(1978) 06 KAR CK 0033

In the Karnataka High Court

Case No : Writ Petition No''s. 1149 of 1974 and 148 of 1975

B.V. Subramanya Setty APPELLANT

Vs

Senior Regional Transport Officer and Others RESPONDENT

Date of Decision : 30-06-1978

Acts Referred:

Karnataka Motor Vehicles Taxation Act, 1957 — Section 3 (1), 38 (1)

Citation : (1984) ILR (Kar) 85

Hon'ble Judges : Chandrashekar, C.J;Venkataramiah, J;Srinivasa Iyengar, J

Bench : Full Bench

Advocate : C.S. Shanthamallappa, for the Appellant; M.P. Chandrakantarai Urs, HCGP for R-1 and 2 and S.J. Srinivasan, for R-3, for the Respondent

Judgement

Venkataramiah, J.

The petitioner in Writ Petition No. 1149 of 1974 is the owner of a motor vehicle bearing number MYM 4077. He purchased it from M/s Rajalakshmi Motor Service on 24-10-1973. The certificate of registration of the vehicle. Parts ''A'' and ''B'' of the Stage Carriage Permit which had been obtained in respect of it, and the tax token relating to it had all been surrendered before the Regional Transport Officer on 27-9-1968 by its former owner claiming exemption upto 31-12-1968 from the tax payable under the Karnataka Motor Vehicle Taxation Act, 1957 (hereinafter referred to as the Taxation Act). Subsequent to to 31-12-68 the documents continued to remain in the Office of the Regional Transport Officer. According to the petitioner, the fitness certificate issued in respect of the vehicle had expired on 10-10-1968 and had not been renewed. After the vehicle was transferred to the petitioner, the Regional Transport Officer, Mysore, who was the Licensing Officer under the Taxation Act issued a notice of demand to the petitioner demanding a sum of Rs.28,215/- as the arrears of tax payable in respect of it upto the date of the transfer of the vehicle in his favour. Aggrieved by that notice of demand the petitioner filed an appeal before the Deputy Transport Commissioner, Mysore Division. It was dismissed. Thereafter he filed Writ Petition

No. 1149 of 1974 before this Court questioning the validity of the above notice of demand served on him.

The petitioner in Writ Petition No. 148 of 1975 is the owner of a motor vehicle bearing number MYE 3299 which was being used as a private carrier. According to the petitioner the said vehicle was not in a fit condition to be used as a private carrier since about June 1971. He, therefore, surrendered all the relevant documents of the vehicle required for the purpose of claiming exemption under the Government Notification dated 26-9-1971 issued u/s 16 of the Taxation Act before the Regional Transport Officer, Karwar, and sought exemption from payment of tax from 1-7-1971 to 31-12-1971. Thereafter he intimated on 14-1-1972 that the documents might continue to remain with the Regional Transport Officer and exemption might be granted till 5-12-1973. The certificate of fitness issued in respect of the vehicle had expired. The Regional Transport Officer, however, issued a notice of demand dated 25-7-1974 to the petitioner calling upon him to pay tax of Rs-3,040/- under the taxation Act for the period between 1-1-1972 and 30-11-1973. Against the said notice of demand the petitioner filed an appeal before the Deputy Transport Commissioner, Belgaum. The appeal was allowed in part exempting payment of tax upto 30-6-1972. The petitioner was however called upon to pay tax for the period subsequent to 1-7-1972. Aggrieved by the order passed in the appeal, the petitioner filed Writ Petition No. 148 of 1975.

Both these petitions were referred to a Division Bench by the Single Judge before whom they came up for hearing. When they came up for hearing before the Division Bench, it was noticed that on a common question of law which arose for consideration in these cases, there were conflicting decisions of this Court. The Division Bench, therefore, referred the said question of law to a Full Bench. The question referred to the Full Bench is formulated as follows :-

"Whether the legal fiction under the explanation to sub-section (1) of Section 3 of the Karnataka Motor Vehicles Taxation Act, 1957, that a vehicle shall be deemed to be suitable for use on the road, arises where the registration certificate in respect of a transport vehicle is current, even if the certificate of fitness of that vehicle, is not in force "either on account of its expiry or cancellation?"

