(1985) 09 KAR CK 0039

In the Karnataka High Court

Case No : Writ Petition No. 10329 of 1983

Indian Oil Corporation APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 17-09-1985

Acts Referred:

Karnataka Motor Vehicles Taxation Act, 1957 — Section 16, 16 (1), 3

Citation : (1986) ILR (Kar) 2439

Hon'ble Judges : Rajasekhara Murthy, J

Bench : Single Bench

Advocate : V. Tarakaram, for the Appellant;

Final Decision : Allowed

Judgement

Rajasekhara Murthy, J.—Petitioner herein is the Indian Oil Corporation which is a public sector undertaking of Government of India and registered as a company under the Companies Act. The petitioner has installations for the supply of aviation fuel at various airports/air force stations in the Karnataka State to cater exclusively to the needs of refuelling aircraft with aviation petrol. Two such installations are located at Bangalore Airport, HAL Complex and at the Air Force Station, Yelahanka.

2. Government of Karnataka, by its Notification dated 29-7-1975 in exercise of its powers conferred by Clause (a) of Sub-section (1) of Section 16 of the Karnataka Motor Vehicles Taxation Act, 1957 (hereinafter referred to as the Act) granted exemption as per Annexure-B from payment of tax under the Act in respect of the four oil tankers referred to therein and belonging to the petitioner.

3. It is necessary to reproduce the said Notification, which reads :-

"Notification No. HD 32 TMT 75, Bangalore, dated 29th July, 1975.

In exercise of the powers conferred by Clause (a) of Subsection (1) of Section 16 of the Karnataka Motor Vehicles Taxation Act, 1957 (Karnataka Act 35 of 1957) and in supersession of Notification No. HD 17 TMT 72, dated 29th March 1972, the Government of Karnataka being of the opinion that it is necessary in public interest so to do, hereby exempt the tax payable under the said Act in respect of the Motor Vehicles bearing Registration No. DLL 5782, DLL 2957, MYD 7739 and KLV 5636, belonging to Indian Oil Corporation Limited, which are solely used for the purpose of refuelling of aircraft at Bangalore Airport and which are exclusively kept and used within the Bangalore Airport and H. A. L. Complex, and subject to the condition that the said vehicles should not ply on any public road. This exemption will be in force so long as the said Vehicles do not ply on any public road.

By order and in the name of the Governor of Karnataka, Sd - K. P. RAMAKRISHNA Under Secretary to Government Home Department."

4. By communication dated 17-9-1979 issued by the Under Secretary to Government, Home Department, to the Station Manager, IOC, Aviation Fuel Station, Bangalore-17 as per Annexure-B, it was proposed to withdraw the exemption granted earlier. This was followed by another Notification bearing No. HD 36 TMT 79, dated 31-10-1979 issued by the same authority and published in the official Gazette under which the exemption granted to six vehicles of the petitioner was rescinded with effect from 1-11-1979.

5. The representations made to reconsider the decision of the Government was of no avail and finally the Government replied as per Annexure-F dated 11-9-1980 that the request of the petitioner cannot be complied with, Being aggrieved by this withdrawal of exemption the petitioner has approached this Court for appropriate relief.

6. Though primarily the challenge is to the Notification of the Government rescinding the exemption, Sri. Tarakaram, Learned Counsel for the petitioner, with the permission of the Court, has advanced arguments on merits viz., whether the vehicles in question arc entitled to exemption under the Act. Relying on Section 3 of the Act which is the charging Section and relying on the decision of the Supreme Court in the case of Bolani Ores Ltd., . in support of his contention the Learned Counsel submits that the vehicles in question which are exclusively used within the Airport for refuelling are entitled for exemption from the levy of tax. Therefore, apart from the reasons given by the Government for withdrawing the exemption, it is necessary to consider the contention of the Learned Counsel as to the liability to pay tax under the taxation Act on the admitted facts of the case.

7. It is necessary to revert to the Notification of the Government Annexure-A under which the Government granted exemption from payment of tax in respect of the four vehicles belonging to the petitioner. That exemption was granted subject to the condition that the vehicles should be exclusively used for the purpose of refuelling the Aircraft at Bangalore Airport and subject to the further condition that the said vehicles should not ply on any public road. However, by

the communication dated 17-9-1979 (Annexure-B), it was proposed to withdraw the exemption on the ground that the petitioner is a company.

7. It is contended on behalf of the petitioner that having regard to the scheme of the Act, tax is leviable on all motor vehicles suitable for use on road. A motor vehicle whose certificate of registration is current shall be deemed to be a vehicle suitable for use on roads as per the explanation to Section 3 of the Act. ''Suitable for use on roads'' is interpreted by Supreme Court in Bolani Ores'' case that the tax is attracted if the vehicle is plied on a public road. While explaining the scheme of the Bihar Act vis-a-vis the charging Section 2(c), the Supreme Court observed as follows :--

"Bihar Taxation. Act is a regulatory measure imposing compensatory taxes for the purpose of raising revenue to meet the expenditure for making roads, maintaining them and for facilitating the movement and regulation of traffic. The validity of the taxing power under Entry 57 List II of the Seventh Schedule read with Article 201 of the Constitution depends upon the regulatory and compensatory nature of the taxes. It is not the purpose of the Taxation Act to levy taxes on vehicles which do not use roads or in any way form part of the flow of traffic on the roads which is required to be regulated .... But Entry 57 of List II is subject to the limitations that the power of taxation thereunder cannot exceed the compensatory nature which must have some nexus with the vehicles using the roads, viz., public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Motor Vehicles Act, they cannot be taxed...."

