
(1987) 10 KAR CK 0017
In the Karnataka High Court
Case No : W.P. No. 13089/1987

Joseph Palanthinkal and Another

APPELLANT

Vs

Deputy Commissioner for Transports, Mysore and Another

RESPONDENT

Date of Decision : 15-10-1987

Acts Referred:

Karnataka Motor Vehicles Taxation Act, 1957 — Section 8A

Citation : (1987) 3 KarLJ 300

Hon'ble Judges : K. A. Swami, J

Judgement

Swami, J.-The petitioner in W.P.No. 13088 of 1987 is the registered owner of a tourist vehicle bearing registration No. KRV 5506 covered by the All India Tourist Permit issued under Section 63(7) of the Motor Vehicles Act, 1939 (hereinafter referred to as the "Act") by the State Transport Authority, Trivandrum (Kerala).

2. The petitioner in W.P.No. 13089/87 is also the registered owner of a tourist vehicle bearing registration No. KRV 5029 covered by the All India Tourist Permit issued under Section 63(7) of the Act by the State Transport Authority, Trivandrum (Kerala).

3. The 2nd respondent by the order dated 26-8-1985 bearing No DAS.CR./KRV-5506/83-84. produced as Annexure-A in W.P.No. 13088/87 determined the tax payable by the petitioner in respect of the vehicle bearing registration No. KRV 5506 at Rs. 15,120/- for the two quarters from 1-10-1981 to 31-12-1981 and 1-1-1983 to 31-3- 1983. Subsequently, the successor in the office of the 2nd respondent in exercise of his power under Section 8A of the Karnataka Motor Vehicles Taxation Act, 1957 (Hereinafter referred to as the "Taxation Act") issued a show cause notice dated 18-12- 1986 bearing No. DSA/CR-35/KRV 5506 83-84 to the petitioner in W.P. No. 13088/87 calling upon him to show cause as to why the order dated 26-8-1985 (Annexure-A) should not be revised and why he should not be made to pay motor vehicles tax in respect of vehicle bearing No. KRV 5506 for the period from 1-4-1981 to 31-3-1984 at the rate of Rs.216/-per seat per quarter inclusive of surcharge amounting to Rs. 90,720/-. The petitioner

submitted his reply. On consideration of the reply, the 2nd respondent has passed the impugned order dated 29-6-1987 bearing No. DSA/CR-35/KRV-5506/83-84 (Annexure-B) determining that the petitioner is liable to pay the motor vehicles tax in a sum of Rs.90,720/- for the period from 1-4-1981 to 31-3-1984. In that sum he has given deduction to the amount of Rs. 6000/- paid by the petitioner pursuant to the order dated 26-8-1985 (Annexure-A) and has directed the petitioner to pay a sum of Rs. 84,720/-. Being aggrieved by the aforesaid order, the petitioner preferred an appeal before the 1st respondent who, by the order dated 20-7-1987 Apl.No. DCT. TAX.14/87-88 produced as Annexure-C, has confirmed the order of the 2nd respondent. It is the validity of these two orders that is challenged in W.P.No. 13088/87.

4. Similarly the 1st respondent in W.P.No. 13089/1987 determined the tax payable by the petitioner in respect of vehicle bearing No. KRV 5029 by the order dated 15-10-1985 bearing No. DSA.CR 35/KRV 5029/84-85 (Annexure-A) in a sum of Rs.7560A for the period from 3-10-1981 to Rs. 31-12-1981 at the rate of Rs. 216/- per seat per quarter inclusive of surcharge for 35 seats. Out of the said sum, Rs. 6000/- paid by way of bank-guarantee was given deduction and the balance of Rs. 1,560/- was directed to be paid by the petitioner. Subsequently, the successor in the office of the 2nd respondent in exercise of his power under Section 8A of the Taxation Act issued a show cause notice dated 18-12-1986 in No. DSA/CR-35/KRV 5029/83-84 calling upon the petitioner to show cause as to why the order dated 15-10-1985 should not be revised and why he should not be made to pay motor vehicles tax at the rate of Rs. 216/- per seat per quarter for the period from 1-4-1981 to 31-3-1984, The petitioner submitted his reply. On considering the reply submitted by the petitioner, the 2nd respondent by the impugned order dated 29-6-1987 bearing No. DSA/CR-35/KRV-5029/83-84 has determined the tax payable by the petitioner in respect of vehicle bearing No. KRV 5029 for the period from 1-4-1981 to 31-3-1984 at the rate of Rs. 216/- per seat per quarter including surcharge at Rs. 30,720/-. Out of the said sum, the 2nd respondent has given deduction of Rs. 7,560/- paid by the petitioner pursuant to the order dated 15-10-1985 and directed the petitioner to pay a sum of Rs. 83,160/-.

