

(2017) 01 GUJ CK 0201
In the Gujarat High Court
Case No : 5788 of 2012

ABDUL SAMAD ABDUL HAMID SHAIKH

APPELLANT

Vs

STATE OF GUJARAT

RESPONDENT

Date of Decision : 25-01-2017

Acts Referred:

Constitution of India, Article 226, Article 226 - Power of High Courts to Issue certain writs - Power of High Courts to Issue certain writs
Motor Vehicles Act, 1988, Section 43(2), Section 43(2), Section 2(28), Section 2(28) -
Gujarat Motor Vehicles Tax Act, 1958, — Section 1, Section 3, Section 3(1), Section 4, Section 2, Section 8, Section 4(1)

Citation : (2017) 01 GUJ CK 0201

Hon'ble Judges : M.R. Shah, B.N.Karia

Bench : Division Bench

Advocate : RAMKRISHNA B DAVE

Judgement

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order or direction to quash and set aside the impugned orders of the respondent dated 26.07.2010 and 09.03.2012 by which the appropriate RTO authorities refused to register the vehicle in

question in the name of the petitioner firstly on the ground that the certificate of road worthiness in Form No.22 which was required to be produced from the manufacturer has not been produced and also on the ground that the amount of tax due and payable for the earlier period has not been paid by the petitioner.

2. Facts leading to the present petition in nutshell are as under:

2.1 The dispute is with respect to the vehicle bearing Chassis No.357152 DTZ 4450820 which was a commercial vehicle. It was originally financed by M/s. Tata Motors Finance Limited and purchased by one Hasumatiben Rathwa. Since the original owner Hasmutiben Rathwa defaulted in making payment to the financier,

the financier M/s. Tata Motors Finance Limited repossessed the said vehicle. Subsequently, such vehicle was sold to the petitioner who applied for registration. The RTO authorities raised two objections to register such vehicle viz. that the motor vehicle taxes of such vehicle were not paid and unless a total tax of Rs.2,40,000/was paid the RTO authorities were not inclined to register the vehicle in the name of the petitioner. The second objection was that the petitioner had not produced a certificate of road worthiness in Form No.22. Hence, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India challenging the impugned decision of the RTO Authorities in not registering the aforesaid vehicle in the name of the petitioner, which was refused on the aforesaid two grounds.

3. Shri Ramkrishna Dave, learned Advocate appearing on behalf of the petitioner has vehemently submitted that as such the certificate in Form No.22A was required to be produced by the manufacturer as well as the bodybuilder, provided the vehicle had gone for bodybuilding work outside. It is submitted that in the present case it is not in dispute that there was no bodybuilding work done outside and therefore, the

manufacturer itself issued the certificate of road worthiness, however by mistake it was issued in Form No.22A. It is submitted that in substance both certificate in Form No.22 and Form No.22A are the certificates with respect to road worthiness. Therefore, it is submitted that when the petitioner produced the certificate of road worthiness issued by the manufacturer, the same can be said to have been required compliance. It is submitted that therefore on the aforesaid ground the respondent authority was not justified in denying the registration of the vehicle in the name of the petitioner.

3.1 Now, so far as the demand of tax for the prior period is concerned, it is submitted by Shri Dave, learned Advocate appearing on behalf of the petitioner that firstly for the period during which the financier had repossessed the vehicle, the said financier being a dealer in terms of section 8 of the Motor Vehicles Act was not required to pay any tax in excess of what was prescribed by the Government under first proviso to section 3 of the Gujarat Motor Vehicles Tax Act, 1958 (hereinafter referred to as Act, 1958).

3.2 It is further submitted that in the present case even subsection (2) of section 3 of the Act, 1958 would come into play. It is submitted that admittedly earlier the vehicle was not registered either in the name of Hasumatiben Rathwa or in the name of M/s. Tata Motors Finance Limited. It is submitted that for the first time the application was submitted by the petitioner for registration which came to be refused by the Authorities by impugned order. It is submitted that therefore considering subsection (2) of section 3 of the Act, 1958, the liability to pay the tax would arise only after the application for registration is refused.

3.3 It is submitted that even otherwise on the ground of nonpayment of the dues of tax for the prior period, the registration cannot be refused.

Making above submissions and relying upon the decisions of the Division Bench of this Court in the case of Mahasagar Travels Limited vs. State of Gujarat & Ors. rendered in Special Civil Application No.10050/2011 and in the case of State of Gujarat thro Secretary & Ors. vs. Mono Steels (India) Ltd. & Anr. reported in 2014(35) GHJ 389, it is requested to allow the present petition and grant the reliefs as prayed for.