The above question arises in the following way. In Writ Petition No. 1149 of 1974 tax is demanded under the Taxation Act on the basis that the vehicle was being used for carrying passengers for hire or reward and in Writ Petition No. 148 of 1975 tax is demanded on the basis that it was a private carrier. Tax in question is levied u/s 3 of the Taxation Act. During the relevant period it stood thus :

"3. Levy of tax. (1) A tax at the rates specified in Part A of the Schedule shall be levied on all motor vehicles suitable for use on roads, kept in the State of Mysore :

Provided that in the case of motor vehicles kept by a dealer in or manufacturer of, such vehicles for "the purposes of trade, the tax shall only be levied and paid by such dealer or manufacturer on vehicles permitted to be used on roads in the manner prescribed by rules made under the Motor Vehicles Act, 1939.

Explanation :- A motor vehicle of which the certificate of registration is current shall, for the purposes of this Act, be deemed to be a vehicle suitable for use on roads."

[sub-sections (2) and (3) are not relevant for the purpose of these cases.]

Part A of the Schedule of the Taxation Act sets out the different rates at which the tax is levied on different kinds of motor vehicles.

The power to levy taxes on motor vehicles suitable for use on roads is conferred on the State Legislature by Entry 57 of List II of the Seventh Schedule to the Constitution which reads :

"57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tram cars subject to the provisions of Entry of List III."

The character of taxes leviable under Entry 57 of List II is compensatory as held by the Supreme Court in The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, . They are levied in lieu of the facilities provided in the shape of roads, bridges, etc- Section 3(1) of the Taxation Act imposes a tax on motor vehicles which may be used on roads in accordance with the rates specified in the Schedule to that Act and it is payable periodically. Section 7 of the Taxation provides, in effect, that if a motor vehicle in respect of which tax Act has been paid for any specified period is not used during the whole of that period or a continuous part thereof not being less than one calendar month, a refund shall be made of such portion of the tax and subject to such conditions as may be prescribed. Section 16 confers the power on the State Government to exempt certain vehicles from taxation or to reduce the taxes payable on them. In fact a notification has been issued by the State Government u/s 16 prescribing the procedure to be followed by a owner of a motor vehicle in order to claim exemption from payment of tax when such vehicle is not being used on roads. An examination of these provisions indicates that the taxes levied under the Taxation Act are really taxes on motor vehicles which are suitable for use on the roads in the State and the taxing authority has to establish that a motor vehicle is suitable for use on roads before levying tax on it.

There is however the Explanation to Section 3(1) of the Taxation Act which provides that a motor vehicle of which the certificate of registration is current shall, for the purposes of the Taxation Act, be deemed to be a vehicle suitable for use on roads. The Explanation which is in the nature of a deeming provision is intended to prevent evasion of the tax imposed by Section 3(1) as observed by this Court in HANUMAN TRANSPORT COMPANY v. TRANSPORTCOMMISSIONER [1965 (2) Mys LJ 465] The Explanation enacts a fiction that every motor vehicle of which the certificate of registration is current, is suitable for use on roads in order to prevent the evasion of tax by owners of motor vehicles. It requires them to pay tax levied u/s 3(1) of the Taxation Act which also reserves them the right to claim refund u/s 7 on proof of non-user of the vehicles as prescribed therein. In such cases the burden of proving non-user on roads is on the owner of the vehicle, who is expected to know all the facts of user or non-user of the vehicle and not on the taxing authority. The above fiction cannot be extended to a motor vehicle whose certificate of registration is not current. In the case of such a vehicle tax will become payable only when it is established by the taxing authority that it was suitable for use during the relevant period.

The contention of the petitioners in these two cases is that since the certificates of fitness issued in respect of the vehicles in question had expired, they should be deemed to have been not validly registered during the relevant period and that therefore the Explanation was not applicable to them. The said contention is based on Section 38(1) of the Motor Vehicles Act, 1939, which reads :

"38. (l) Subject to the provisions of Section 39, a transport vehicle shall not be deemed to be validly registered for the purposes of Section 22, unless it carries a certificate of fitness in Form has set forth in the First Schedule, issued by the prescribed authority, to the effect that the vehicle complies for the time being with all the requirements of Chapter V and the rules made there under. Where the prescribed authority refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in the owner for such refusal."

