(2001) 09 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 2339 of 1989

Afzalpurkar Vishwanath APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 25-09-2001

Acts Referred:

Bombay Motor Vehicles Tax Act, 1958 — Section 3(1C), 6, 9(4)
Bombay Motor Vehicles Taxation Rules, 1959 — Rule 12(3), 12(4)
Constitution of India, 1950 — Article 265

Citation : (2002) 2 ALLMR 279 : (2002) 2 BomCR 659 : (2002) 3 MhLj 234

Hon'ble Judges : N.V. Dabholkar, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : P.G. Godhamgaonkar, for the Appellant; P.B. Patil, A.G.P., for the Respondent

Final Decision : Partly Allowed

Judgement

N.V. Dabholkar, J.—The petition challenges Constitutional validity of Rule 12(3) of the Bombay Motor Vehicles Tax Rules, 1958, to the extent it prescribes limitation of six months for claiming refund of life time tax.

2. Petitioner was resident of Aurangabad and he owned a Luna Moped (Two wheeler), which he had purchased on 8-7-1986. It was registered as MFV 6380 by paying tax for one year as per the then scheme of Bombay Motor Vehicles Tax Act, 1958. In the year 1987, respondent No. 1 introduced a scheme by amendment to the said Act. Under the scheme, petitioner deposited one time tax of Luna Moped on 28-7-1987.

On retirement from service with Government of Maharashtra, petitioner shifted his residence from Aurangabad to Hyderabad since his only son is an Advocate practicing at Andhra Pradesh High Court. Petitioner obtained no objection certificate from the office of respondent No. 3 and thereafter registered his Moped at Hyderabad with Registration No. AHS 1982 on 2-7-1988. Petitioner also paid one time tax at Hyderabad.

On 16-7-1988, petitioner applied to respondent No. 3 by registered post A.D. claiming refund of life time tax deposited with it. The same was received by respondent No. 3 on 21-7-1988 (Exhibit C). After reminder dated 25-8-1988, petitioner was replied by respondent No. 3 vide communication dated 9-2-1989. It was informed that refund of the tax in such cases is to be claimed within six months from the date of removal of the motor vehicle to other State as per Rule 12(3) and (4) of the Bombay Motor Vehicle Tax Rules, 1959. Since the application was submitted after expiry of more than six months since the removal of the vehicle outside the jurisdiction of respondent No. 3, the claim for refund could not be entertained. Further communication to respondent No. 2 was also responded with similar reply dated 27-4-1989 (Exhibits E & F) and hence this writ petition challenging the limitation of six months prescribed by Rule 12(3) as also refund of life time tax deposited with respondent No. 3.

3. There is no dispute that Section 9 of the Bombay Motor Vehicles Act, 1958, enables refund of tax in favour of owner of the vehicle where the registered owner surrenders to the taxation authority the certificate of taxation issued in respect of such vehicle declaring that he will not, during the whole or part of the unexpired portion of the period for which tax has been paid, use or keep for use in any public place in the State the motor vehicle from the date specified in the declaration. Rule 12(3) of the Bombay Motor Vehicles Tax Rules, 1959, reads as follows :

"12-Application for refund u/s 9 :

(1)......... ....

(2)......... ....

(3) No application claiming refund shall be entertained if it is made more than six months after the date on which non use is certified, the date of removal of the motor vehicle out of the State or the date of suspension or cancellation of the certificate of registration."

There is also no dispute that vehicle is removed beyond the territory of State of Maharashtra, and, therefore, is entitled to refund. Because in the application dated 16-7-1988, petitioner said that he had shifted his two wheeler vehicle to Hyderabad State in October, 1987, the respondents have taken a view that the application was beyond six months and, therefore, due to limitation prescribed by Rule 12(3), his claim for refund could not be entertained. According to petitioner, he paid the tax under the scheme of one time tax at Hyderabad and got the vehicle re-registered with the local RTO on 2-7-1988 (Exhibit A). Although it is contended in para 4 of the petition that according to the new scheme, the petitioner deposited one time tax of his Luna Moped on 20-7-1987, on reference to copy of registration produced at Exhibit A, it can be seen that the registration was cancelled by RTO, Aurangabad, on 28-7-1987 and that does not seem to be the date on which one time tax was deposited with respondent No. 3. The petition is silent as to the date on which no objection certificate was issued by respondent No. 3.

It is the contention of petitioner that limitation of six months prescribed by Rule 12(3) for the purpose of applying for refund permissible u/s 9 is otiose, of no practical use, because of the scheme of life time tax payment in lump-sum introduced by Section 3(1C) of the Bombay Motor Vehicles Tax Act, 1958 ("The Act" for the sake of brevity). This is because, in case of denial of refund because of such limitation, tax payer after payment of life time tax in one State on shifting vehicle to the territorial jurisdiction of another State will be subjected to double taxation.

In order to appreciate the contention of the petitioner, it is necessary to reproduce certain provisions :

"Section 3(1C)(a): Subject to the provisions of this Act, there shall be levied and collected on all motor cycles and tricycles used or kept for use in the State, one time tax, for the life time of such motor cycles and tricycles.

(i) if registered after the date on which the provisions of this sub-section take effect (hereinafter in this sub-section referred to as "the said date" at the rate specified in Part I of the Second Schedule;

(ii) if already registered before the said date and on which the tax is already paid under Sub-section (1), at the rates, specified in Part II of the Second Schedule;

(iii) if first registered in any other State and thereafter on transfer there of in the State of Maharashtra, a new registration mark is assigned to the same after the said date, then having regard to the month of their first registration in that other State, at the rates specified in Part II of the Second Schedule.

(b)......... ....

(c)......... ...."