3.4 It is submitted that pursuant to the interim order dated 10.12.2012 passed by the Division Bench of this Court, on deposit of entire amount of tax demanded i.e. Rs.2,40,000/the vehicle has been registered in the name of the petitioner. It is submitted that therefore once the prayer to set aside the impugned demand is granted and the same is set aside the petitioner shall be entitled to the refund of the aforesaid amount of Rs.2,40,000/-. Therefore, he has requested to pass appropriate order accordingly.

4. Present petition is vehemently opposed by Shri Hardik Vora, learned Assistant Government Pleader appearing on behalf of the RTO authorities. Relying upon subsection (1) of section 4 read with Section 8 of the Act, 1958, it is submitted that once the vehicle was put to use the liability to pay the tax arises. It is submitted that if the financier subsequently repossess the vehicle and the said vehicle was not to be put to use, in that case the financier and/or the concerned person was required to submit appropriate application for nonuse and after processing such an application for the year during which the vehicle is not used the liability to pay the tax for such period will not arise. It is submitted that in the present case after the vehicle was repossessed by the financier, no such application was given. It is submitted that

therefore considering section 4 read with section 8 of the Act, 1958, the liability to pay the RTO tax after the vehicle in question was put to use originally shall commence and continue and considering section 8 of the Act, 1958, subsequent purchaser is liable to pay the dues of the tax to the taxation authorities.

4.1 Now, so far as the reliance placed upon the decisions of the Division Bench of this Court in the case of Mahasagar Travels Limited (Supra) is concerned, it is submitted that on facts the said decision shall not be applicable to the facts of the case on hand. It is submitted that similarly the decision of the Division Bench of this Court in the case of Monosteels (India) (Supra) also shall not be applicable to the facts of the case on hand.

Making above submissions it is requested to dismiss the present petition.

5. Heard learned Advocates appearing for respective parties at length.

At the outset it is required to be noted that as such the petitioner is the subsequent purchaser who has purchased the vehicle in question from the financier. It is not in dispute that the vehicle was owned by M/s. Tata Motors Finance Limited Ltd. which was sold to Hasumatiben by giving the finance. The owner who took the finance did not pay the installments / sale consideration to

M/s. Tata Motors Finance Limited and therefore, the said vehicle was repossessed. The petitioner purchased the said vehicle from M/s. Tata Motors Finance Limited after the same was repossessed from M/s. Tata Motors Finance Limited. That the petitioner submitted the application to register its name in the record / RTO book which came to be rejected on the aforesaid grounds i.e. on the ground that the petitioner had not produced the certificate of the

manufacturer in Form No.22 as well as the amount of Rs.2,40,000/was due and payable and towards the RTO tax.

5.1 Now, so far as the refusal to register the vehicle in the name of the petitioner on the ground that the petitioner had not produced the certificate issued by the manufacturer in Form No.22 is concerned, it is required to be noted that as such the petitioner had produced the certificate of the manufacturer in Form No.22A. Such a certificate was required to show that the vehicle is roadworthy. If the vehicle is sent for bodybuilding work outside the place of the manufacturer, in that case such a certificate is required to be issued in Form No.22A, which is required to be signed and issued by the manufacturer as well as bodybuilder. However, the purpose and object is to see that the certificate of road worthiness is issued. In the present case it is the case on behalf of the petitioner that vehicle in question was never send to bodybuilder for any bodybuilding work outside. Therefore, the certificate of road worthiness in Form No.22 only was required. However, through oversight and by mistake it appears that the petitioner produced the certificate from the manufacturer in Form No.22A, which in substance can be said to be a certificate of road worthiness. Under the circumstances, it can be said that the requirement of producing the certificate of road worthiness has been complied with. Under the circumstances in the facts and circumstances of the case the RTO authority is not justified in refusing to register the vehicle in the name of the petitioner on the aforesaid ground.

5.2 Now, so far as the demand of tax due and payable on the vehicle from the petitioner is concerned, it is the contention on behalf of the petitioner that once the vehicle was repossessed by the financier, such financier will again be considered to be a dealer in terms of Section 8 of

the Act, 1958 and therefore, such a dealer is not required to pay any tax in excess of what was prescribed by the Government under first proviso to section 3 of the Act, 1958. The aforesaid has no substance and cannot be accepted. Once the vehicle was transferred by the financier to another person, in that case considering section 3(1) of the Act, 1958, the liability to pay the tax on such vehicle will arise. Subsection (1) of section 3 provides that there shall be levied and collected on all motor vehicles used or kept for use in the State, a tax at the rates fixed by the State Government, by notification in the Official Gazette. Therefore, the moment the possession of the vehicle was handed over to the purchaser who took the loan from the financier and was put to use the liability to pay the tax arise. Proviso to subsection (1) of section 3 shall be applicable only in a case where the vehicle is kept by a dealer or manufacturer of such vehicles,

