

(1997) 05 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 16033 of 1990

Abdul Rauf

APPELLANT

Vs

The Regional Transport Officer and Registering Authority,
Raichur and Another

RESPONDENT

Date of Decision : 30-05-1997

Acts Referred:

Karnataka Motor Vehicles Rules, 1989 — Rule 151
Karnataka Motor Vehicles Taxation Act, 1957 — Section 16, 7
Motor Vehicles Act, 1988 — Section 66

Citation : (1998) 4 KarLJ 71

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri A. Ananda Shetty for Sri C.S.S. Mallappa, for the Appellant; Sri K.M. Shivayogiswamy, High Court Government Pleader, for the Respondent

Judgement

1. Vehicle bearing Registration No. KLN 2464 was originally registered in the State of Kerala. In December, 1989 the petitioner purchased and brought the same to the State of Karnataka. He then made an application to the Regional Transport Officer, Raichur for transfer of ownership in his favour. This application was rejected by the RTO on the ground that the vehicle did not satisfy the requirements of the Rule 151 of the Karnataka Motor Vehicles Rules of 1989. Aggrieved the petitioner filed W.P. No. 31 of 1990 and succeeded in getting a direction against the RTO for registration of the vehicle. Consequently the vehicle was transferred in the name of the petitioner on 1-2-1990. Shortly thereafter the RTO issued a demand notice Annexure-A to the petition, calling upon the petitioner to pay a sum of Rs. 9,030/- on account of the tax payable in respect of the vehicle under the Motor Vehicles Taxation Act of 1957 for the period of 1-12-1989 to 31-1-1990. This demand the petitioner unsuccessfully assailed in an appeal before the Commissioner for Transport at Gulbarga. The Appellate Authority held that the vehicle having been brought into the State of Karnataka in December, 1989 and not being exempted from the payment of tax u/s 16 of

the Motor Vehicles Taxation Act of 1957, the only course open to the petitioner, under the circumstances was to pay the amount of tax claimed and seek refund thereof u/s 7, if the vehicle had not been used during the period in question as alleged by the petitioner. "In the present writ petition the petitioner calls in question the validity of the aforesaid order of the Commissioner as also the demand notice issued by the RTO.

2. Mr. Shetty, learned Counsel for the petitioner strenuously argued that the vehicle in question had not been used during the period of 1-12-1989 to 31-1-1990. He urged that the authorities had by rejecting the request for registration of the vehicle, disabled the petitioner from putting the vehicle on the road for use. The documents concerning the vehicle, argued the learned Counsel had been tendered to the authority which had remained with them, in the absence whereof the petitioner could not have made use of the vehicle. He relied upon Section 66 of the Motor Vehicles Act of 1988 and argued that the petitioner was legally debarred, from bringing the vehicle on the road for use in the absence of a permit and since the permit could not be issued till such time the vehicle was transferred in his name, it must be presumed that the vehicle had not actually remained in use.

3. The essential facts are not in dispute. It is not denied that the vehicle even though registered originally in Kerala was brought to the State of Karnataka in December 1989 by the petitioner, on the basis of the sale in his favour. It is also not in dispute that ever since the day the vehicle has entered the State of Karnataka the same has remained in the custody and control of the petitioner. That being so the liability to pay tax u/s 3 of Karnataka Motor Vehicles Taxation Act of 1957, in respect of any such vehicle cannot be disputed particularly when it is admitted that the vehicle was otherwise suitable for use on road during relevant period. Whether or not the vehicle was actually used is however a pure and simple question of fact which shall have to be enquired into and determined by the Competent Authority. I draw support in this regard from the decision of the Supreme Court in State of Karnataka Vs. K. Gopalakrishna Shenoy and Another, , where their Lordships have held that the State can levy tax on all motor vehicles which are suitably designed for use on road. Explanation to Section 3(1) of the Act it was held contains a deemed provision that as long as the certificate of registration of a motor vehicle is current, the vehicle must be deemed to be suitable for use on roads. The following passage from the decision is in this regard apposite.-

"The inevitable consequence of the Explanation would be that the owner or a person having control or possession of a motor vehicle is statutorily obliged to pay the tax in advance for the motor vehicle as long as the Certificate of Registration is current irrespective of the condition of the vehicle for use on the roads and irrespective of whether the vehicle had a Certificate of Fitness with concurrent validity or not. The Act, however, takes care to see that the owner of a motor vehicle or a person having possession or control of it is not penalised by

payment of tax in advance for a vehicle which had not been actually used during the whole of a period or part of a period for which tax had been paid by him. The Legislative provision in this behalf is to be found in Section 7 of the Taxation Act".

4. Seen in the light of the above, it is difficult for the petitioner to escape his liability to deposit the tax claimed having regard to the fact that the vehicle was roadworthy and had a certificate of registration which was current during the relevant period. His only remedy as rightly observed by the Appellate Authority is to pay the amount of tax demanded and claim refund of the same on proof of the fact that the vehicle had not actually been put to use during the relevant period.

5. Mr. Shetty however argued that deposit of amount of tax demanded and a claim for refund of the same would be an idle formality and an avoidable ritual. According to him the petitioner's case fell within the category of exceptional situation in which the petitioner can claim waiver of the payment of tax even without deposit. He in this regard relied upon the following passage from the judgment of the Supreme Court in the case mentioned earlier:-

"Even if the vehicle was not in a road worthy condition and could not be put to use on the roads without the necessary repairs being carried out, the owner or person having possession or control of a vehicle is enjoined to pay the tax on the vehicle and then seek a refund. Perhaps in exceptional cases where the vehicle has met with a major accident or where it is in need of such extensive repairs that it would be impossible to put the vehicle to use or where the Transport Authorities themselves prohibit the use of the vehicle due to its defective condition and cancel the Certificate of Fitness or suspend it, the person concerned may surrender the Certificate of Registration and other documents like permit etc., and seek the permission of the Transport Authorities to waive the payment of tax on the ground that no proof of non-user was necessary and as such payment of tax on the one hand and an automatic application for refund on the other would be a needless ritualistic formality and if the permission sought for is granted, he need not pay the tax. In all other cases the only course left open is for the person concerned, to pay the tax in advance and thereafter apply to the Authorities and obtain refund of tax after proving that the vehicle was not fit for use on the roads and had in fact not been made use of".

I am not however impressed by this submission. A plain reading of the passage extracted above would show that the same envisages a situation where the vehicle had met with a major accident or required extensive repairs so that without it, it would be impossible for the owner to put it on road for use. The present is however not one such case. The vehicle being admittedly in a road worthy condition, the question as to whether the same was or was not put to use on account of non-registration of the same by the authorities or the absence of a permit in favour of the petitioner shall have to be examined by the authorities u/s 7. Needless to say that it is only if the petitioner proves non-use of the vehicle to the satisfaction of the Competent Authority, there he shall be entitled to an order of refund and not otherwise.

6. In the result this petition fails and is accordingly dismissed reserving liberty for the petitioner to seek refund of the amount of tax demanded from him u/s 7 of the Act after the same is deposited. In the circumstances however there shall be no order as to costs.