
(2000) 06 KL CK 0027
In the High Court Of Kerala

Damodaran

APPELLANT

Vs

R.T.O.

RESPONDENT

Date of Decision : 01-06-2000

Acts Referred:

Kerala Motor Vehicles Taxation Act, 1976 — Section 6

Citation : (2000) 2 ACC 506 : (2000) 2 KLJ 98

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Judgement

J.B. Koshy, J.—Petitioner is the registered owner of KEF 1185. He had purchased the vehicle and he is the registered owner as can be seen from Ext. P1. According to the petitioner he was not having a pucca permit and was plying on temporary permit. The permit was granted on 12.11.1998 only and no permit was issued prior to that. The petitioner has prepaid the tax as provided u/s 4 of the Kerala Motor Vehicles Taxation Act for the quarter ending 30.9.1998, According to the petitioner even though he had paid the tax for the quarter ending 30.9.1998 the vehicle was not used from 30.9.1998 as the temporary permit was over on 31.8.1998. It is clear from the respondents' records also that permit was issued in November, 1998. Therefore, petitioner filed refund application for refund of tax. The above refund application was rejected on the ground that refund application was not filed within one week from the date of the alleged non-use, as mentioned in S.R.O. No. 874/75.

2. This Court has consistently held that with regard to the application for exemption u/s 5, "G" Form should be filed in advance so that verification can be done by the Authorities. But with regard to the refund of the tax u/s 6, position is different. The entire tax paid is not refundable. Only part of the tax is liable to be refunded as provided under the rules, when the party had paid the tax in advance.

3. Section 6 reads as follows:

6. Refund of tax--(1) Where the tax for any motor vehicle has been paid for any quarter or year and the vehicle has not been used or kept for use during the whole of that quarter or year or a continuous part thereof not being less than one month, a refund of the tax at such rates as may, from time to time, be notified by the Government, shall be payable subject to such conditions as may be specified in such notification.

(2) Notwithstanding anything contained in this Act, a registered owner who has paid tax for a year or more shall be entitled to refund of tax at such rates as may be prescribed on cancellation of the registration of the vehicle or removal of the vehicle to any place outside the State on account of transfer of ownership or change of address.

4. It specifically says that refund application should be filed only if the vehicle is at least not in use for one month as specified in the notification. Therefore, only after minimum one month of non-use the party can file refund application and then it is for the Authorities to consider whether plea of the non-use made by the petitioner is correct or not. But S.R.O. No. 874/75 makes it compulsory that refund application should be filed within one week from the date of commencement of the period for which the refund is claimed. That is impossible as petitioner can file an application only after the period of one month as per the provisions of the section. S.R.O. cannot say that it should be filed within one week from the date of commencement of the period as it is an impossible condition. Of course, since advance intimation is not there verification may become difficult. But it is for the party who claim to convince the Authorities that vehicle was not used during the period in question. Burden is on him to convince the Authorities that the vehicle was not used. In the above circumstances, provision in S.R.O. No. 874/75 that refund application should be filed within one week from the commencement of the period for which the refund of tax is claimed is set aside as it is contrary to Section 6, as u/s 6 refund application can be filed only after the non-use of the vehicle at least for more than one month.

5. Petitioner also claims that since the vehicle is not having a permit, even though tax is payable, it can be only as a non-transport vehicle. I set aside Ext. P7 and direct the Appellate Authority to reconsider the matter again with notice to the petitioner and refund application may be considered on merit without looking into the question of time bar and claim of the petitioner may be considered on both grounds according to law. Fresh orders should be passed within two months from the date of receipt of a copy of this judgment. With regard to the tax for the month of October onwards, petitioner may pay the amount under protest subject to the decision as directed.

6. The Original Petition is allowed to the above extent.