for the purpose of trade, there shall be levied and collected annually such amount of tax not exceeding Rs.5000 as the State Government may, by notification in the Official Gazette specify on those motor vehicles only which are permitted to be used on the roads in the manner prescribed by rules made under the Motor Vehicles Act, 1988. Meaning thereby such a dealer / manufacturer is permitted to use the vehicle for limited purpose of repair but not permitted to use on road. Such an eventuality is not there in the present case. Under the circumstances the contention on behalf of the petitioner that for the period during which the financier has repossessed the vehicle, such financier being a dealer in terms of section 8 of the Motor Vehicles Act was not required to pay any tax in excess of what was prescribed by the Government under first proviso to section 3 of the Act, 1958 has no substance and cannot be accepted.

5.3 Now, so far as the liability of the tax to be paid by the petitioner is concerned and the submission on behalf of the petitioner that

considering subsection (2) of section 3 for the period prior to refusal of the certificate of registration, there shall not be any liability is concerned, the aforesaid has no substance. It is required to be noted that considering subsection (1) of section 3 of the Act, 1958, once the vehicle is transferred and put to use the liability to pay the tax arise. If the vehicle is repossessed by the financier subsequently, in that case the remedy available to such financier would be by submitting an appropriate application before the appropriate authority of nonuse of such vehicle and for the period of such nonuse the liability to pay the tax shall not arise. Otherwise the liability to pay the tax continues.

5.4 Section 4(1) of the Act, 1958 provides that the tax is required to be paid in advance by every registered owner, or any person having possession or control, of such motor vehicles. Section 8 of the Act, 1958 provides that if the tax leviable in respect of any motor vehicle remains unpaid by any person liable for the payment thereof, and such person before having paid the tax has transferred the ownership of such vehicle or has ceased to be in possession or control of such vehicle, the person to whom the ownership of the vehicle has been transferred or the person who has possession or control of such vehicle shall also be liable to pay the said tax to the Taxation Authority. Considering the aforesaid provisions it cannot be said that the respondent authority had committed any error and/or acted illegally and/or de hors the provision of the Act, 1958 demanding the tax due on such vehicles.

5.5 Now, so far as the reliance placed upon the decision of the Division Bench of this Court in the case of Mahasagar Travels Ltd. (Supra) is concerned, on considering the facts in the said case, we are of the opinion that the said decision shall not be applicable to the facts of the case on hand. In the case before the Division Bench, the owner

submitted the application for temporary registration and the same was sent to the garage for bodybuilding. As per the provisions of section 43(2) of the Motor

Vehicles Act, 1988, the temporary registration made under the said section shall be valid only for a period not exceeding one month and shall not be renewable. However, considering the proviso where the motor vehicle so registered is a chassis to which a body has not been attached and the same has been detained in the workshop beyond the said period of one month for being fitted with a body or due to any unforeseen circumstances beyond the control of the owner, the period may, on payment of such fees, if any, as may be prescribed by the be extended by such further period or periods as the registering authority or other prescribed authority, as the case may be. In the case before the Division Bench it was found that because of the riots the vehicle was not brought out of the garage / bodybuilder s premises and thereafter when the authority levied the tax for the said period on considering the same as a deemed use, it was held that the authority was not justified. Under the circumstances, on facts the said decision shall not be applicable to the facts of the case on hand. Similarly, the decision of the Division Bench of this Court in the case of Mono Steels (India) Ltd. also shall not be applicable to the facts of the case on hand. In the case before the Division Bench admittedly the subsequent purchaser purchased the vehicle in a public auction as scrap and therefore, considering section 2(28) of the Motor Vehicles Act, 1988, it was held that the Scrap Road Mobile Crane cannot be said to be a motor vehicle inasmuch as it cannot be used on roads by its owners by its own mechanical power and is not meant for transportation on road. Under the circumstances, the said decision also shall not be applicable to the facts of the case on hand.

6. In view of the above and for the reasons stated above, present

Special Civil Application succeeds in part. The impugned order passed by the authority in not registering the vehicle on the ground that the petitioner had not produced the certificate in Form No.22 is hereby quashed and set aside and it is observed and held that as the petitioner had produced the certificate of road worthiness issued by the manufacturer in Form No.22A, in the facts and circumstances of the case, such condition is treated to have been complied with.

Now, so far as the present petition with respect to demand of Rs.2,40,000/which as such the petitioner has subsequently deposited and on such deposit the vehicle is now registered in the name of the petitioner is concerned, for the reasons stated hereinabove, petition is dismissed. Rule is made absolute partly to the aforesaid extent and discharged for the rest.