Section 38(1) makes it obligatory on the part of an owner of a transport vehicle (as defined in the Motor Vehicles Act) to secure a certificate of fitness in respect of such vehicle as it provides that when such vehicle does not carry a certificate of fitness it stall not be deemed to be validly registered for purposes of Section 22 or the Motor Vehicles Act which prohibits the user of such vehicle for the purpose of carrying passengers or goods. A certificate of fitness once issued, subject to Section 38(3) of the Motor Vehicles Act, remains effective for such period, not being in any case more than two years or less thus six months as may be specified in the certificate by the prescribed authority u/s 38(1) of the Motor Vehicles Act [vide Section 38(2) of the Motor Vehicles Act]

The petitioners contend that since the vehicles in question by virtue of Section 38(1) should be deemed to have been not validly registered for the purpose of Section 22 of the Motor Vehicles Act, they should be deemed to have been not validly registered for the purpose of the Explanation to Section 3(1) of the Taxation Act also and that the taxing authority cannot rely upon the Explanation to levy taxes in respect of them.

It is urged on behalf of the respondents that the ''deeming'' provision is Section 38(1) of the Motor Vehicles Act which provides that a transport vehicle shall not be deemed to be. validly registered for purposes of Section 22 of the Motor Vehicles Act unless it carried a certificate of fitness, has to be confined in its application to proceedings under the Motor Vehicles Act only and it cannot affect the operation of the fiction in the Explanation to Section 3(1) of the Taxation Act. In support of the above contention, reliance is placed by the respondents on the decision of this Court in V. NARAYANA REDDY vs. COMMISSIONER FOR TRANSPORT IN MYSORE AMD ANOTHER [1971 (2) MysLJ 319]. The relevant part of the above decision reads :

"The learned counsel urged that the fitness certificate of the vehicle having expired and not renewed and the vehicle in question being a transport vehicle it is deemed not to be validly registered for purposes of Section 22 of the Motor Vehicles Act; by virtue of Section 38 of the said Act, and therefore the certificate of registration should be deemed not current and when the certificate of registration is deemed non-current, the explanation to sub-section (1) of Section 3 is not attracted. According to the learned counsel if the registration of the vehicle for the purposes of Section 22 of the Motor Vehicles Act, is not valid, the vehicle is not suitable for use on roads. Learned counsel relied on certain decisions under the Motor Vehicles Act where it was held that where the fitness certificate of a transport vehicle is not current, it shall not be deemed to be validly registered for the purpose of Section 22 of the Motor Vehicles Act. Section 22 read-with Section 38 of the Motor Vehicles Act prohibits the driving of a transport vehicle unless the vehicle is not only registered but also has a current fitness certificate. This only means that there is a legal prohibition against the use of transport vehicles without a current fitness certificate. Sub-section (1) of Section 3 of the Act refers to the condition of the Motor Vehicle and not the legal requirements that have to be satisfied for plying under the Motor Vehicles Act. By the explanation to sub-section (1) of Section 3 the Legislature, for the purpose of the Act has provided that motor vehicles so long as their certificates of registration are current, shall be deemed suitable for use on roads. The legal fiction created by Section 38 of the Motor Vehicles Act is only for the purpose of Section 22 of that Act and cannot be extended to the Taxation Act. Therefore, we are not able to agree with the contention of the learned counsel that the petitioner''s vehicle should be held unsuitable for use on roads,"

The correctness of the above view is under challenge before us. In the above decision this Court has proceeded on the assumption that registration of motor vehicles for purposes of the Taxation Act, is different from the registration of a motor vehicle for purposes of the Motor Vehicles Act. That assumption is not, in our opinion, correct. There are no provisions relating to the issue of a certificate of registration of a motor vehicle under the Taxation Act. Section 2(j) of the Taxation Act treats the Motor Vehicles Act as a cognate Act by declaring that words and expressions used, but not defined in it, shall have the meaning assigned to them in the Motor Vehicles Act. The fiction embodied in the Explanation to Section 3(1) of the Taxation Act comes into play only when a certificate of registration is obtained under Chapter II of the Motor Vehicles Act and continues to operate as long as the said certificate is current. The said certificate ceases to be current only by operation of the relevant provisions of the Motor Vehicles Act. It is not in any way affected by any of the provisions of the

