(1987) 02 GUJ CK 0001

In the Gujarat High Court

Case No : Special Civil Application No. 299 of 1987

Babul Parmaji Shah APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 17-02-1987

Acts Referred:

Bombay Motor Vehicles Tax Act, 1958 — Section 14
Bombay Motor Vehicles Taxation Rules, 1959 — Rule 5
Gujarat Carriage of Goods Taxation Act, 1962 — Section 10, 14, 16

Citation : AIR 1988 Guj 37 : (1987) 1 GLR 614

Hon'ble Judges : P.R. Gokulakrishnan, C.J;G.T. Nanavati, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; M.I. Hawa, for the Respondent

Judgement

Gokulakrishnan, C.J.—Rule. Mr. Hawa, the learned Counsel waives service of Rule on behalf of the respondents. With the consent of the learned Counsel for both the sides, this matter was taken up for final hearing to-day.

2. This Special Civil Application is filed by the petitioner for getting the whole proceedings right from the demand of tax by respondent No. 3 from the petitioner vide his letter dated 14-5-1986 quashed and for issuing an appropriate writ, order or direction prohibiting the respondents from recovering any amount by way of tax from the petitioner.

3. Mr. Vyas, the learned Counsel for the petitioner contended that Annexure ''A'' to the Special Civil Application cannot be construed either as an order passed by the Assistant Regional Transport Officer, Palanpur or as a notice issued by him under the provisions of the Gujarat Carriage of Goods Taxation Act, 1962 (hereafter referred to as "the Gujarat Act"). Brief facts of this case relevant for the purpose of appreciating the contentions raised on behalf of the petitioner are as follows. The goods vehicle belonging to the petitioner, which is bearing No. GTF 3838 and which previously bore registration No. RRQ 5107 had a valid permit up to 23-1-1983. The petitioner had intimated to the authority concerned

that the said vehicle was not to be used from 1-4-1980. As per R. 5 of the Bombay Motor Vehicles Tax Rules, 1959 (hereafter referred to as "the Bombay Rules"), a registered owner is required to make a declaration in Form "NT" to the appropriate Taxation Authority along with the certificate of taxation, regarding nonuser of the vehicle. Rule 5 of the said Rules reads as under:

"5. Certificate for non-user : - (1) A registered owner of, or any person who has possession or control of, a motor vehicle, not intending to use or keep for use such vehicle in the State and desiring to be exempted from payment of tax on that account shall, before the expiry of the current period for which the tax on such vehicle has been paid, for which a declaration of non-use as here in provided has been made, make a declaration in Form "NT" to the appropriate Taxation Authority along with the certificate of taxation.

(2) If the Taxation Authority is satisfied that the motor vehicle, in respect of which a declaration in Form "NT" has been made, has not been used or kept for use for the period mentioned in the declaration and for which tax has not been paid or for which a declaration of non-use as herein provided has been made, it shall certify that the motor vehicle has not been used or kept for use for such period.

(3) Notwithstanding anything contained in sub-rules (1) and (2), if such owner or person proves to the satisfaction of the Taxation Authority that the motor vehicle was not used or kept for use during the period for which tax has not been paid, such Taxation Authority may certify that such vehicle has not been used or kept for use during such period."

In this case, it is the say of the department that no such certificate of non-user was issued or a declaration of such non-user was made in respect of the goods vehicle belonging to the petitioner. In such circumstances, the Assistant Regional Transport Officer, Palanpur, acting both under the Bombay Motor Vehicles Tax Act, 1958 (hereinafter referred to as "the Bombay Act") read with the Bombay Rules as well as the Gujarat Act read with the Gujarat Carriage of Goods Taxation Rules, 1962 (hereafter referred to as "the Gujarat Rules"), by a communication dated 13-5-1986 found that the petitioner is liable to pay motor vehicle tax of Rs. 20,250/- and goods tax of Rs. 8046/-, in all totaling Rs. 28,296/-. Having recorded such a finding the Assistant Regional Transport Officer, Palanpur called upon the petitioner to pay up the aforesaid amount of motor vehicle tax, goods tax, penalty amount and amount of interest thereon within seven days from the date of receipt of the said notice. Against this order, the petitioner filed Appeal No. 18 of 1986 before the Director of Transport, Gujarat State, Ahmedabad. The said appeal was, however, dismissed as time barred, by the appellate authority. Being aggrieved by the said order of dismissal, the petitioner has filed the present petition.

