

(1995) 02 MAD CK 0029

In the Madras High Court

Case No : Writ Petition No. 1036 of 1994

R. Palaniappan

APPELLANT

Vs

The Regional Transport Officer and Others

RESPONDENT

Date of Decision : 08-02-1995

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 87
Motor Vehicles Act, 1988 — Section 13, 3, 7, 88(14)

Citation : (1995) 1 CTC 191 : (1995) 1 LW 424 : (1995) 2 MLJ 206

Hon'ble Judges : Jayasimha Babu, J

Bench : Single Bench

Advocate : N. Gopalakrishnan, for the Appellant; V.P. Sengottuvel, Government Advocate for first Respondent and N. Nazir Ahmed, for 2nd Respondent, for the Respondent

Judgement

Jayasimha Babu, J.—The petitioner is aggrieved by the order of the Regional Transport Officer, Madras 35 dated 28-12-1994 by which

the said authority, by endorsing a copy of that order to the petitioner required him to pay the motor vehicles tax for the goods carrier TSC 2160 in

the sum of Rs. 30,500/- as home tax for the period from 1-10-1992 to 31-12-1993 and composite tax of Rs. 93,250/- payable to other states for

the period from 1-10-89 to 31-3-94. It is not in dispute that this vehicle has a national permit whose validity was upto 25-4-1994. It is also not in

dispute that the previous owner of the vehicle had not applied for authorisation under Rule 17 of the Central Motor Vehicles Rules read with

Section 88 Clause 14 of the Motor Vehicles Act for the period subsequent to 1-4-1990.

2. The petitioner has averred that he purchased the vehicle at an auction held by the second respondent, The Tamil Nadu Industrial Investment

Corporation Limited, which had financed the third respondent, the previous owner of the vehicle who had defaulted in paying the amounts due to

the second respondent-Corporation. The second respondent has averred that it seized the vehicle on 7-9-93 and the vehicle was delivered to the

petitioner on 12-4-1993. The consideration paid by the petitioner to the second respondent for the purchase of the vehicle is said to be Rs.

1,75,000/-.

3. The second respondent has stated that the vehicle had been sold in "as is where is" condition including the outstanding liability if any for payment

of tax in respect of the vehicle and that if there is any liability, the same has to be discharged by the petitioner alone.

4. The learned counsel for the petitioner submitted that the demand for payment for composite tax for the vehicle for the period from 1-4-90 is

patently illegal as the national permit itself ceased to be valid, with the expiry of authorisation which had been granted prior to 1-4-1990. Learned

counsel referred to clause 48 of the Conditions of the permit which specifically states that ""permit shall cease to be valid unless the vehicle is

covered by a valid authorisation issued by the competent authority.

5. The authorisation referred to in the permit is the authorisation referred to in Section 88(14) of the Motor Vehicles Act and Rules 87 of the

Central Motor Vehicles Rules. Section 88(14)(a) empowers the Central Government to make rules regulating authorisation fee payable for the

issue of permit referred to in sub sections (9) and (12) of Section 88 although those sub sections themselves do not refer to any authorisation.

Authorisation"" fee is defined in para (b) of the Explanation following sub section (14) of Section 88 as ""the annual fee not exceeding Rs. 1000/-

which may be charged by the appropriate authority of State to enable the Motor Vehicle covered by the permit referred to sub Sections (9) and

(12) to be used in other States subject to payment of taxes or fees if any levied by the State Government concerned"".

6. Rule 87 of the Central Motor Vehicles Rules prescribes the form in which application for authorisation is to be made namely F.40, and specifies

the fee payable as Rs. 500/-. The form in which the authorisation is to be granted is prescribed by Rule 87 (2) and that is in form No. 47. the

period of validity of the authorisation is specified in sub rule (3) of Rule 87 as not

exceeding one year. Form 46 requires the applicant to furnish information regarding the vehicle and also requires the applicant to enclose bank draft to that application for the amount of the authorisation fee along with the application. Form No. 47 provides for authorising the use of the vehicle in the State to be named subject to the payment of taxes by the permit holder to the respective states.