Taxation Act. Hence in order to find out whether a certificate of registration is current or not, we have to look to the provisions of the Motor Vehicles Act only. It follows that there cannot be a certificate of registration which is not current for purposes of the Motor Vehicles Act, but current for purposes of the Taxation Act. Under the Motor Vehicles Act a certificate of registration may cease to be current in several ways. It comes to an end on the expiry of the prescribed period u/s 25 of the Motor Vehicles Act. It ceases to be current by an order of suspension passed u/s 33 of the Motor Vehicles Act or by an order of cancellation u/s 34 of the Motor Vehicles Act. In the case of a transport vehicle, when it does not carry a fitness certificate, Section 38 (1) states that it shall not be deemed to have been validly registered for purposes of Section 22 of the Motor Vehicles Act. That means that during the period when the transport vehicle is not carrying a fitness certificate, its certificate of registration will be inoperative or non-existent and it cannot be used for carrying passengers or goods (vide: Puran Singh Vs. State of Uttar Pradesh and Others, Explanation to Section 3(1) of the Taxation Act cannot be applied to such a case (vide: STATE OF KARNATAKA v. BOODI REDDAPPA (1975) 1 Kant LJ 206, We do not, therefore, agree with. the view expressed in NARAYANA REDDY''s case on the above question.

The decision in SEETHAMMA SALIGRAM v. THE REGIONAL TRANSPORT OFFICER, MYSORE [1965(1) Mys. LJ 284] is not of much assistance to the respondents. That case proceeded on the basis that the certificate of registration of the vehicle in question was current.

In B. G. BHAGWAN v. REGIONAL TRANSPORT OFFICER, TUMKUR [1966 (2) Mys. L. J 649] it is held that where the fitness certificate is cancelled, the Explanation to Section 3(1) of the Taxation Act becomes inapplicable. It makes no difference whether the fitness certificate ceases to be in force before or after the expiry of the period for which it was issued. It is no doubt true that the procedure prescribed u/s 38(3) of the Motor Vehicles Act and Rule 82 of the Motor Vehicles Rules have to be followed in the case of cancellation of fitness certificate. But no such formality or procedure is contemplated in the case of fitness certificate ceasing to be in force on the expiry of the period for which it is issued.

No assistance can be derived by the respondents from the decision in HANUMAN TRANSPORT COMPANY''S Case [1965 (2) Mys L. J 465] which lays down that the Explanation will be applicable to all cases of vehicles whose certificates of registration are current because the question involved in these cases is a different one, that is, whether in these cases the certificates of registration of the vehicles in question were current or not.

On a careful consideration of all aspects of the case, we feel that the decision in NARAYANA REDDY''s case which takes a view contrary to the above view, is erroneous and we over rule.

We however make it clear that merely because the Explanation to Section 3(1) of the Taxation Act is held to be inapplicable in a particular case, the vehicle in question is not liable to pay tax u/s 3(1) of the Taxation Act. It may still be open to the taxing authority to hold the vehicle liable to tax provided it is established independently of the Explanation that the vehicle was suitable for use on roads during the relevant period.

There is a slight error in the wording of the question referred to the Full Bench. It gives an impression that it is quite possible for the certificate of registration of a transport vehicle to be current even when its certificate of fitness is not in force either on account of its expiry or on account of its cancellation. But on going through the record, we feel that the question referred to us in substance is whether the certificate of registration of a transport vehicle, as defined in the Motor Vehicles Act, can be considered as being current when it does not carry a certificate of fitness as required by law.

Our answer to the question referred to the Full Bench, is as follows :

"The legal fiction under the explanation to sub-section (1) of Section 3 of the Karnataka Motor Vehicles Taxation Act, 1957, that a Vehicle shall be deemed to be suitable for use on road, does not arise where the registration certificate in respect of a transport vehicle is not current on account of the certificate of fitness of that vehicle not being in force, either on account of its expiry or cancellation. But even where that explanation is inapplicable the transport vehicle is liable to tax under the Taxation Act if it is established that it was suitable for use on roads during the relevant period."

These cases will now go back to the Division Bench for disposal in accordance with law.