The scheme of one time tax for the life of motor cycle and tricycle was introduced by Maharashtra Act 14 of 1987.

"Section 9(4):

Notwithstanding anything contained in Sub-section (1), a person shall be entitled to a refund of the tax as provided in that sub-section if the Taxation Authority is satisfied that --

(a)(i) such person for reasons beyond his control, is not able to surrender the certificate of taxation, and

(ii) the vehicle in respect of which the refund of the tax is being claimed will not be used in any public place during the period for which such refund is claimed.

(b) (i) the vehicles in respect of which the refund of the tax is claimed has not been used in any public place during the period for which such refund is claimed, and

(ii) the application for refund could not be made for reasons beyond his control; provided however that such application is made within such period as may be prescribed."

"Section 9(6) reads as under --

"Notwithstanding anything contained in Sub-section (1), where a tax has been paid under Sub-section (1C), (1D) or (1E) of Section 3, a registered owner shall be entitled to refund of tax at the rates specified in the Second Schedule or as the case may be, Third Schedule in case of,

(a) removal of the motor vehicle to any other State on transfer of ownership or change of address; or

(b) suspension or cancellation of registration of Motor Vehicle on account of scrapping of it due to accident or any other reason : Provided that, the refund of tax shall be granted by the Taxation Authority,

(i) in case of removal of motor vehicle outside the State of Maharashtra on transfer of ownership or on change of address, only on production of sufficient proof of its transfer outside the State of Maharashtra; and (ii) in the case of scrapping of motor vehicle only on production of a certificate from the Insurance Company or any other sufficient documentary evidence that it is beyond repair and cannot be used again."

Section 9(6) was added by Maharashtra Act 2 of 1998 i.e. subsequent to introduction of one time tax for the life time of motor cycle. As can be seen by comparison of Sub-sections (4) and (6) of Section 9, there was no provision in Section 9(4) regarding refund of tax on removal of the vehicle to any other State on transfer pf ownership or the change of address. It can be visualized that such provision was introduced in the year 1998 so as to prevent a tax payer being subjected to double taxation. We would lay special emphasis on proviso (i) which makes it incumbent upon the owner of the vehicle to produce sufficient proof regarding transfer of the vehicle outside the State of Maharashtra before he can claim refund of one time tax for the life time of motor vehicle.

On simple reading of Rule 12(3), it can be seen that in prescribing the limitation for preferring applications for refund, it covers all the contingencies in which refund of tax can be claimed u/s 9 i.e. non use of the vehicle, the date of removal of the motor vehicle out of the State and the date of suspension or cancellation of the certificate of registration. Although petitioner has attacked the provision regarding limitation as being unreasonable due to apprehension of likelihood of double taxation, it cannot be ignored that in a given case, a vehicle owner may claim refund of much longer period by obtaining a certificate regarding non-use. Therefore, keeping some time limit to claim refund of non-use, is necessary in order to avoid false claims of refund for much longer span.

In case of removal of the vehicle out of the State, inbuilt safeguard against double taxation is contained in proviso (i) to Section 9(6), which requires the local RTO to obtain and the owner to provide sufficient proof of its transfer outside the State of Maharashtra. This serves as safeguard against false claims based on mere statement of removal of vehicle outside the State of Maharashtra. There can be no better proof of removal of vehicle outside the State of Maharashtra than a certificate of registration of the said vehicle with the RTO in the State to which the vehicle is taken. Reading Section 9(6) proviso (i) together with Rule 12(3), it can be seen that the two provisions together provide inbuilt safeguard against false claims of refund as also double taxation.

Reading the two provisions together, the limitation of six months wilt have to be computed from the date on which the vehicle is registered with another RTO, beyond the territorial jurisdiction of the State of Maharashtra. Otherwise there may be cases when a vehicle would be removed beyond the State of Maharashtra after claiming refund and being plied in another State without payment of tax with the local RTO of that State.

5. Period of limitation prescribed by Rule 12(3) ought to be computed in the manner interpreted as above, in view of Sub-rule (4) of Rule 12, which reads as follows :

"If the Taxation Authority is satisfied that the motor vehicle in respect of which the refund is claimed is permanently removed out of the State or has ceased to exist, it shall grant refund for the whole of the unexpired portion of the period for which the tax was paid."

The rider of limitation of six months as contained in Rule 12(3) stands relaxed by virtue of proviso (i) to Section 9(6) as also Sub-rule (4) of Rule 12. The limitation will have to be computed from the date of registration of the vehicle in other State, because of proviso (i) to Section 9(6). By virtue of Rule 12(4), it is imperative on the Taxation Authority to pay the refund for the whole of the unexpired portion of the period for which tax is paid, on being satisfied that the motor vehicle is permanently removed out of the State.

Since the petitioner has permanently removed the vehicle outside the State of Maharashtra by registration with Andhra Pradesh (Hyderabad) on 2-7-1988, the tax on the vehicle is chargeable by the Regional Transport Authorities in the State of Maharashtra till 1-7-1988 and by the authorities in the State of Andhra Pradesh from 2-7-1988. The limitation in case of the petitioner''s vehicle, for the purpose of Rule 12(3), will have to be computed from 2-7-1988 i.e. registration with RTO in Andhra Pradesh, which is "sufficient proof of transfer of the vehicle beyond the State of Maharashtra. The application dated 16-7-1988 thus was not beyond limitation.

6. The writ petition is, therefore, partly allowed. The petitioner shall be entitled to refund as per rules, part of "one time tax for the life time" of Luna Moped paid in the office of respondent No. 3, on the basis that vehicle is taken beyond the

territory of State of Maharashtra permanently with effect from 2-7-1988.

Rule is made absolute accordingly with no order as to costs.

