

(2002) 02 MAD CK 0165

In the Madras High Court

Case No : Writ Petition No. 807 and W.M.P. No. 1083 of 2001

D.P. Sathik Deen

APPELLANT

Vs

The Regional Transport Officer and Others

RESPONDENT

Date of Decision : 12-02-2002

Acts Referred:

Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 13

Citation : AIR 2002 Mad 399 : (2002) 1 MLJ 704

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : N. Gopalakrishnan, for the Appellant; P. Sanjay Ramaswamy, G.P., for the Respondent

Final Decision : Allowed

Judgement

A. Kulasekaran, J.—The petitioner has filed the above writ petition seeking for a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent made in R. No. 19804/D2/99, dated 28-2-2000 and quash the same and direct the respondents to refund the Motor Vehicles Tax for the period from 23-9-1997 to 23-10-1997 in respect of the vehicle bearing Registration No. TN-60/ 5765.

2. Heard both sides. The petitioner is the owner of the vehicle bearing Registration No. TN-50/5765 covered by contract carriage omni bus permit issued by the 3rd respondent. The petitioner has paid taxes for the said vehicle for the quarter 30-9-1997 and 31-12-1997. The said vehicle met with an accident on 23-9-1997 and the Motor Vehicle Inspector, Grade II, Perambalur had inspected the vehicle on the same day and issued C F X Notice cancelling the fitness certificate for the said vehicle and the vehicle was stopped from 23-9-1997 to 23-10-1997. The petitioner has filed an application for refund of the tax, which was rejected by the 1st respondent holding that the fee under Rule 172(6) was not remitted, records were not deposited and the tax token was belatedly surrendered on 11-12-1997. Aggrieved by the order of the 1st respondent, the petitioner preferred an appeal before the 2nd respondent, who

has rejected the same by his order dated 16-1-1999 on the ground that the appeal is not filed in time. Thereafter, the petitioner has filed a revision before the 3rd respondent against the order of the 2nd respondent, which was also dismissed. Hence, this writ petition.

2A. Mr. Gopalakrishnan, learned counsel appearing for the petitioner argued that the vehicle was off the road during the relevant period. As per Rule 3 of Tamil Nadu Motor Vehicles Tax Rules if any vehicle met with an accident, CFX is issued and stoppage has been verified the vehicle shall not be deemed to be used or kept for use and, therefore, the petitioner is entitled to refund of the tax. The learned counsel further argued that Rule 14 of the Taxation Rules is not mandatory and Rule 172(6) of the Tamil Nadu Motor Vehicles Act ought not to have been relied upon by the respondents while rejecting the claim of the petitioner.

3. Mr. Sanjay Ramaswamy, learned Government Advocate appearing on behalf of the respondents argued that the records of the vehicle and the stoppage report were not submitted by the petitioner within seven days from the date of stoppage of the vehicle. The stoppage report has been submitted to the RTO, Periyakulam only on 26-11-1997 and the tax licence of the vehicle was surrendered only on 11-12-1997. The petitioner has belatedly filed an appeal against the order of the 1st respondent which was rightly rejected by the 2nd respondent and the order passed by the 2nd respondent was also confirmed by the 3rd respondent. As per the conditions laid down under Rule 14(a) of the Tamil Nadu Motor Vehicle Taxation Rules, 1974, the tax licence of the vehicle should be surrendered to the RTO within seven days from the date of stoppage of the vehicle or within a reasonable period thereafter as provided under Rule 14(b) of the above Rules. The non-use of the vehicle shall be intimated to the RTO concerned within seven days from the date of stoppage of the vehicle or within a reasonable period and thereafter. In this case, the petitioner has intimated and stoppage of the vehicle after 64 days and surrendered the tax and licence of his vehicle after expiry of 79 days from the date of stoppage of the vehicle. Further, the petitioner has not surrendered the registration certificate of the vehicle to the respondent. The abovesaid Act of the petitioner is violative of Rules 14(a) and (b) of the Taxation Rules, 1974. Moreover, no valid reasons for the belated submission of the stoppage report and tax licence were not assigned by the petitioner.

