

(2014) 12 KAR CK 0269
In the Karnataka High Court
Case No : Writ Petition No. 881/2006 (T-MVT)

G.M. Divate

APPELLANT

Vs

The Regional Transport Officer Taxation Authority

RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Karnataka Motor Vehicles Taxation Act, 1957 — Section 16

Citation : (2014) 12 KAR CK 0269

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : V.P. Kulkarni, Advocate for the Appellant

Judgement

Anand Byrareddy, J.—The petitioner is said to be a partnership firm. The petitioner is said to have financed the purchase of a bus by the respondent No. 3 and the vehicle is said to have been hypothecated to secure the loan. The said transaction was said to have been duly endorsed in the Registration Certificate of the vehicle by the competent authorities. It transpires that there was a hypothecation created in favour of the fourth respondent as well, in respect of the same vehicle.

It transpires that there was a default in repayment of the loan, on account of which the petitioner is said to have seized the vehicle as on 27.7.1998. Pursuant to which, the petitioner is said to have intimated the authorities that the vehicle was not intended to be used on the road during its seizure by the petitioner, in Form-30, dated 30.7.1998.

It further transpires that the owner of the vehicle had thereafter repaid the entire loan amount and had taken possession of the vehicle. This is said to have been intimated to the transport authorities as on 3.1.2000.

It is stated that two years thereafter, the petitioner is said to have been served with an order dated, 12.5.2003, passed by the Taxation authority terminating the exemption granted, as to payment of tax, on declared non-use of the vehicle.

The petitioner was thereafter said to have been served with a demand notice dated 20.5.2003 with a tax demand. The petitioner is said to have preferred an appeal against the said order of demand. It is stated that a similar demand was said to have been made as against the fourth respondent. And the said respondent is also said to have filed an appeal. The said appeals were disposed of by a common order dated 1.10.2003, holding that the petitioner was liable to meet the tax liability in respect of the vehicle.

The petitioner therefore, is said to have challenged the above by way of a writ petition before this court challenging the same, in WP 49942/2003. The said petition is said to have been allowed and the matter remitted to the authority with a direction to reconsider the case, in accordance with law.

A show cause notice is thereafter said to have been issued - wherein it is said to have been stated that as per the reports of the Inspector of Motor Vehicles, attached to the Regional Transport Office (RTO), Dharwad, dated 30.9.2000 and 20.10.2002, the vehicle in question was not found at the declared place, namely, Moonrise Garage, Hubli. It was neither found at Leo Security Force, Ashoknagar, Belgaum, as declared by the fourth respondent. And that the removal of the vehicle without permission of the concerned authority was in violation of the notification dated 11.9.1980 providing for exemption of non-use on the road. The petitioner was called upon to show cause as to why the intimation of non-use should not be withdrawn and the tax exemption claim for the whole period should not be terminated. The petitioner is said to have filed detailed objections spelling out the sequence of events and denying its liability. However, by an Order dated 12.11.2004, the petitioner was called upon to pay the tax due for the period 1.6.1998 to 31.5.2003 to the tune of Rs. 12,02,022/- in respect of the said vehicle.

2. The petitioner is said to have filed an appeal against the said order, which was dismissed. It is that which is under challenge in the present appeal.

3. After having heard the learned counsel for the petitioner and the learned Additional Government Advocate, and having perused the record- the point for consideration is as to what would be the consequence of the petitioner having violated a condition of allowing the vehicle in question being removed, during the period of exemption, from the place where the motor vehicle was kept, without the prior permission of the Regional Transport Officer concerned.

4. It is seen that Section 16 of the Karnataka Motor Vehicles Taxation Act, 1957 (Hereinafter referred to as the "KMVT Act", for brevity) empowers the State Government to issue notification exempting or reducing prospectively or retrospectively the tax payable in respect of any class of motor vehicles or motor vehicles not used on the roads. It also empowers the State Government by notification to reduce the rate of tax payable in respect of any class of motor vehicles plying on route on routes specified in the notification, if in its opinion, it is necessary in the public interest so to do. The State Government has issued a

notification in accordance with the said section in No. HD 95 TMT 77 (II), dated 11.09.1980 exempting the motor vehicles registered under the State of Karnataka and not intended to be used on the roads from payment of tax, subject to certain conditions. The notification is as under.