5. Being aggrieved by the said order, the petitioner preferred an appeal before the 1st respondent who by the order dated 20-7-1987 passed in Apl.No.DCT. TAX. 15/87-88 affirming the order of the 2nd respondent dismissed the appeal as per Annexure-C. It is the validity of these orders that is challenged in W.P.No. 13089/1987.

6. As common questions of law and fact arise in these petitions, the same are heard together.

7. It is contended on behalf of the petitioners that after a Divisional Bench of this court decided W.P. No. 12495/1984-(Mrs.V. SOUDHAKUMARI v R.T.O. & TAXATION AUTHORITY, reported in I.L.R 1985 Karnataka, the 2nd respondent determined the tax as per Annexure-A produced in each one. of the writ

petitions. Therefore, in the absence of any further material, there is no justification on the part of the 2nd respondent to exercise power under Section 8A of the Taxation Act and revise, the earlier order.

8. It appears to me, having regard to the facts and circumstances of the case, it is not possible to accept this contention. It is necessary to bear in mind that prior to 1-4-1981, the tourist vehicles having the permits issued under Section 63(7) of the Act by the Transport Authorities of the other States, were exempted from payment of tax in the State of Karnataka. This exemption was withdrawn with effect from 1-4-1981 under the Notification dated 31-3-1981 bearing No HD 50 TMI 81. Several Operators including the petitioners challenged the validity of the said notification. The petitioner in W.P.No. 13088/1987 filed W.P.No. 27422/81 and the petitioner in W.P.No.13089/81 filed W.P. No. 22511/1981. In those petitions, they obtained interim orders on the averments that if they have to Operate in the State of Karnataka, they will be required to pay the tax under the Notification dated 31-3-1981. On the basis of the averments, this court passed an interim orders staying the operation of the Notification dated 31-3-1981 in so far it affected the petitioners subject to each of the petitioners furnishing bank guarantee in a sum of Rs. 6000/- in favour of the 2nd respondent (R.T.O. Mysore). Pursuant to the said interim orders, it is not in dispute, each one of the petitioners furnished bank guarantee to the satisfaction of the R.T.O. Mysore. It is in this context, a Division Bench of this court considered the effect of the averments made in the writ petition and obtaining of the interim order in Souda Kumari's case (ILR 1985 Karnataka. 615). The relevant portion of the judgment is found at paras 14 and 15 which reads as follows:

"14. When the petitioner pays taxes in the home State and this State with which we are primarily concerned, it is obvious that she pays them only to operate her vehicle in both the States and for no other reason at all. When the petitioner operates her vehicle in this State after paying taxes to both the States, it is pretty certain that she would have definitely operated her vehicle for the entire period without payment of taxes to the State of Karnataka. After all this is consistent with her later conduct. We do not see anything illegal in the RTO relying on this, as one of the circumstances to record his finding.

15. After all the petitioner would not have approached this court for nothing and obtained an order of stay for nothing at all. Without any doubt the petitioner approached this Court and obtained an order with one and the only object of operating her vehicle in this State without payment of taxes, as she was doing earlier. Even the very telling observations of the Supreme Court in Jayaram's case (A.I.R. 1983 S.C.1005) militate against the case of the petitioner.

