

(2002) 04 KL CK 0029
In the High Court Of Kerala
Case No : O.P. No. 8858 of 2002

Haridasan

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 03-04-2002

Acts Referred:

Motor Vehicles Taxation Act, 1976 — Section 3(1), 3(3), 5(1)

Citation : AIR 2002 Ker 333 : (2002) 3 ILR (Ker) 155 : (2002) 1 KLJ 775

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : Vakkom N. Vijayan and K.P. Rajan, for the Appellant; Sojan James, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The petitioner is the registered owner of stage carriage No. KRC 9340 which was sold to the fifth respondent by agreement dated 4.6.1997. Neither the petitioner nor the fifth respondent remitted the tax in time and the vehicle ultimately was seized by the police on account of non-payment of tax on 26.3.2000. However, the fifth respondent paid much of the arrears of tax in instalments. The petitioner's prayer is . to issue a writ of mandamus or other appropriate direction directing the third respondent to grant exemption from payment of tax in respect of the vehicle for the period during which the vehicle was not in use. The petitioner has made an application vide Ext. P3 to the District Collector, Kollam. Obviously the Collector not being the concerned authority rightly did not consider the matter. So far no orders are passed on that application. Learned counsel for the petitioner pointed out that the petitioner also approached the third respondent and according to the third respondent tax should be paid for the period during which the vehicle was in police custody as well.

2. Learned Government Pleader also supported this contention of the third respondent that by virtue of Section 3(3) of the Motor Vehicles Taxation Act, 1976, registered owner of, or any person having possession or control of, a

motor vehicle shall, for the purposes of this Act, be deemed to use or keep such vehicle for use in the State, except during any period for which exemption from tax is granted u/s 5(1). Counsel for the petitioner submitted that as the vehicle was under police custody, it cannot be said to be "kept for use" because the registered owner did not have possession or control of the vehicle during that period. In the absence of possession or control of the vehicle, it cannot be said that the vehicle was kept for use. In fact, the vehicle was detained for recovery of tax and the same was not kept for use, but for sale for recovery of tax arrears, if default continued. The petitioner therefore prays for a declaration that no tax is payable for the vehicle from 1.4.2000 to 31.3.2002 when the vehicle was in police custody.

3. The question to be decided is whether tax can be levied during the period when the vehicle was in police custody. The Government Pleader has referred to Section 3(3) of the Motor Vehicles Taxation Act, 1976 and contended that there is a presumption of use by the registered owner unless he claims exemption u/s 5(1) of the Act, The relevant sub-sections of Section 3 are given hereunder for easy reference:

3. Levy of tax :- (1) Subject to the other provisions of this Act, on and from the date of commencement of this Act, a tax shall be levied on every motor vehicle used or kept for use in the State, at the rate specified for such vehicle in the Schedule-

Provided that no such tax shall be levied on a motor vehicle kept by a dealer in, or a manufacturer of, such vehicle, for the purpose of trade and used under the authorisation of trade certificate granted by the registering authority.

2.

(3) The registered owner of, or any person having possession or control of, a motor vehicle shall, for the purpose of this Act, be deemed to use or keep such vehicle for use in the State, except during any period for which no tax is payable on such motor vehicle under Sub-section(1) of Section 5.

It is obvious from Section 3(3) that liability of the registered owner for motor vehicle tax is not absolute during, the period when he continues to be the registered owner. It is not the ownership that attracts tax. The incidence of tax is for the use of the motor vehicle in the State and also on the motor vehicle kept for use in the State as is evident from Section 3 of the Act. Section 3(3) provides for the presumption of use of motor vehicle or keeping a motor vehicle for use by the registered owner or any person having possession or control of the motor vehicle, except when exemption is claimed u/s 5(1) of the Act. Section 5(1) provides that a registered owner or a person who is in control or possession of the motor vehicle need not pay tax during the period when the vehicle was not intended to be used or kept for use during a particular period. The method of normal -exemption under Rule 10 prescribed u/s 5 of the Act is to file an advance intimation in Form G. Therefore, it is evident from Section 5 read with Rule 10

that a vehicle which is not intended to be used or kept for use for a particular period will not attract tax, even though the vehicle remains registered under the M. V. Act. The need to file an advance intimation for exemption is to enable the motor vehicle department to verify as to whether the vehicle is in fact used during that period contrary to the declaration filed. The obligation of filing an advance intimation u/s 3(3) read with Section 5(1) read with Rule 10 is on the registered owner or the person in control and possession of the vehicle. The normal presumption is that the registered owner is in control and possession of the vehicle. However, the section enables the person in possession and control of the vehicle, even though he is not the registered owner, also to apply for exemption. Therefore Section 3(3) visualises two situations, one is that the registered owner himself has possession and control of the vehicle and the other is that the possession or control is not with the registered owner. In both the situations, it is the person who has possession and control of the vehicle who applies for exemption u/s 5(1). This position is made further clear because in Form G details of the vehicles, such as place of garage, reasons for the non-use, the probable date on which the vehicle will be put to use, etc., which are matters only within the knowledge of the person who is in possession and control of the vehicle, are called for. Therefore a registered owner who does not have possession and control of the vehicle is not entitled to apply for tax exemption u/s 5(1) of the Act.

4. As already stated, the vehicle does not attract tax if it is not kept for use or intended to be used during the particular period if the declaration is filed in terms of Rule 10 prescribed u/s 5 of the Act. Now the question to be considered is whether a vehicle in police custody, which is not kept for use or intended to be used during the period the vehicle was in police custody, should be subjected to tax u/s 3(1) or 3(3) of the Act. In the first place, as already stated, the registered owner without possession and control over the vehicle is not supposed to submit Form G under Rule 10 because he will not be in a position to state the contents of the declaration, such as place of garage, reasons for non-use, the probable date on which the vehicle will be put to use, etc., which are not within his knowledge. Further the very object of filing Form G is to enable the motor vehicle department to prevent use of the vehicle for the period during which the exemption is claimed under the declaration filed. There is absolutely no need to file such a declaration when the vehicle is in police custody and the registered owner is deprived of possession and control of the vehicle. The last aspect of the matter to be considered is whether the person in possession and control of the vehicle, that is the police, should file an application for exemption in Form G. As already mentioned, the purpose of detention of the vehicle is to secure and realise the arrears of tax and it would be absurd to attribute the responsibility of claiming exemption on the police. Therefore, I am of the view that when the vehicle was in the custody of police or for that matter any other government agency, there is no need to file Form G for claiming exemption. Since the ingredient in the main charging Section 3(1) is not satisfied, because the vehicle

kept in police custody was not kept for use or intended to be used during that period, there is no tax. Since the vehicle was held in police custody from 26.3,2000 onwards, I hold that there is no liability to pay the motor vehicle tax from 1.4.2000 to 31.3.2002 by the petitioner. There will be a direction to the respondents to release the vehicle to the petitioner on the petitioner clearing the arrears of tax and additional tax in respect of the period other than the period stated above, during which the vehicle will not attract tax.

O.P. is disposed of as above.