4. The learned counsel for the petitioner relied upon an unreported Judgment of this Court in W. P. Nos. 6115 and 6116 of 1982 (Anjaneya Motor Transport (P) Limited v. The Transport Commissioner, Chepauk, Chennai-5 and others) wherein in Para-3 it has been stated as follows :--

"3. It is not in dispute that motor vehicles tax is compository in character. On the facts, it has been found that the vehicle in question had not plied on the roads beyond 12-4-1980 until 30-6-1980. Therefore, normally the petitioner would be entitled for refund of the proportionate tax. Merely because there has been delay

in the submission of records, the petitioner's right to obtain refund should not be denied. A compassionate view should be taken. In the instant case, the delay is not considerable. No prejudice would be caused to the respondents if the application of the petitioner for refund had been favourably considered because the respondents would be repaying the amount which the petitioner is legitimately entitled to obtain. The finding rendered by the respondents that the period of delay is not reasonable cannot be sustained. The reasonableness of the delay has to be considered with reference to the facts of each case and in the instant case, insofar as there is no denial of the fact that the petitioner's vehicle had not plied beyond 12-4-1980 up to 30-6-1980, the application filed for refund cannot be stated to have been filed beyond reasonable time." The learned counsel for the petitioner has also relied on the decision rendered by this Court in W. P. No. 9551 of 1998 (R. M. Vaithianathan v. The Transport Commissioner, Government of Tamil Nadu, Chepauk, Madras-5 wherein it has been observed thus :--

"..... I had an occasion to consider the nature of the stipulation contained in rule 14 in Rasipuram Union Motor Service (P) Ltd., Rasipuram v. State of Tamil Nadu (W. P. No. 9284 of 1982 dated 9-8-1990), In the said decision, relying upon the earlier judgment of this Court, I have taken the view that rules like rule 14 to make them reasonable and not unconstitutional have to be so read as to indicate merely the relevant and guiding factors in determining the correctness of the claim made for a refund in an individual case and not as disqualifying factors to deny the claim for refund. As a matter of fact, the fact that the vehicle was off the road is not in dispute in the present case"

The learned counsel for the petitioner has also brought to the notice of this Court a decision of this Court made in W. P. No. 11893 of 1997 (Smt. P. Seeniammal v. The Regional Transport Officer, Ramanathapuram and others) wherein it has been held thus :--

"..... The contention is that when it is admitted that the vehicle is off the road, a duty is cast on the respondents to order refund of the tax and surrender of the tax token cannot be a reason for rejecting the refund."

In W. P. No. 3890 of 1991 (S. Loganathan v. The Regional Transport Officer, Madras (South) Madras-32) relied on by the learned counsel for the petitioner, this Court held as follows :--

"..... When the respondent has rightly found that the vehicle was factually and physically off the road till 12-3-1991, as evidenced by the reports of the field staff and as per the materials available on record, the petitioner cannot be made to pay the tax to Tamil Nadu as well as to any other contiguous States opted for in the National permit. When the vehicle was actually garaged since the date of accident on 19-7-1989 and from 22-3-1990 when the vehicle was taken possession, the question of using the vehicle in the contiguous States listed in

the permit would not valid. The impugned demand, in my view, is wholly perverse and unreasonable.,"

5. Now we look into the relevant provisions of the Act :--

"Section 13 of the Tamil Nadu Motor Vehicles Taxation Act. 1974 Refund of Tax :
(1) Where the tax for any motor vehicle has been paid for any quarter, half-year, year or the life time and the vehicle has not been used on any public road during the whole of that quarter, half-year, year or 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 on an application made within such period as may be prescribed and subject to such conditions as may be specified in such notification.