The contention of the petitioners about the applicability of Section 3(2) of the Act was also negated by this court in the aforesaid decision. The relevant portion is found in para 20 of the judgment which is as follows:

"Section 3(2) of the Act governs a case of user of a vehicle for a period not

exceeding 30 days and not to a case of continuous user of a vehicle as in the present case. Section.3(2) applies to a case of temporary or sporadic user of a vehicle of outside State and not to a case of continuous user of such vehicle in the State of Karnataka. When a vehicle is continuously used in the State as found by the R.T.O. then that vehicle is eligible to pay taxes only under Section 3(1) of the Act. We see no merit in this contention of Sri Achar also reject the same."

9. The ratio of the aforesaid decision of this Court applies to the case on hand. In the instant case also the petitioners obtained an interim order on the averments that if they were to operate the vehicles they were required to pay the tax and therefore the notification should be stayed. They also furnished bank guarantees in terms of the interim orders. It is certain that the petitioners had obtained the interim orders with one and the only object of operating the vehicles in the State without payment of tax. The records referred to by the authorities below do show that the petitioners had plied the vehicles in the State of Karnataka. Therefore, the petitioners were liable to pay the tax as demanded. It is this aspect of the matter which was overlooked in the earlier order even though in the earlier orders, the decision in Soudha Kumari's case was referred to but it was misunderstood and was not correctly applied. The ratio of the judgment was glossed over. The tax for only two quarters in one case and one quarter in another case, was demanded. Such a course having regard to the Division Bench decision of this Court in Soudha Kumari's case was not correct. Of course, if the petitioners really did not operate this vehicle, they are not put to any loss. Their right to seek refund still remains as per Section 7 of the Taxation Act and the Rules framed thereunder. That being the position, the circumstances did exist for exercise of the power under Section. 8A of the Taxation Act which provides that if at any time it is found that the amount of tax paid for any period in respect of any motor vehicle falls short of the tax payable under the Act, then, notwithstanding any incorrect entry or the absence of any entry in the certificate of registration relating to the motor vehicle regarding the tax payable in respect of such vehicle or the issue of a taxation card or any entry having been made in such taxation card regarding the payment of tax for such period, the taxation authority, may, after notice to the registered owner or person having possession or control of the motor vehicle and giving him an opportunity of being heard recover the difference between the tax so paid and the tax payable by such owner or person. In the instant case the tax payable by the petitioner was not fully recovered or determined as per the orders produced as Annexure-A in each of these petitions. Therefore, the 2nd respondent was entitled to revise the same. He has issued notice to the petitioners and heard them before passing the orders. In addition to this, the recent enunciation of the Supreme Court in STATE OF KARNATAKA v GOPALAKRISHNA SHENOY (I.L.R. 1987 Karnataka. 3109) has also to be borne in mind. It has been held by the Supreme Court that it is not possible for the State to keep a watch on all the vehicles which are operated in the State and therefore, it is for the operators who want to claim exemption from

the payment of tax to prove the non-user and claim refund. The relevant portion is as follows;

"It would be absolutely impossible for the State to keep monitoring all the vehicles and prove that each and every registered vehicle is in a fit condition for and would be making use of the roads and is therefore, liable to pay the tax. For that reason, the State has made the payment of tax compulsory on every registered vehicle and that too in advance and has at the same time provided for the grant of refund of tax whenever the person paying the tax has not made use of the roads by plying the vehicle and substantiates his claim by proper proof. Any view to the contrary would defeat the purpose and intent of the Taxation Act and would also afford scope and opportunity for some of the persons liable to pay the tax to ply the vehicle unlawfully without payment of tax and later on justify their non-payment by setting up a plea that the vehicle was in repair for a continuous period of over a month or the whole of a quarter, half year or year as they choose to claim."

That being so, it is not possible to hold that the impugned orders suffer from any infirmity or error apparent on the face of the record.

9. For the reasons stated above, the petitions fail and the same are dismissed.

10. However, it is made clear that the dismissal of these petitions does not come in the way of the petitioners to pay the tax and then claim refund as per the provisions of Section 7 of the Taxation Act read with the relevant Rules. If such application is made, the concerned authority shall consider the same and dispose of the same on merits in accordance with law irrespective of this order.

Writ Petitions Dismissed.