(1998) 04 AP CK 0086

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18998 of 1995

Depot Manager, APSRTC, Hyd. — APPELLANT

Vs

Transport Commissioner, A.P., Hyd. and Others — RESPONDENT

Date of Decision : 02-04-1998

Acts Referred:
Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 4

Citation : AIR 1999 AP 49 : (1998) 3 ALD 424 : (1998) 3 ALT 425

Hon'ble Judges : T.N.C. Rangarajan, J;S.V. Maruthi, J

Bench : Division Bench

Advocate : Mr. K. Harinath, SC for APSRTC, for the Appellant; Special Government Pleader for Taxes, for the Respondent

Judgement

T.N.C. Rangarajan, J.—This writ petition challenged the demand for Motor Vehicles Tax treating the vehicles subject to tax as contract carriage vehicles.

2, The petitioner is a Government Undertaking running "transport services. In respect of the motor vehicles with which we are concerned, in the approved Scheme of Road Transport Services, the petitioner was allowed to use the vehicles "as town service/stage carriage with authorisation to use stage carriages as contract carriages for operating exclusive trips to Schools, Colleges, Industrial Establishments, Offices, etc." Treating these vehicles as stage carriage vehicles the petitioner had paid the appropriate tax. However, a show cause notice was issued on 2-3-1993 by the Regional Transport Officer, Ranga Reddy District, stating that in respect of the seven vehicles of Kusaiguda depot the permission to use them as contract carriages indicated that they are liable to be taxed as such. It was stated that the audit of Regional Transport Office brought to the notice of the Regional Transport Officer that apart from collecting tax at a rate lesser than that applicable to contract carriages, there was also an incorrect exemption for the Conductor and the Driver and hence there was a short levy of tax of Rs. 1,87,980/-. The petitioner was required to show cause why a demand should not be raised for that amount. On 11-3-1993, the petitioner gave a reply stating that the user as contract carriage was approved in the Scheme and since it is essentially a stage carriage, treating it as contract carriage for tax purpose was incorrect. By order dated 27-3-1993 this claim of the petitioner was rejected and a demand was raised. The petitioner filed an appeal which was also rejected on 1-8-1994 by the Deputy Transport Commissioner. Further appeal to the Transport Commissioner also met the same fate.

3. In this writ petition, the contention of the learned Counsel for the petitioner is that since the bus was registered primarily as a stage carriage bus, with authorisation to use for some trips as contract carriage for Schools, Offices, etc., the tax to be levied for the bus is under the entry appropriate to the stage carriage and not the contract carriage. He further submitted that where there is a doubt or ambiguity, the benefit should be given to the assessee.

4. The learned Special Government Pleader for Taxes submitted that the permitted use as a contract carriage brought the vehicle into the entry relating to contract carriages and when two entries are applicable, the one which charges higher tax must be chosen. He referred to the decision of the Full Bench of this Court in Y. Peda Venkaiah Vs. The Regional Transport Officer, Nellore, , and submitted that the taxation is according to use and when admittedly the vehicle was used as a contract carriage the tax applicable to the contract carriage was required to be levied, hi the alternative, he submitted that if both the entries were attractive, the tax should be imposed proportionately according to the actual user of the vehicle.

5. The admitted position is that under the Scheme notified by the Government, the vehicles were registered as Town Service Stage Carriage Vehicles. They also carried an authorisation for user as Contract carriage for operating exclusive trips to Schools, Colleges, Offices, etc. Therefore, primarily the vehicles have been registered only as stage carriage vehicles and the use as contract carriages for special trips was the authorised additional use.

6. The relevant entries with which we are concerned are entry Nos.4(iii) and 4(v) in the First Schedule of the A.P. Motor Vehicle Tax Act, 1963, which read as follows :

"Classes of Motor Vehicles fitted Maximum with pneumatic lyres quarterly tax 4(iii) Vehicles permitted to carry more than six passengers and plying as stage carriages on town service/routes - (a) In respect of vehicles permitted to ply as Express services for every passenger (other than the driver and conductor) which the vehicle is permitted to carry Rs.1,200-00 (b) in respect of vehicles permitted to ply as ordinary services, for every passenger (other than the driver and the conductor) which the vehicle is permitted to carry Rs.1,000-00 XXX XXX XXX XXX XXX XXX 4(v) Vehicles permitted to carry more than six passengers and plying as contract carriages for every passenger other than the driver and conductor) which the vehicle is permitted to carry Rs.4,000-00

No doubt the Full Bench of this Court had stated in Venkaiah''s case (supra) that the Scheme of this Act is to impose tax according to use. But in that case, after having registered as a contract carriage in the beginning of the quarter, there was a change in the vehicle and, therefore, there was an attempt to tax the vehicles at higher rate than applicable to stage carriages. The Full Bench pointed out that while the tax is based on the use of the vehicle there was no provision for changing the basis because of change of use in the middle of the quarter as levy is according to the quarter. The other decisions cited by both sides related to cases where there was unauthorised use and it was held that despite the permission granted and the registration of the vehicle, unauthorised use will empower the tax authorities to levy tax as well as the penalty at higher rate. We are concerned here with authorised use of the vehicle primarily registered as stage carriage vehicles for additional trips as contract carriage vehicles. The cases cited do not have any direct application on this issue. However, in one decision of this Court in the case of D. Narayana Swamy v. The Regional Transport Officer, Anantapur, 1974 (1) ALT 69, it was observed that:

"We do not think that there is any principle to the effect that it is the maximum rate that should apply. It may be that in a case where in a quarter the bus is plied even for a few days, the tax may be payable for the whole quarter."

In that case, the tax was fixed according to the distance estimated for the route and subsequently the tax was enhanced by revising the estimated distance. It was noted that in the same quarter for a few days the total distance permitted fell in one category of lesser tax while on other days the total distance permitted fell in other category of higher tax and the question was as to the rate that should be applied. The Court chose to apply the lower rate by pointing out that there was no presumption as to tax and where it was capable to "two alternate meanings, that which is more favourite to the subject has to be allowed.

7. In the present case also, even according to the permit granted to the petitioner the vehicles fall both under Item No.4(iii) as stage carriage as well as under Item No.4(v) as contract carriage. Even if the tax is to be levied on the basis of the user the only way to resolve this issue is to take the regular and greater use of the vehicles which are primarily registered as stage carriage vehicles. The permitted additional trips on contract carriages for servicing Schools, Colleges, Offices, etc., does not detract from the main use of the vehicles as stage carriage vehicles. In our view, therefore, it is not possible to take these vehicles out of the category of stage carriages in Item No.4(iii) and fit them in to the category of contract carriages in Item No.4(v) only because of permitted additional use to serve colleges, offices, etc., on certain occasions.

8. The alternate argument of the Government Pleader cannot also be entertained because the tax is levied per quarter and not according to the actual trips even though it is based on the user of the vehicles. The question of imposing proportionate tax cannot arise when there is no specific provision for the same. The tax for the quarter has to be determined only according to the basic use of the vehicles which, as we said, is according to the stage carriage permit. We are,

therefore, convinced that the tax has been rightly paid by the petitioner as a stage carriage vehicle under Item No.4(iii) of Schedule I of the Act.

9. The demand raised by the respondents is, therefore, quashed and the writ petition is allowed. No costs.