8. u/s 16 of the Act, the State Government may grant exemption, subject to such restriction and conditions as may be specified, from payment of tax in respect of any class of motor vehicles. The Notification dated 29-7-1975 (Annexure-A) issued by the Government is one such notification granting exemption to petrol tankers owned by the petitioner Corporation.

9. Section 3 of the Act is the charging Section. The purpose of the Act is to levy tax on vehicles which are suitable for use on roads and the tax imposed under the Act is for the purpose of raising revenue to meet the expenditure for making roads, maintaining them and for facilitating the movement and regulation of traffic. This is in conformity with Entry 57 of List II of Schedule VII of the Constitution as observed by the Supreme Court in the Bolani Ores'' case relied upon by the Counsel for the Petitioner. Entry 57 of List II of Schedule VII reads as under :--

"Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tram-cars subject to the provisions of Entry 35 of List III."

10. In Bolani Ores'' case the Supreme Court was dealing with Section 2(c) of the Bihar and Orissa Motor Vehicles Taxation Act and the corresponding provision in Karnataka Act, i.e., Section 3 also came up for interpretation in the appeal filed by Dalmia Cement Bharat Ltd. The question before the Supreme Court was

whether the dumpers and rockers owned By Bolani Ores were eligible for exemption from payment of tax under the Bihar Motor Vehicles Taxation Act. The contention before the Supreme Court was that the said Vehicles Were exclusively used within the mining area and were not at any point of time plied on public road. Appellant therein approached the Supreme Court in a Civil Appeal since the State authorities had declined to grant exemption.

11. On examination of the scheme of the Act and the facts involved in the said case, the Supreme Court held that dumpers and rockers, though registered under the Act, were not taxable as long as they were used solely within the premises of the mining area.

12. Civil Appeal No. 336/70 filed by Dalmia Cement Ltd. which arose out of a Writ Petition filed in Karnataka High Court was also considered and disposed of along with Bolani Ores'' case. That was an appeal filed against the judgment of the then Mysore High Court made in a Writ Petition. The petitioner in that Writ Petition had challenged the demand by the Regional Transport Officer to get the dumpers registered under the Act which were used in the mining area. The High Court had dismissed the Writ Petition and held that tax was leviable on the dumpers notwithstanding the fact that they were not used outside the mining area.

13. While disposing of the Writ Petition filed by Bolani Ores, Supreme Court observed that Section 3 of the Mysore Act was in pan materia with Section 2(c) of the Bihar Act. Therefore, the ratio laid-down in Bolani Ores'' case equally applies to the Mysore Act. The present Act with which we are concerned is Karnataka Act contains the same provision.

14. To my mind it is clear that exemption granted by the Government under Annexure-A, the notification dated 29-7-1975 was in conformity with what the Supreme Court has laid-down in Bolani Ores'' case. It is clear from a perusal of the provisions of Section 16(1) of the Act that the State Government may exempt any class of motor vehicles or motor vehicles not used on roads.

15. Therefore, what remains to be considered is whether in the light of the above discussion and in the light of the ratio of the decision of the Supreme Court in Bolani Ores'' case, the withdrawal of the exemption of payment of tax by the Government in the petitioner''s case is justified ?

16. A Statement of objections is also filed on behalf of respondents. Reliance is placed on the power of the Government to withdraw the exemption and reference is made to Section 21 of the General Clauses Act. It is necessary to notice that it is not the case of the Government that there was any contravention of the conditions imposed by them while granting exemption under the Notification dated 29-7-1975. However, the reason given for withdrawing the exemption on the ground that the petitioner is a company is irrelevant and is inconsistent with it''s own order granting exemption u/s 16(1) or (ii) of the Act.

17. Sri Tarakaram, learned Counsel for the petitioner has also produced a certified copy of the Judgment of Mohan, J. of Madras High Court made in W. Ps. 2337 & 2338/1976 in which Indian Oil Corporation, Madras, was the petitioner. On identical facts, the Court relying upon the Bolani Ores'' case held that the vehicles of the Indian Oil Corporation stationed at Sulur Aviation Fuel Station in Coimbatore District, were entitled to exemption.

18. For the reasons stated above, the order of the Government Annexure-C is quashed.

19. It is to be noticed that under Annexure-A exemption was granted only in respect of 4 vehicles but what is now rescinded is in respect of 6 vehicles as per Annexure-C. Petitioner is entitled to exemption in respect of the 6 vehicles referred to in Annexure-C.

20. In the result, the Writ Petition is allowed and rule issued is made absolute.

