(1989) 07 GUJ CK 0014

In the Gujarat High Court

Case No : First Appeal No. 1108 of 1986

Kaushik Transport — APPELLANT

Vs

State of Gujarat and Others — RESPONDENT

Date of Decision : 18-07-1989

Acts Referred:

Bombay Motor Vehicles Tax Act, 1958 — Section 3, 4
Motor Vehicles Act, 1939 — Section 31, 4

Citation : AIR 1990 Guj 102 : (1990) 1 GLR 21

Hon'ble Judges : N.B. Patel, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : S.H. Sanjanwala, for the Appellant; M.C. Patel, Addl. Govt. Pleader, for the Respondent

Judgement

G.T. Nanavati, J.—The appellant was the owner of truck bearing No. GTD 5177. He sold the said truck to Himatlal Jaysukhlal-original defendant No. 3, on 1-10-1975. On payment of price, delivery of the truck was given to Himatlal on that day. A sale deed in that behalf was also executed. It was agreed by the parties that motor vehicle taxes on and from 1-10-1975 were to be paid by the purchaser. The applicant had also informed the registering authority about this transfer by its letter dated 3-10-1975 and had also sent a copy of the sale deed along with it. The appellant, however, received a notice in 1982 calling upon it to pay the motor vehicle tax and penalty for the period from 1-10-1975 to 31-12-1981. The appellant pointed out to the registering authority that it had already transferred the truck in 1975 but the registering authority did not accept this plea of the appellant on the ground that the appellant has not ceased to be a registered owner of the truck and therefore it has continued to remain liable to pay the tax. As the tax demanded by the registering authority was not paid by the appellant, the registering authority tried to recover the said amount as arrears of land revenue under the Bombay Land Revenue Code. The appellant, therefore, filed Civil Suit No. 128 of 1983 in the Court of Civil Judge (S.D.) Ahmedabad (Rural).

2. The appellant, in support of its case, inter alia, produced the intimation which it had given to the registering authority and also a copy of the sale deed. It also examined Vinodbhai, a partner of the firm, to prove that the sale had taken place on 1-10-1975 and that necessary intimation thereof was given to the registering authority. No evidence was led either by the registering authority or by the purchaser of the truck. The trial Court, after considering the requirement of Section 31 of the Motor Vehicles Act, as amended in 1978, held that the proper procedure was not adopted by the appellant-transferor and by the transferee-original defendant No. 3, and, therefore, the appellant cannot be said to have properly transferred its vehicle. He, therefore, held the appellant liable to pay the taxe demanded from it. The suit of the appellant was, therefore, dismissed.

3. Aggrieved by the judgment and decree passed by the trial Court, the appellant has filed this appeal and contended that the trial Court committed an error in applying the amended Section 31 even though old Section 31 applied to the facts of the case. As stated earlier, the vehicle in question was sold by the appellant on 1-10-1975. Therefore, what was the obligation of the appellant at that time will have to be found out by referring to the relevant provision of law as it stood on that day. Admittedly Section 31, which has been applied by the trial Court, came to be inserted in the Act in place of the old Section 31 in 1978. The procedure which is prescribed by the amended Section 31 is required to be followed by the transferor - transferee and the concerned authority after the date on which that provision came into force. The appellant was not required to follow that procedure and, therefore, the finding recorded by the trial court in this behalf is obviously erroneous.

4. Section 31, as it stood before its amendment in 1978, read as under:

"3 1. (1) Where the ownership of any motor vehicle registered under this Chapter is transferred :

(a) the transferor shall, within fourteen days of the transfer, report the transfer to the registering authority within whose jurisdiction the transfer is affected and shall simultaneously send a copy of the said report to the transferee;

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he resides, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

(2) A registering authority other than the original registering authority making any such entry shall communicate the transfer of ownership to the original registering authority."