(2) Where any tax is paid by mistake or in excess, the tax so paid or collected shall, on an application made within such period, be refunded to such person in such manner and subject to such conditions as may be prescribed.

Rule 14 of Tamil Nadu Motor Vehicles Taxation Rules

Rule 14.(a) Taxation licence shall be surrendered to the Regional Transport Officer concerned within seven days from the date of stoppage of the vehicle or within a reasonable period thereafter.

(b) The non-use of the vehicle shall be intimated in writing to the Regional Transport Officer concerned by Registered Post with Acknowledgment due together with reasons for such non-use and the details of the place where the vehicle is garaged within seven days from the stoppage of the vehicle or within a reasonable period and shall thereafter surrender :--

(i) in the case of a transport vehicle, the Certificate of Registration and permit; and

(ii) where the documents are seized or retained by any authority, a certificate obtained from the authority which effected the seizure or retention of such documents

Provided that the conditions laid down in this rule shall not apply to a Motor Vehicle belonging to a State Transport Undertaking subject to the condition that it shall produce an undertaking along with an application for refund that it will produce the documents referred to therein before the disposal of the refund application.

Rule 172 (6) of Tamil Nadu Motor Vehicles Rules

(6) It shall be a condition of the permit of every transport vehicle that the vehicle will be so maintained as to be available for the service for which the permit was granted for the entire period of currency of the permit and that the permit is liable to be suspended or cancelled, after due notice to permit holder if the vehicle has not been used for the purpose for which the permit was granted for a

continuous period of more than ten days during the period for which the permit authorise the use of the vehicle on the road, unless the holder of the permit had obtained in writing the prior permission of the Transport Authority to suspend the service of the vehicle for a specific period exceeding ten days.

Provided that no holder of a permit shall ordinarily be granted permission to suspend the service of the vehicle for a continuous period exceeding twenty days at a time :

Provided further that the period may be extended by such further period or periods, as the Transport Authority thinks fit;

Provided also that the holder of a permit shall pay the fee prescribed in the Table under rule 279.

6. In this case, the motor vehicle Inspector, Grade II, Perambalur has inspected the vehicle involved in the accident on the very same day i.e., on 23-9-1997 and issued C F X Notice cancelling the fitness certificate of the vehicle with effect from the said date. The stoppage of the vehicle from 23-9-1997 to 23-10-1997 was also duly verified by the field staff of the respondents. The petitioner has demanded refund of tax for the said period for more than a month of the accident, which is within the purview of Section 13 of the Taxation Act, 1974.

7. The claim made by the petitioner is in terms of the provisions of Rule 15 which also stipulates that no refund of tax shall be permissible for non-use of the vehicle for less than a month. The other grounds canvassed by the learned counsel for the respondents is that the petitioner has not produced the records in terms of Rule 14 of the Act. Rule 14 has to be read as a guiding factor in determining the correctness of the claim made for refund in an individual case and not as a disqualifying factor denying the claim for refund. The relevant documents were not surrendered by the petitioner in time is not a valid reason for rejecting the claim for refund. Admittedly, the vehicle was off the road during the relevant period and C F X notice of cancelling the fitness certificate was issued by the proper authority with effect from the date of accident. In such a case, even non-surrender of token and other records would not disentitle the owner to the refund. Both the appellate and revision any authority erred in rejecting the claim on the technical ground of delay without considering the reasonableness of the claim.. I also concur with the view taken by this Court, cited supra.

8. The respondents relied on Rule 172 (6) and rejected the claim of the petitioner. Considering the circumstances of the case, Rule 172(6) cannot be made applicable in the present case on hand. Hence, the reasons assigned by the respondents for rejecting the claim is also invalid.

Considering the overall circumstances of the case, I set aside the order passed by the respondents and allow this writ petition holding that the petitioner is entitled for refund of the portion of the tax for the period between 23-9-1997 to

23-10-1997. No costs. Consequently, connected WMP is closed.