

(2014) 07 AP CK 0016

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17038 of 2014

Greeda Sudhasini J.

APPELLANT

Vs

Government of Telangana

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 2(h), 3, 3(1)

Andhra Pradesh Reorganisation Act, 2014 — Section 78

Motor Vehicles Act, 1988 — Section 177, 33, 39, 4, 40

Citation : (2014) 5 ALT 417

Hon'ble Judges : Nooty. Ramamohana Rao, J

Bench : Single Bench

Advocate : B. Nagi Reddy, Advocate for the Appellant

Final Decision : Disposed Off

Judgement

Nooty Ramamohana Rao, J.—The petitioner sought for a Writ of Mandamus to declare the action of the third respondent, the Assistant Motor Vehicle Inspector, Regional Transport Authority, Secunderabad in seizing and detaining the petitioner's Light Motor Vehicle (Car) bearing Registration No. TN-59-AA-3333 under vehicle check report No. 000284 dated 12.06.2014 without conducting any enquiry as illegal and arbitrary and consequently to direct the respondent to release the vehicle to the petitioner herein immediately.

2. The petitioner claimed ownership of a light motor vehicle, a car which is registered in the State of Tamil Nadu on 22.10.2003. The vehicle bears Registration No. TN-59-AA-3333. The vehicle is a Sedan manufactured by General Motors limited. Its cubic capacity is recorded as 1800 cc and maker's class is recorded as OPTRA 1.8 LT. It's unladen weight is recorded as 1265 kgs. The registration certificate is valid upto 21.10.2018. It is the case of the petitioner that she had come to Hyderabad to visit her brother's house situate at Manasarovar heights, RTC Colony, Secunderabad, using the said vehicle. The petitioner has not disclosed the exact date of her entry into the composite State

of Andhra Pradesh. But, she described it as a recent event. However, when the motor mechanic was taking the vehicle to his garage, the Assistant Motor Inspector intercepted the same on 12.06.2014 at 11.00 A.M. and seized the same on the ground that it was found plying for the past two months without paying Telangana State Life Time Tax and without carrying original Registration Certificate. Hence, he seized the vehicle and kept it at R.T.A. Secunderabad. The Registration Certificate bears an endorsement that the Life Time Tax of Rs. 58,800/- has been paid obviously to the State of Tamil Nadu. The petitioner has also received a show cause notice from the Regional Transport Officer, R.T.A. Secunderabad through his Memo. No 3742/SD/B2/2014 dated 20.06.2014. It is proposed by him to collect Life Time Tax of Rs. 90,635/- and a penalty of Rs. 5,440/- put together a total of Rs. 96,075/- from the petitioner.

3. At that stage, a detailed order has been passed by this Court on 25.06.2014 clearly indicating that if the vehicle in question is a non-commercial, non-transport light motor vehicle, and if it has already suffered taxation for life time in another State, there should be a provision in the statute itself authorizing levy or demand of life tax by the State in which it was found plying and since, I did not find any such provision mentioned in the Show Cause Notice demanding payment of life tax, the attempt made in that regard is likely to be viewed as an unauthorized practice aimed at to make the owner of the vehicle to surrender to the dictates of the R.T.A.

4. In response, the Regional Transport Officer, Secunderabad filed a detailed counter affidavit. It is vaguely suggested in paragraph 2 of the counter affidavit that while seizing the vehicle, the Assistant Motor Vehicle Inspector had also collected tollgate and service bills from the dash board of the vehicle and thereafter, it is asserted that the petitioner's vehicle has been plying in the State of Andhra Pradesh from 29.02.2012 and hence it is liable to pay Life Tax u/s 3(1) of the Andhra Pradesh Motor Vehicle Taxation Act, 1963, as amended by Act 11 of 2010, which provision is applicable even in the State of Telangana by virtue of Section 78 of the Andhra Pradesh Reorganization Act, 2014. It is now suggested that based on the toll receipts and service bills, the show-cause notice dated 20.06.2014 was sent proposing to levy tax together with penalty amounting to Rs. 96,075/- as the vehicle was found plying in Andhra Pradesh from 29.02.2012 without payment of tax. It is the case of the respondents that the vehicle is liable to pay life tax under Sub-Sections (1) and (2) of Section 3 of the Andhra Pradesh Motor Vehicle Tax Act, 1963, as amended by Act No. 11 of 2010 read with the entries contained in the VI Schedule to the said Act. Since the vehicle is only a 10 year old vehicle, tax is calculated at the rate of 8.5% on the cost in the vehicle. Since, it was plying in Andhra Pradesh without payment of tax, penalty at the rate 2% per month, as per Rule 13 of Andhra Pradesh Motor Vehicle Taxation Rules, 1963, amounting to Rs. 5,440/- was proposed to be imposed on the vehicle. That is how, the action of the respondents in raising the demand is sought to be justified.