"GOVERNMENT OF KARNATAKA

No. HD 95 TMT 77 (II)

Karnataka Government of Secretariat, Vidhana Soudha Bangalore, dated 11th September, 1980

NOTIFICATION

In exercise of the powers conferred by sub-clause (ii)(a) of Sub-section (1) of Section 16 of the Karnataka Motor Vehicles Taxation Act, 1957 (Karnataka Act 35 of 1957) and in supersession of Notification No. HD 70 MVT 58, dated 13th March, 1959, the Government of Karnataka being of the opinion that it is necessary in public interest so to do hereby exempt the motor vehicles registered in the State of Karnataka and not intended to be used on roads from the payment of tax under the said Act for period of one full quarter, half-year, as the case may be, during which such vehicles are not intended to be used on roads, subject to the following conditions, namely:--

1. The non-use of the motor vehicle should be intimated before the commencement of the quarter, half-year, or year, as the case may be, in writing in Form 30 of Rule 34-A of the Karnataka Motor Vehicles Taxation Rules, 1957.
2. The Registration certificate, taxation card and permit, if any, in respect of the motor vehicle or where such documents are seized or retained by any authority, a certificate obtained from the concerned Authority for such a seizure or retention of the documents, should be surrendered to the Regional Transport Authority concerned, on or before the first day of the commencement of the quarter, half-year or year, as the case may be. In the case of a motor vehicle covered by a hypothecation of hire-purchase agreement, if the motor vehicle is seized by the financier and the document relating to such motor vehicle is seized by the financier and the document relating to such motor vehicle are not with him, the non-use shall be intimated to the concerned Regional Transport Officer.
3. The motor vehicle shall not be removed during the period of exemption from the place where the motor vehicle is kept without the prior permission of the Regional Transport Officer concerned.
4. The Regional Transport Officer or nay other officer authorised by him in this behalf shall have the power to inspect the place where the motor vehicle in kept to satisfy himself regarding the non-use of such motor vehicle.
5. If on such inspection, the motor vehicle is not found at the place where it is intimated to have been kept such motor vehicle shall not be entitled to the exemption from payment of tax.

6. At the time of return of documents to the registered owner, after the expiry of the period of such non-use of the motor vehicle, the Regional Transport Officer shall cause an entry to be made in the taxation card the non-use of the motor vehicle specifying therein the period during which the motor vehicle was under non-use.

This notification shall come into force with effect from 12th September, 1980.

By Order and in the name of the Governor of Karnataka

Sd/- (H.B. Ramaswamaiah) Under Secretary to Government Home Department."

Rule 34-A of the Karnataka Motor Vehicles Taxation Rules, 1957 (Hereinafter referred to as the "Rules", for brevity) provides the procedure for intimation of the non-use of the vehicles. It states that the intimation of non-use of motor vehicles should be made in Form 30. The notification referred above makes it clear that in order to claim exemption from payment of tax the motor vehicle to which Form 30 was filed to the Competent Authority shall not be removed during the period of exemption from the place where the motor vehicle is kept without prior permission of the Regional Transport Authority concerned. It also empowers the Competent Authority or the officer empowered by him to inspect the place where the motor vehicle is kept to satisfy himself regarding the non-use of such motor vehicle and if on such inspection, the motor vehicle is not found at the place where it is intimated to have been kept such motor vehicle was not entitled to exemption from payment of tax.

The petitioner was not the owner of the vehicle. The petitioner had admittedly taken possession of the vehicle in exercise of a right under a hypothecation agreement, between the petitioner and the owner of the vehicle. As a party in possession of the vehicle, the petitioner became liable to bear the tax burden as long as the vehicle remained in such custody. As the vehicle was not being used on the road, the petitioner had obtained an exemption from the authorities in respect of such liability.

It is on record that the petitioner had intimated the authority, as on 1.8.1998 the non-use of the vehicle and that the same had been re-possessed from the owner on account nonpayment of the loan amount and that the same had been stationed at Moonrise Garage. Though it is claimed by the petitioner that due intimation was given of the vehicle having been handed over to the owner on receipt of its dues, as on 3.1.2000, the same is denied by the authorities. However, the authority has first become aware of the vehicle no longer being available at the Moonrise Garage, as on 25.8.2000, on which date a Motor Vehicle Inspector, attached to the RTO, Dharwad is said to have made a report in this regard. It would hence follow that the liability of the petitioner would subsist during the period that the petitioner was deemed to have been in possession of the vehicle, which period can be treated as being from 1.8.1998 to 25.8.2000. The tax demand for the period 1.6.1998 to 31.5.2003 on the other hand, is without basis. The reasoning of the authorities in fastening such liability is on the

basis of decisions of the apex court and this court, which are clearly with reference to the owner of the vehicle whose liability to pay tax would subsist as long as the certificate of registration in respect of the vehicle is current. In so far as the petitioner was concerned, he had sought for and obtained exemption from payment of tax as long as the vehicle was in his custody and possession, for otherwise he was liable to pay tax merely on being in possession of the vehicle. If there was a breach of any condition on which the exemption was conferred - the privilege abates. He was in possession of the vehicle admittedly from 1.8.1998 upto 3.1.2000. Since the date on which he had lost possession is confirmed only as on 25.8.2000, he cannot escape the liability to pay the tax for such period, namely, 1.8.1998 to 25.8.2000.

Accordingly, the writ petition is allowed. The impugned orders are quashed. The respondents are directed to compute the tax payable in respect of the vehicle bearing No. KA-22-7155, including cess and penalty, for the period 1.8.1988 to 25.8.2000, which the petitioner shall pay within fifteen days of receipt of a demand in that regard.