Under the above section the only obligation of the transferor was to report within 14 days of the transfer the fact of transfer to the registering authority within whose jurisdiction the transfer was effected. He was also required simultaneously to send a copy of the said report to the transferee. The evidence led in this case clearly establishes that the appellant had, within the prescribed time, reported the fact of transfer to the registering authority and had also given a copy of that report to the transferee. In fact, the original T.T.O. form was given by the appellant to the transferee. In the intimation, which it had given to the registering authority, a request was made to cancel its name as registered owner and to substitute the name of the transferee to whom the vehicle was sold. It was not the case of the contesting defendants that the intimation which the appellant had given was not in the form in which it was required to be given under old Section 31. It, therefore, becomes apparent that the appellant had discharged the obligation, which it was required to discharge under the provision of law then applicable. It was not informed by the registering authority that its request to cancel its name as registered owner and to substitute the name of the purchaser as registered owner was not accepted by the department. Naturally the appellant remained under the belief that its request was accepted since it did not hear anything to the contrary from the department within reasonable time. It was after lapse of about seven years that the Regional Transport Authority called upon the appellant to pay tax payable under the Bombay Motor Vehicles Tax Act on the ground that it still continues as a registered owner in the record of the registering authority.

5. The question for our consideration is, whether in view of these facts, respondents Nos. 1 and 2, who are original contesting defendants, can be permitted to recover the tax from the appellant on the ground that it still continues to be the registered owner. It is no doubt true that under the Bombay Motor Vehicles Tax Act, 1958, it is provided that tax leviable u/s 3 shall be paid by owners or persons having possession or control of the motor vehicle. Section 4 makes the registered owner of the vehicle and a person having possession or control of the motor vehicle in question liable to pay tax under that Act. Section 4 read in isolation may lead to a conclusion that a registered owner continues to remain liable to pay tax under the Act so long as he continues to be the registered owner even though he might have ceased to be the real owner of the vehicle inspite of a valid transfer made by him. This section, in our opinion, is really required to be read along with Section 31 of the Motor Vehicles Act. As pointed out earlier, under old Section 31 only obligation cast upon the registered owner who transferred his vehicle was to report that fact of transfer to the registering authority in the prescribed form which contained an intimation and a request to the registering authority to make a suitable change. This was the only obligation cast upon the registered owner when he transferred his vehicle and ceased to be the real owner of the vehicle. Once he notified the fact of transfer to the registering authority he could be said to have discharged his obligation under the law and he could not thereafter be saddled with any liability as a registered owner merely because transferring or the registering ''authority had failed to discharge its obligation under the Act. The position will be the same

even after amendment of Section 3 1, provided the new procedure provided therein is followed. To hold otherwise would make the requirement of the provision of law in that behalf unreasonable. Reading the two provisions together, therefore, it will have to be held that a registered owner of a vehicle continues to remain liable to pay the tax under the Bombay Motor Vehicles Tax Act so long as he does not notify the transfer to the registering authority as required by the provisions of the Motor Vehicles Act. It could not have been the intention of the Legislature that even after notifying the transfer and making a request to the registering authority to make necessary changes he should continue to remain liable for payment of the tax. For these reasons, even though S. 4 of the Bombay Motor Vehicles Tax Act, 1958 provides that every registered owner shall pay tax leviable under S. 3 of that Act, it will have to be held that the registered owner as contemplated by that section is the registered owner who has not notified the fact of transfer in accordance with the provisions of the Motor Vehicles Act. If a registered owner properly notifies the fact of transfer and requests the registering authority to make necessary changes and if his request is not rejected then in that case, in our opinion he cannot be made liable to pay tax under the Bombay Motor Vehicles Tax Act thereafter. As pointed out earlier, in this case necessary intimation was given and a request for change was also made. The registering authority had not rejected the request of the appellant. Under the circumstances he cannot be permitted after a lapse of about seven years to claim the tax and penalty from the appellant on the ground that it still continues to be the registered owner notwithstanding the fact that the appellant as a registered owner had discharged its obligation under the Act and there was a lapse on their part in either not making the change as desired by the appellant or informing it that its request was not accepted.

6. In the result, this appeal will have to be allowed. The suit filed by the appellant will have to be decreed. It is declared that the appellant is not liable to pay the taxes under the Bombay Motor Vehicles Tax Act in respect of the truck bearing.No.GTD 5177 on and from 1-10-1975. Respondents Nos. 1and 2 are, therefore, permanently restrained from recovering the tax for that period from the appellant in any manner. Looking to the facts of the this case, the parties are directed to bear their own costs throughout.

7. Appeal allowed.

