(2009) 06 KL CK 0011

In the High Court Of Kerala

Case No : W.A. No. 20 of 2008

Jomon		APPELLANT
	Vs	
Tahsildar		RESPONDENT

Date of Decision : 09-06-2009

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 10
Motor Vehicles Taxation Act — Section 22, 5

Citation : (2009) 3 KLT 721

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : Renjith B. Marar and L. Rajesh Narayan, for the Appellant; Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Writ Appeal is filed against judgment of the learned Single Judge by which appellant''s claim for exemption from motor vehicle tax for his vehicle is rejected for the reason that Form G prescribed under Rule 10 of the Motor Vehicles Rules was not furnished by the appellant. During hearing, Government Pleader relied on Full Bench judgment of this Court in Regional Transport Officer v. Abdurahiman 2007 (1) KLT 613 (F.B.) and contended that in the absence of Form G, appellant was rightly declined exemption by the Motor Vehicles authorities and confirmed by the learned Single Judge.

2. The appellant purchased vehicle bearing Reg. No. KL 16A-4013 while it was in the garage, on 22.7.2004. However, before the appellant took possession of the vehicle from the garage. Police recovered the vehicle from the garage on 27.9.2004. The tax claimed from the appellant is for the period 1.10.2004 to 31.3.2007. The appellant''s case is that from Police custody the vehicle was released by the Sub Divisional Magistrate, to the Financier and the appellant never got possession of the vehicle. When revenue recovery notice was issued, he challenged the same before this Court claiming exemption under Notification S.R.O. 878/1975, which was declined by the learned Single Judge holding that

Form G was not furnished which is the requirement in terms of the Full Bench decision above referred. Counsel for the appellant contended that Form G has no application in as much as his claim for exemption is under Notification S.R.O. 878/75 issued by the Government u/s 22 of the Motor Vehicles Taxation Act. On the other hand, Government Pleader referring to the Full Bench decision submitted that notification relied on by the appellant is also considered by the Full Bench, which held that filing of advance intimation Form G is an absolute requirement for claiming exemption. We have heard counsel for the appellant, Government Pleader and have gone through the Full Bench judgment.

3. We feel appellant''s case is not one covered by Section 5 or Rule 10 and so much so, Form G has no application. In the first place, Section 5 provides for exemption for period for which a motor vehicle is not intended to be used or kept for use on road. The exemption referred to therein applies to motor vehicles, which but for the claim of exemption on account of non-user, would be liable for payment of tax. The mandatory procedure contained therein is filing of advance intimation in Form G prescribed under Rule 10 which is issued u/s 5 of the Act. On the other hand, Section 22 of the Act authorises Government to grant exemption or reduction in the rate of tax or modification in regard to tax liability with prospective or retrospective effect. It is expressly provided in the Section that exemption can be granted to any person or class of persons, or in respect of any motor vehicle or class of motor vehicles, or in respect of any motor vehicle or class of motor vehicles using a specified route. What is clear from this Section is that Government enjoys power to waive tax which is otherwise payable under the statute, and such waiver can be made even retrospectively. There is nothing to indicate in Section 22 that the person claiming exemption has to comply with any procedure or file any form for availing the benefit of notification. Necessarily exemption has to be claimed in accordance with the procedure or formalities contained in the Notification issued by the Government under which claim is made. The exemption claimed by the appellant under Clause 27 of the Notification S.R.O. 878/75 is for motor vehicles held in the custody of the Police or other authorities for offences other than non-payment of tax for the period during which such vehicles are in such custody. The ingredients to prove the claim of exemption are self-evident in the notification itself. In other words, any person claiming exemption on furnishing proof of taking over custody of the vehicle by the Police or authorities shall be entitled to exemption from payment of tax for the period during which the vehicle was in the custody of such authority. In other words, he has to prove with documents, period of detention i.e. the date on which the vehicle was taken into custody and the date on which vehicle was released, for claiming exemption under this clause of the Notification. Form G prescribed under Rule 10 does not call for any of the details that is required to be proved to claim exemption under the Notification. We are of the view that the procedure prescribed under Rule 10 i.e. filing of advance intimation is consciously not brought within the scope of Section 22 because Section, authorises Government to give even retrospective exemption and exemption for

vehicles operating on the road, whereas the exemption u/s 5 is only for non-user of the vehicle for any specific period. We are, therefore, of the view that the concept of exemption for non-user visualised u/s 5 and the exemption which involves even waiver of tax for the past, present or future visualised u/s 22 are entirely different. The Full Bench has not considered the scope of the Sections. On the other hand, the decision implies that in all cases of exemption claimed under the statute, Form G is required, which to our mind will defeat the very purpose of Section 22. In fact we notice from the judgment that the Full Bench was of the view that exemption should not be denied for the period during which vehicle was in the custody of Police or other authorities, whether it be for nonpayment of tax or for any other offence punishable under any law. After holding so, unfortunately the Full Bench has insisted upon the requirement of Form G which is impossible of performance by the parties. This would virtually deny the benefit otherwise available to the parties under the statute. In our view, the details called for in Form G also cannot be furnished by a person whose vehicle is taken over by the Police because he does not know where the Police is going to garage the vehicle. Further, he cannot declare the period for which the vehicle is likely to be in Police custody, probable date on which the vehicle will be again put to use etc. Here again, we notice that the Full Bench has not considered the details called for in Form G which if furnished by the person whose vehicle is taken into custody by Police, can be only vague and not specific. We do not know whether such a Form G furnished can be acted upon by a Regional Transport Authority or whether such an application deserves to be only dismissed as vague and wanting in specific particulars. We, therefore, feel the Full Bench decision requires reconsideration and for considering reference to a still larger Bench, we refer this Writ Appeal to Full Bench.

There will be stay as prayed for, for three months on payment of Rs. 15,000/- within two months from now.