5. Heard the learned counsel for the petitioner and the learned Government Pleader for Transport. Learned Government Pleader has pointedly drawn my attention to the provisions contained in the Andhra Pradesh Motor Vehicle Taxation Act, 1963 and would submit that in terms of Sub-section (1) of Section 3, tax is liable to be levied on every motor vehicle used or kept for use in a public place in the State. Since the vehicle has been found plying in the composite State of Andhra Pradesh and subsequently in the bifurcated State of Telangana, according to the learned Government Pleader, as per the fourth proviso under Sub-section (2) of Section 3 of the Motor Vehicles Taxation Act, the demand is justified.

6. The expression "Tax" is defined in Section 2(h) as the tax leviable under the A.P. Motor Vehicles Tax Act, 1963. Section 3 of this Act is the charging provision. It reads as under:

"(1) The Government may, by notification, from time to time, direct that a tax shall be levied on every motor vehicle used or kept for use, in a public place in the State.

(2) The notification issued under sub-section (1) shall specify the class of motor vehicles on which, the rates for the periods at which, and the date from which, the tax shall be levied:

Provided that the rates of tax shall not exceed the maximum specified in column (2) of the First Schedule in respect of the classes of motor vehicles fitted with pneumatic tyres specified in the corresponding entry in column (1) thereof; and one and a half times the said maximum in respect of such classes of motor vehicles as are fitted with non-pneumatic tyres....."

7. Section 3 clearly spelt out that a tax shall be levied on every motor vehicle used or kept for use in a public place in the State. The similar expressions "Used or kept for use" employed in Section 3(3) of Punjab Passengers and Goods Taxation Act, 1952 has fallen for consideration of the Supreme Court in *International Tourist Corporation and Others Vs. State of Haryana and Others*, . The Supreme Court held that whenever a motor vehicle is kept for use or it is actually used, the taxable event occurs and the obligation to pay tax gets attracted. Once again, in *State of Karnataka Vs. K. Gopalakrishna Shenoy and Another*, , it was held by the Supreme Court - while dealing with a similarly worded Section 3(1) of the Karnataka State Act - that, it confers right upon the State to levy a tax on all motor vehicles which are suitably designed for use on roads at prescribed rates without reference to the road worthy condition of the vehicle or otherwise. It was further clearly pointed out in the said judgment that the charging section of the Taxation Act has to be construed on its own terms and not with reference to the provisions contained in the Motor Vehicles Act. Section 4 of this Act burdened the registered owner of the motor vehicle or any other person in possession or in control thereof, to pay the tax levied in advance either quarterly, half yearly or annually on a licence to be taken out by him for

that quarter, half year or year, as the case may be, within fifteen days from the date of commencement of the quarter, half year or one year, as the case may be. Therefore, it is needed to notice as to whether the whole of the life tax is to be paid or tax for a quarter/half year/per year has only to be paid. Sub-section 2 of Section 3 therefore: offers guidance in this regard. The notification which the Government is required to issue under Sub-section (1) of Section 3 shall specify the class of motor vehicles of which, the rates and for the periods and the date from which the tax shall be levied. Therefore, the notification by the Government has to clearly spell out the classes of motor vehicles on which tax is liable to be levied. It should also specify the rates at which such tax is liable and most importantly for the periods at which and the date from which the taxes shall be levied. As the learned Government Pleader has placed strong reliance upon the fourth proviso added to Sub-section (2) of Section 3, which clearly spelt out that in case of three or four wheeler motor vehicles including motor cars coming under non-transport category, registered in same state, tax shall be levied at the rates specified in the sixth schedule. The sixth schedule contained a tabulated statement. Column 3 dealt with three or four wheeler motor vehicles including motor cars, jeeps coming under non-transport category, not exceeding 2286 kgs in unladen weight, omni buses upto a seating capacity of ten persons in all and new motor cabs of other States that are entering into the rolls of this State by way of change of address or transfer of ownership the cost of which exceeds rupees ten lakhs . Column 4 contained the particulars for the very same class of vehicles but the cost of which exceeded Rs. 10.00 lakhs. Therefore, the essential distinction between columns 3 & 4 is revitted around the cost of the vehicle exceeding or no exceeding Rs. 10.00 lakhs. The case of the respondent is that since the value of the motor vehicle in question exceeded Rs. 10.00 lakhs as per Entry No. 2(10), of the same sixth schedule, 8.5% of the cost of the vehicle is liable to be levied as tax. The sixth schedule therefore is the all important one for our inquiry. In both columns 3 & 4, the relevant expressions used are ".....Of other states that are entering into the rolls of the State by way of change of address or transfer of ownership.....". Therefore, columns 3 & 4 of the sixth schedule of the Tax Act clearly indicate that the motor vehicle registered in other State but is found entering into the rolls of this State by way of change of address or transfer of ownership, the rate of tax prescribed therein is required to be paid. Similarly, the entry No. 2 also indicated as under:

"If the vehicle is already registered and its age from the month of registration....."

8. Therefore, Entry No. 2 read with the particulars contained either in column 3 or column 4 of the sixth schedule make it clear that the vehicle is the one which is already registered in some other State but entered the composite State of Andhra Pradesh or the subsequently formed State of Telangana or the remaining part of State of Andhra Pradesh, but the purpose of such entry shall be to gain entry into the rolls of the particular State by way of change of address or transfer of ownership. If the entry into another State is for purposes other than this, the

sixth schedule cannot be understood as authorizing levy of the tax at those rates. This becomes clear when Entry 1 of the sixth schedule is carefully studied. It reads as under:

At the time of registration of new vehicles, question of it being already registered in another State would not normally arise. A vehicle may have been purchased at a place or from a dealer situate across the borders of the State and it is brought into this State for purpose of registration, by its owner. In this context, Section 33 of the Motor Vehicles Act specified that a motor vehicle in the possession of a dealer shall be exempted from the necessity of registration subject to the condition that he obtains a trade certificate from the registering authority having jurisdiction in the area in which the dealer has his place of business. A trade certificate in respect of a vehicle can be granted by the registering authority, if satisfied that the applicant is a bona fide dealer and requires the certificates specified in the application and then issue to the applicant one or more certificates in Form-17 and shall assign in respect of each certificate a trade registration mark referred to under Sub-section 6 of Section 41 of the Motor Vehicles Act and followed by a number containing not more than three digits (See Central Rule 35). A trade certificate granted or renewed there under shall be in force for a period of two months from the date of issue or renewal thereof and shall be effective throughout India. Central Rule 41 listed out the purposes for which motor vehicle with trade certificate may be used. Clause (d) thereof clearly spelt out that for proceeding to or returning from the premises of the dealer or of the purchaser or of any other dealer for purpose of delivery a trade certificate can be used. Rule 42 further imposes an obligation on a holder of a trade certificate not to deliver a motor vehicle to a purchaser without registration, whether temporary or permanent.

9. Section 39 of the Motor Vehicles Act clearly obligates that no person shall drive any motor vehicle and shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with Chapter IV of the Motor Vehicle Act and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner. Section 40 further obligates every owner of a motor vehicle to cause the vehicle to be registered by a registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept. Section 43 enabled the owner of a motor vehicle to apply to any registering authority or other prescribed authority to have the vehicle temporarily registered in the prescribed manner and for issue in the prescribed manner of a temporary certificate of registration and a temporary registration mark. Section 46 has spelt out that subject to the provisions of Section 47 any motor vehicle registered in accordance with this chapter in any State shall not require to be registered elsewhere in India and a certificate of registration issued or in force under this Act in respect of such vehicle shall be effective throughout India. Section 47(1) of the Motor Vehicle Act clearly spelt out that when a motor vehicle registered in one State has been kept

in another State for a period exceeding 12 months, the owner of the vehicle shall apply to the registering authority within whose jurisdiction the vehicle thus is kept for assignment of a new registration mark and shall present the original certificate of registration to that registering authority. Sub-section 4 of Section 47 of the Act also enabled each State Government to make rules requiring the owner of a motor vehicle not registered within the State, which is brought into or is for the time being in the State to furnish to the prescribed authority in the State such information with respect to the motor vehicle and its registration as may be prescribed. Sub-section 5 dealt with the default of not complying with the requirement under Sub-section (1). This proviso requires the owner to pay in lieu of any action that may be taken against him, u/s 177 such amount not exceeding Rs. 100/-, as may be prescribed under Sub-section (7). Sub-section 7 empowered the State Government to prescribe different amounts having regard to the period of delay on the part of the owner in making an application under Sub-section (1).