4. Mr. Vyas, the learned Counsel appearing for the petitioner submitted that the communication dated 13-5-1986 addressed by the Assistant Regional Transport

Officer; Palanpur is neither an order nor a notice required to be given under the provisions of either the Bombay Act or the Gujarat Act. The learned Counsel further submitted that if it is construed that it is a notice under the Gujarat Act, it has not been given in Form VIII prescribed by R. 10 of the Gujarat Rules. Mr. Hawa, the learned Counsel for the respondents submitted that the appellate authority has rightly dismissed the appeal as time barred; and that the communication, dated 13-5-1986 can be construed as an order of the Assistant R.T.O. Palanpur under the provisions of the Bombay Act. When Mr. Hava was confronted with the failure of the authority concerned in giving a notice under the prescribed form as required by R. 10 of the Gujarat Rules, he has no answer to the same.

5. We have carefully considered the relevant provisions in this case. Section 14 of the Bombay Act reads as under :

"14. (1) Any person, who is aggrieved by any order of a Taxation Authority, may file an appeal before such person or authority, in such manner, within such time, and on payment of such fees, as may be prescribed.

(2) The appeal shall be heard and decided in such manner as may be prescribed"

Section 16 of the Gujarat Act reads as under:

"16. Appeal : - (1) Any operator objecting to a notice of demand served on him under S. 14 may, within thirty days of the service thereof, appeal to the prescribed authority:

Provided that, no appeal shall be entertained unless it is accompanied by proof of the payment of the tax admitted by the appellant to be due and the memorandum of appeal bears a court-fee stamp of the value of five rupees.

(2) Subject to such rules of procedure as may be prescribed, the prescribed authority may, after giving the appellant an opportunity of being heard, pass such orders on the appeal as such authority thinks just and proper."

The communication dated 13-5-1986 levying the tax and penalty under both these Acts was questioned by way of an appeal, admittedly beyond the period of limitation prescribed under S. 14 of the Bombay Act as well as under S. 16 of the Gujarat Act. The communication-dated 13-5-1986 clearly makes out a case for the levy of motor vehicle tax; and this communication can be construed as an order contemplated under the Bombay Act. At this stage, we are not going into the merits of the case. If the said order dated 135-1986 is an order contemplated under the provisions of the Bombay Act, then the appeal preferred under S. 14 of the said Act is definitely beyond the period of limitation. Hence, we are of the view that the appellate authority was right in dismissing the said appeal on the ground of limitation; and having failed before the appellate authority, it is too much for the petitioner herein to prefer this Special Civil application to agitate once over the legality and validity of levy of motor vehicles tax in respect of the said vehicle. To that extent, the petition will have to be dismissed.

6. As regards the levy of goods tax we are convinced by the argument of Mr.Vyas, the learned Counsel for the petitioner that the notice is not given in form No. VIII as prescribed by the Gujarat Rules. R. 10 of the Gujarat Rules states "A notice of demand under S. 14 shall be in Form VIII or in Form VIIIA, as the case may be." In this case, Form No. VIII alone will apply. For the recovery of tax levied under S. 14 of the Gujarat Act, it is necessary that notice in form No. VIII should be given. The communication dated 13-5-1986 cannot, by any stretch of imagination, be construed as a notice in Form No. VIII referred to above. Hence to the extent that the communication dated 13-5-1986 calls upon the petitioner to pay goods tax under the provisions of the Gujarat Act has to be set aside. The respondents are bound to give notice to the petitioner in Form VIII as prescribed by R. 10 of the Gujarat Rules and decide the matter as to the liability of the petitioner herein to pay the goods tax, in accordance with law.

7. For all these reasons, this petition is partly allowed. The impugned order at Annexure ''A'' to the petition in so far as it relates to the demand of goods tax from the petitioner under the Gujarat Act and the Gujarat Rules is quashed and set aside, since no valid notice of demand was served on the petitioner. It is, however, open to the respondents to serve an appropriate notice as provided under the relevant law, on the petitioner and proceed further for the recovery of the said amount of goods tax from the petitioner herein in accordance with law. That part of the impugned order at Annexure ''A'' which relates to the recovery of motor vehicles tax from, the petitioner is confirmed. Rule is made absolute to the above extent only with no order as to costs.

8. Petition partly allowed.

