

(2011) 05 KL CK 0039
In the High Court Of Kerala
Case No : W.A. No. 412 of 2010

Chief Postmaster General and Another APPELLANT
Vs
State of Kerala and Others RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Constitution of India, 1950 — Article 285(1)

Citation : (2011) 3 KLJ 650 : (2011) 6 RCR(Civil) 748

Hon'ble Judges : C.N.Ramachandran Nair, J;B.P.Ray, J

Bench : Division Bench

Advocate : S.Krishnamoorthy CGC, for the Appellant; K.P.Pradeep (GP), for the Respondent

Final Decision : Dismissed

Judgement

Ramachandran Nair. J.

1. The question raised in the connected Writ Appeals and the W.P. (C), all filed by the Postal Department, is one and the same i.e. whether the State Government is entitled to levy motor vehicle tax in respect of the vehicles owned and used by the Postal Department in Kerala. We have heard Standing Counsel appearing for the appellants/petitioners and the Government Pleader appearing for the State Government and its departments. The proposition canvassed by the Standing Counsel appearing for the Postal Department is that motor vehicles belonging to Central Government Departments including the Postal Department come within the description of "property" belonging to the Union of India referred to in Article 285(1) of the Constitution of India which is exempt from tax under any State-law. However, this contention did not find acceptance with the learned Single Judge who held that motor vehicle tax is an indirect tax which is not covered by Article 285(1) of the Constitution by following the decision of the Supreme Court reported in *Karya Palak Engineer, C.P.W.D., Bikaner Vs. Rajasthan Taxation Board, Ajmer and Others*, which again was rendered by the Supreme Court following two earlier decisions of the Constitution Bench in *Sea Customs Act* case

(AIR 1963 SC 1760) and in New Delhi Municipal Committee Vs. State of Punjab, etc. etc., . However, in the two writ petitions filed by the Postal Department, the learned Single Judge took the view that Postal Department can approach the State Government for getting exemption by invoking powers conferred on the State u/s 22 of the Kerala Motor Vehicles Taxation Act, 1976 (hereinafter called "the Act"). It is against the common judgment rendered by the learned Single Judge in the two writ petitions filed by the Postal Department, they filed the Writ Appeals. Since the same issue was raised in another writ petition that was pending before the Single Bench, we ordered posting of the said case also for hearing and disposal along with the Writ Appeals.

2. Section 3 of the Act authorises levy and collection of motor vehicle tax on every vehicle kept for use in the State. It is the settled position by several decisions of the Supreme Court, particularly in *Bolani Ores Ltd.*, that motor vehicle tax is a compensatory tax levied for use of the road by the vehicles. Admittedly, levy and collection of tax on motor vehicles is within the exclusive domain of the State under Entry 57 of List II of the VIIth Schedule to the Constitution which is as follows:

Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List HI.

Nowhere in the Motor Vehicles Act, 1988, which is a Central legislation nor in any law made by Parliament, any exemption is provided for levy of tax on Central Government vehicles registered and operated in any State. Entry 33 of List III authorises both Parliament as well as the State Legislature to make law on mechanically propelled vehicles and the principles on which tax on such vehicles are to be levied. This provision has no relevance so far as the controversy raised in this case is concerned i.e. whether by virtue of operation of Article 285(1) of the Constitution, the Postal Department or the Central Government can claim exemption from motor vehicle tax payable to the State Government for the vehicles registered and used in Kerala. The contention raised by Standing Counsel appearing for the appellants/petitioners is that the finding of the learned Single Judge that motor vehicle tax is not a direct tax is not correct. According to the appellants/petitioners, liability to pay tax is on the registered owner which is the Postal Department for the vehicles owned and operated by them in Kerala. So much so, the incidence of tax is directly falling on the Government. Department is the case of the appellants/petitioners. We are unable to agree with this contention because motor vehicle tax otherwise popularly known as "road tax" is a tax for use of the vehicles on roads and not for ownership of the vehicles. There is a presumption in the Act that every registered vehicle is deemed to be kept for use in the State and so much so, liable to pay tax. However, for any period of non-user of the vehicle, the registered owner is entitled to furnish Form G and get exemption from tax for the period during which the vehicles was not put to use on road u/s 5 of the Act read with Rule 10 of the Motor Vehicles Taxation Rules. We find that the incidence of tax is directly

on the use of the vehicles on the roads maintained by the State and so much so, is not a direct tax on the Government or Central Government Department on account of the ownership of the vehicles. Article 285(1) of the Constitution is as follows:

285. Exemption of property of the Union from State taxation:- (1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State.

What is clear from sub-section (1) is that unless Parliament otherwise provides State shall not levy any tax on the property of the Union. We have already held above that motor vehicle tax is not a tax on the motor vehicle, but a tax on the use of the motor vehicle on the road and so much so, the motor vehicle tax is outside the scope of exemption covered by Article 285(1). Further, it is worthwhile to refer to Entry 32 of List I of the VIIth Schedule which is as follows:

32. Property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides.

The above provision contained in the Union List recognises the property of the Union Government situated in the State subject to legislation by the State unless Parliament otherwise provides. There is no Parliamentary law exempting vehicles owned by Central Government and operating in any State, from the operation of the laws of such States. So much so, in our view, the claim of exemption from motor vehicle tax made by Central Government Department is thoroughly misconceived. For the foregoing reasons we approve the finding of the learned Single Judge that Article 285(1) of the Constitution does not bar the State from levying tax on motor vehicles owned by the Central Government and operated in the State u/s 3 of the Act. However, it is a matter of policy for the State Government to consider whether exemption from motor vehicle tax could be granted to Central Government's vehicles or vehicles belonging to any particular department of the Central Government. Any such exemption can be considered and granted by the State Government u/s 22 of the Act and in our view, the learned Single Judge rightly suggested the appellants to approach the State Government for exemption. Consequently Writ Appeals are dismissed confirming the judgment of the learned Single Judge. Since the question raised in the writ petition is also the same, W.P.(C) is also dismissed.