10. When these provisions are read together, with the provisions of the A.P. Motor Vehicles Tax Act, 1963, it becomes clear that Entry 1 of the sixth schedule will get attracted as soon as a new vehicle bearing a temporary registration mark is presented for registration. In view of the contents, of Columns 3 & 4 even the temporary registration mark could have been granted by a registering authority or such other authority who has been authorized to do so in some other State. Therefore, Entry 1 of the sixth schedule when understood, in the context of Section 40 of the Motor Vehicle Act, which required the motor vehicle to be registered by a registering authority in whose jurisdiction the owner of the vehicle has the residence or place of business where the vehicle is normally kept, obligates payment of Tax at the time of registration of all such new vehicles which have been purchased across the State borders. Hence, even if a new motor vehicle is purchased from a dealer, situated across the borders of the State, the same can also be brought within the State where the normal residence of the owner or his place of business is situate and where the vehicle is normally kept and then pay the Tax at the rates specified therein.

11. In contrast, Entry 2 and the contents of Columns 3 & 4 of the sixth schedule clearly spell out that a motor vehicle which has already been registered in one State which is brought within the State of Andhra Pradesh or the bifurcated States of Telangana and Andhra Pradesh, the same is leviable the motor vehicle tax at the rates specified thereat. But however, the crucial expressions "for entering the rolls of the State" found in both columns 3 & 4 of the Table in sixth schedule, acquire significance. As was noticed supra, Sub-section 1 of Section 47 clearly required the owner of a vehicle, which is registered in one State, if the vehicle has been kept in another State for a period exceeding 12 months, has to apply to the registering authority within whose jurisdiction the vehicle then is for the assignment of a new registration mark and shall present the certificate of original registration to that registering authority. In other words, if a vehicle which is registered in one" State merely enters another State and is kept there,

for a period less than 12 months, there will not be any necessity for application of re-registration. But however, taxation of the motor vehicles is kept independently of registration of the vehicle. But simultaneously the Motor Vehicle Act as well as the Tax dealt with the obligation to have the motor vehicle registered in one State to be re-registered. Therefore, the expressions found in columns 3 & 4 get attracted to every motor vehicle which is entering the State only for re-registration purposes, acquires significance. In my opinion, every motor vehicle registered in some other State while entering the composite State of Andhra Pradesh or the bifurcated States of Telangana and Andhra Pradesh would not automatically require to pay for taxation as per the sixth schedule. The entries in the sixth schedule would get attracted only when the owner of the vehicle prefers to enter into the rolls of the State in which the vehicle is kept or used, by way of change of address or transfer of ownership. This is so, as much as, Entry 2 has not talked of registration in some other State. It merely says ".....if a vehicle is registered and its age from the month of registration is". Therefore, Entry 2 has got to be conjointly read with the provision contained in Column 3 & 4 where the expression ".....other states that are entering into" is found. Otherwise, if Entry 2 is read independently, then, if a vehicle is registered with some other registering authority within the same State would also have to suffer the taxation. Clearly, the statute maker never intended a motor vehicle to suffer repeated life tax payment obligation. Therefore, in my view, motor vehicles which are registered in some other State but entering into the State for purposes of entering of rolls of that State by way of change of address or transfer of ownership, alone are required to suffer the tax specified in sixth schedule. If a motor vehicle registered in some other State entered into the composite State of Andhra Pradesh or the bifurcated State of Telangana or Andhra Pradesh, it is not required to suffer to taxation spelt out in the sixth schedule, automatically.

12. On the contra, Sub-section (2) of Section 3 of Motor Vehicles Tax Act spelt out as to how the notification containing the class of motor vehicles of which the rates, the periods at which and the date from which the tax shall be levied. First schedule clearly spelt out in Entry 8 thereof as to the quarterly tax leviable on every motor vehicle. In my opinion, it is the entries contained in the first schedule to the Act, which can be attracted to the motor vehicle in question in this case, but not the entries contained in the sixth schedule. Accordingly, the show cause notice drawn and issued on 20.06.2014 shall be quashed as it does not have valid basis and the second respondent will re-calculate the tax leviable on the vehicle in terms of the entries contained in the First Schedule to the Act and upon payment of the same, the vehicle shall be released.

13. Accordingly, the writ petition stands disposed of. Miscellaneous applications if any shall stand closed. No costs.