(2014) 10 KL CK 0310

In the High Court Of Kerala

Case No : WP(C). No. 15122 of 2007 (A)

Albin Disouza	APPELLANT
Vs	
Regional Transport Officer	RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0310

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : Sunil Jacob Jose, Advocate for the Appellant; Lilly K.T., Govt. Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner is the owner of a vehicle bearing registration No. KL 13/F 4797. It is the case of the petitioner that on 30.11.2002, the officials of the Forest Range Office, Kannavam Range, seized the vehicle belonging to the petitioner on the allegation that the vehicle was used for commission of an offence under the Forest Act. It is contended that on account of the seizure of the vehicle, the vehicle could not be used thereafter.

2. The grievance in the writ petition is with regard to the refusal of the respondents to grant the petitioner an exemption from payment of tax in respect of the vehicle bearing registration NO. KL 13/F 4797 for the period from 30.11.2002 to 06.02.2007. It is the case of the petitioner that he had purchased the vehicle in 2002 and on 30.11.2002, the vehicle was seized by the Forest officials as noted above. Thereafter, the vehicle continued to be in the custody of the Forest Officials till 06.02.2007. When the petitioner approached the authorities under the Kerala Motor Vehicle Taxation Act for payment of tax in the year 2007, the said authorities refused to accept the tax in respect of the vehicle on the ground that the arrears of tax in respect of the vehicle had not been paid by the petitioner till that date. It was under these circumstances, and aggrieved by the insistence by the authorities under the Kerala Motor Vehicle Taxation Act to pay the tax amounts for a period when the vehicle was in the custody of the

Forest Officials, that the petitioner approached this Court.

3. I have heard Sri. Sunil Jacob Jose, the learned counsel appearing for the petitioner and also the learned Government Pleader appearing on behalf of the respondents.

4. It is the contention of the petitioner that he could not comply with the procedure, with regard to prior intimation, for claiming exemption in terms of Section 5 of the Kerala Motor Vehicle Taxation Act in the instant case, since he could not possibly have known of the seizure of the vehicle and its consequent non-use for the period after 30.11.2002. The petitioner seeks exemption from payment of tax for the period from 01.01.2003 to 06.02.2007 on the strength of the notification SRO. No. 878/75 which contemplated an exemption in respect of the motor vehicle held in the custody of police or other authorities for offences other than non-payment of tax, for the period during which such vehicles are in custody. It is the case of the petitioner that, as the vehicle was in custody from 30.11.2002 to 06.02.2007, and the requirement of furnishing intended non-use declaration could not be complied with in this case, the respondents should have granted the exemption in terms of the aforementioned notification. Attractive though the said contention may appear at first blush, I am of the view that even if the petitioner were to be exempted from the requirement of furnishing a prior intimation showing intended non-use, the same could only be in respect of the quarter covering the date of seizure of the vehicle namely the quarter from 01.10.2002 to 31.12.2002. This is because by 31.12.2002, the petitioner would have already been aware of the seizure of the vehicle and the fact that the vehicle could not be used in the immediately succeeding quarters and he could have easily complied with the requirement of furnishing Form ''G'' declaration of intended non-use for the purposes of claiming exemption in terms of Section 5 of the Kerala Motor Vehicle Taxation Act. The requirement of complying with this procedure has been held to be mandatory by the decision of the Full Bench of this Court in Regional Transport Officer Vs. K.V. Abdurahiman, . Thus, in the absence of compliance with the procedure of furnishing a declaration in Form ''G'', as contemplated under Section 5 of the Kerala Motor Vehicle Taxation Act read with Rule 10 of the Kerala Motor Vehicle Taxation Rules, I am of the view that the petitioner cannot succeed in his claim for exemption from payment of tax for the period from 01.01.2003 to 06.02.2007. It is also necessary to observe that there was nothing preventing the petitioner from actually paying tax due on the vehicle for the said period and then resorting to the procedure for claiming refund of tax paid, as contemplated in Section 6 of the Kerala Motor Vehicle Taxation Act read with Rule 15 of the Kerala Motor Vehicle Taxation Rules, 1975. Thus, in any view of the matter, the petitioner cannot succeed in his claim for exemption from payment of tax for the period in question. Resultantly, I see no merit in the writ petition, the same is accordingly dismissed.