(1991) 11 KL CK 0041

In the High Court Of Kerala

Case No : O.P. No. 1709 of 1988

K.K. Kalyana Sundaram — APPELLANT

Vs

R. T. O. and Others — RESPONDENT

Date of Decision : 01-11-1991

Acts Referred:
Kerala Motor Vehicles Taxation Act, 1976 — Section 5

Citation : (1992) 1 KLJ 365

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : K.P. Dandapani, for the Appellant; V.A. Mohammed, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. Petitioner is the registered owner of a Contract Carriage vehicle, bearing registration No. KRV 5029. it is covered, by an All India Tourist Permit The vehicle was garaged at Coimbatore and it was off the road for the whole quarter ending 30-6-1986. Petitioner gave due intimation regarding the non-operation of that vehicle by submitting Form ''G'' in time. The permit of that vehicle was to be renewed by June, 1986. For the purpose of effecting the renewal of the permit, petitioner remitted a sum of Rs. 9,504/-(Rs. 7,700/- towards the tax and the remaining as penalty and surcharge for the quarter ending 30-6-1986), on 19-6-1986. Since the vehicle was not used or kept for use during the quarter ending 30-6-1986 and intimation in Form ''G'' was given in tune, he prayed for refund of the amount remitted by way of tax and penalty. Deputy Transport Commissioner by his order dated 8-1-1987 refused, refund of tax. Petitioner took up the matter in revision before the Transport Commissioner. By Exhibit P3 order, the Commissioner held that petitioner is eligible for exemption from tax during the quarter ending 30-6-1986 and granted exemption. But as the refund application is belated and as the remittance was not on time, he took the view that refund cannot be granted as per S. R. O. 874/75 dated 29-9-1975. This view

taken by the Transport Commissioner is under challenge. A detailed counter affidavit has been filed in this case. The stand taken therein is that the quarter ending 30-6-1986 was paid on 19-6-1986 as against the prescribed time limit allowed upto 14-4-1986, as per Rule 5 of the Kerala Motor Vehicles Taxation Rules, 1976 So also the application for refund of the tax for the quarter ending 30-6-1986 was filed only on 1-7-1986, that is only after the quarter, as against the maximum time of 7 days allowed, which expired on 7-4-1986. Accordingly it is contended that since the petitioner has failed to satisfy the requirements of the Rules, the application for refund was rejected by the second respondent and it calls for no interference.

2. Section 5 of the Kerala Motor Vehicles Taxation Act, 1976 deals with ''exemption from tax''. In, the case of a motor vehicle which is not intended to be used or kept for use during the whole of a quarter, the registered owner or the person having possession or control of the vehicle shall give previous intimation in writing to the Regional Transport Officer from whom the endorsement for tax has been obtained, that such vehicle would not be used for the said period Thereupon the registered owner or such other person shall not be deemed to have used or kept for use the vehicle for such period, and no tax shall be payable in respect of such vehicle for that period. In the instant case, petitioner gave, prior intimation in Form ''G'' regarding the non-user of his vehicle for the whole of the quarter ending 30-6-86. On verification, the Transport Commissioner came to the conclusion that the said vehicle was not used or kept for use during the quarter ending 30-6-1986; Consequently, my tax shall be payable in respect of such vehicle for quarter ending 30-6-1986. The Transport Commissioner, has infact found that the petitioner is eligible for exemption from tax during that quarter under the law. So, he granted exemption to the petitioner from the liability of paying tax for the vehicle KRV 5029.

3. Even though the vehicle, was entitled to full exemption from the tax for the quarter ending 30-6-1986, petitioner had to pay the tax of the vehicle forgetting renewal of the permit, since no order on his application for exemption was passed till 19-6-1986. As the permit of the vehicle had to be renewed in June, 1986, he remitted the tax of the vehicle, with penalty on 19-6-1986. Immediately thereafter, he, applied for refund of that amount because he was eligible for exemption from tax during the quartet ending 30-6-1986. S.R.O. 874/75, dealing with refund of tax paid, inter-alia provides the following conditions for the refund of tax.-

Application in writing for the refund of tax along With the tax licence shall be made to the Deputy Transport Commissioner through the Regional Transport Officer concerned so as to reach, the Regional Transport Officer within one week from the date of commencement of the period for which the refund is claimed, stating the period of non use and the place of garage of the vehicle and if on verification, it is found that the vehicle has not been used during such period..

From this, it would appear that a person who is not using the vehicle during a whole quarter should pay the tax in respect of the vehicle for that quarter and put in application for refund of that amount and the intimation of the non-user of the vehicle in Form ''G'' within seven days of the commencement of the quarter. This provision appears to be against that contained in Section 5 of the Act. As per Section 5; if the motor vehicle is not used for the whole of the quarter, the registered owner should give previous intimation in writing to the Regional Transport Officer from whom the endorsement of the tax has been obtained and the registered owner shall not then be deemed to have used the vehicle for that period and no tax shall be payable in respect of such vehicle for such period. So, when a Form ''G'' intimation is given, no tax shall be payable in respect of that vehicle. Form ''G'' intimation is to be given within one week from the date of commencement of the quarter. If such art intimation is given on or before 7-4-1986 in respect of quarter ending 30-6-1986, no tax shall be payable in respect of the vehicle. In the instant case, petitioner gave intimation in Form ''G'' before 7-4-1986. Therefore, no tax shall be payable in respect of the petitioner''s vehicle for the quarter tending 30-6-1986. But, he was forced to pay the tax in respect of that vehicle on 19-6-1986 because he wanted to get the permit renewed before the end of June, 1986 and no final order on the intimation in Form ''G'' was passed by the authorities. In other words, the tax which was not payable in respect of the vehicle as per the provision contained in Sec. 5 happened to be paid as a result of the delay caused in passing final order granting exemption. After paying the tax, petitioner claimed refund, that refund has been refused on the ground that the application is belated. In other words, the stand taken by the Commissioner is that the petitioner should have filed application for refund on or before 7-4-1986. This stand taken by the Commissioner, according to me, is absurd. The provision in the S. R. O. quoted above cannot be interpreted in such a manner as to make it absurd. Petitioner, as per the provision contained in Section 5 of the Act, was not liable to pay tax in respect of his vehicle for the quarter ending 30-6-1986. The amount that was paid in respect of his vehicle for the quarter ending 30-6-1986 should have been refunded because the State had no right to that money paid by him. This having not been done, I direct third respondent to refund the amount of Rs. 9,504/- with interest at the rate of 12 per cent per annum from 4-1-1988, the date of Exhibit P3 order, till the date of payment.

Original Petition is allowed in the above terms.

Issue photo copy of the judgment to the parties on usual terms.