7. Though the object of levying authorisation fee appears to be merely to ensure collection of additional revenue to the State concerned by way of collecting authorisation fee even after the permit has been issued, nevertheless the validity of the permit is made subject to the authorisation being obtained and this authorisation had to be obtained at intervals of not more than one year. Condition 48 incorporated in the permit also shows that the National permit itself shall cease to be valid unless the vehicle is covered by a valid authorisation issued by the competent authority.

8. If the permit ceases to be valid on account of the holder of the permit not applying for authorisation, the vehicle in respect of which the permit has been issued, cannot be plied in the other States. If the vehicle is not authorised for use in the other States and is not kept for use in any of those States, the need for collecting tax payable to the other states mentioned in the permit does not arise.

9. It has therefore to be held that the petitioner is not liable to pay composite tax for the period subsequent to 1-4-1990 in view of the fact that the vehicle was not covered by a valid authorisation. This however is not to say that if it is found as a matter of fact that the vehicle had been used in the other States the States concerned is not competent to take action as also recover the tax for such use in the State. The authority which issued the permit cannot however assume that the vehicle had been used in the other States contrary to the terms of the permit, when the permit itself had ceased to be effective by reason of the period for which authorisation had been issued having come to an end.

10. As regards the petitioner's contention that the petitioner is not liable to pay the tax even to the State of Tamil Nadu for the vehicle which has kept within the State of Tamil Nadu, for the period subsequent to 1-10-1993, that contention has to be rejected. The vehicle was admittedly in the State of Tamil Nadu and was, as far is known, fit for use on the roads and

apparently was used. It is for the owner of the vehicle to establish that the conditions required to be fulfilled for obtaining exemption or remission of tax, had been fulfilled. The petitioner cannot be exonerated from his legal obligation to pay the tax merely because it is asserted that the vehicle was not in use.

11. Section 3 of the Tamil Nadu Motor Vehicles Taxation Act, levies tax on motor vehicles used or kept for use in the State of Tamil Nadu. In

case of non-user it is open to the owner of the vehicles to apply for remission for which provision is made in Section 13. It is not open to the owner

of the vehicle to withhold payment of tax on the ground of alleged non-user. This Court has held in the case of *Raj Fernandas v. Regional*

Transport Officer, Madras (South) Madras 31 1993 WLR 476 as also in the case of *N. Dharamalingam v. The Regional Transport Officer*

Madras (Central) Madras (ILR 1994-3 Madras 864) that the tax levied u/s 3 is required to be paid and the same cannot be withheld and the

demand for payment of tax levied under that section cannot be regarded as invalid merely on the ground that the owner may be entitled to obtain a

remission u/s 13 of the Act. Tax has to be paid and it is only if the owner is able to make out a case for remission, that a refund may be sought.

12. Learned Counsel for the petitioner in this connection referred to the decision of this Court in the case of *M/s. Gopu Transport, Madras* 83 v.

The Regional Transport Officer, Madras - West Madras 19M W.L.R. 263. The facts of that case are altogether different and the decision is not of

any assistance to the petitioner. In that case the vehicle was found to have remained outside the State, and had not been brought to or used in this

State and consequently the charge u/s 3 was not attracted.

13. In the counter filed by the third respondent, it has been contended that the petitioner has no right to maintain the petition, as no demand has

been raised against the petitioner. This stand of the third respondent is clearly unsustainable and has to be rejected. Section 7 of the Motor

Vehicles Taxation Act, 1974 clearly provides inter alia that the person succeeding to the ownership of the vehicle, will be liable to pay arrears of

tax in respect of that vehicle. The petitioner being the purchaser of the vehicle is affected by the impugned demand and is entitled to challenge

the same.

14. In the result, this writ petition is allowed in part. The third respondent shall recompute the amount of tax due in respect of this vehicle confining the demand for composite tax to the period upto 31-3-1990. The petitioner is liable to pay arrears of tax due to the State of Tamil Nadu from 1-10-1992 from which date the tax admittedly has remained unpaid.

15. The impugned order is therefore set aside to the extent indicated, with liberty to the respondents to pass fresh order in accordance with law and in accordance with the directions contained in this order.