 01.10.2021 to 28.03.2022. Furthermore, the petitioner submitted stoppage applications periodically until 05.09.2022 for all three vehicles. An inspection conducted by the third respondent corroborates the petitioner's claim that the vehicles were not in use up to the date of surrender application. The inspection report confirms:

- For the first two vehicles, viz., TN-39-BE-7878 and TN-39-BE-7997, the non-use period extended up to 28.03.2022.
- For the third vehicle viz., TN-39-BF-7777, the non-use period extended up to 31.12.2021.

In view of the above, the vehicles were not in use; therefore, no tax can be imposed for the period when the vehicles were non-operational, as stipulated under Section 3 of the Tamil Nadu Motor Vehicles Taxation Act, 1974. The third respondent also acknowledged that the petitioner's vehicles were kept off the road, and thus, no tax or penalty can be levied or demanded for the period in which the vehicles were not in use. Furthermore, it is pertinent to note the petitioner's contention that if the vehicles are parked idle without operation, they will become completely dilapidated and unfit for future use, rendering them unsellable. This situation has arisen due to the failure to accept the surrender applications and issue a nil assessment tax clearance certificate when the vehicles were not in use.

12. Therefore, based on the aforementioned considerations, the impugned order dated 18.12.2023 is hereby set aside. The petitioner's applications for surrender should be duly processed, and a Nil Tax clearance certificate should be issued for the period from 01.10.2021 to 30.09.2022 for the concerned vehicles.

13. Accordingly, the writ petition is allowed. No costs. Connected miscellaneous petition is closed.

06.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
r n s

KRISHNAN RAMASAMY.J.,
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