
(2014) 06 GUJ CK 0072

In the Gujarat High Court

Case No : Special Civil Application No. 6196 of 1996

Lalitaben

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 18-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 2015 Guj 8

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : Jashbhai P. Patel and Nildhara I. Desai, Advocates for the Appellant;
P.P. Banaji, A.G.P, Advocates for the Respondent

Judgement

C.L. Soni, J.—The challenge made in this petition filed under Articles 226-227 of the Constitution of India is against the order dated 4.7.1991 (4.7.1995) at Annexure-C passed by the Joint Director of Transport, Gujarat State, Ahmedabad as also the order dated 28.5.1996 Annexure A passed by the Regional Transport Officer, Jamnagar refusing to accept the request of the petitioner for non-use of her vehicle (Omnibus) for the period from 1.8.1994 to 30.11.1994 and ordering the petitioner to pay Rs. 22500.00 + penalty. The case of the petitioner is that her husband died on account of cancer on 20.10.1991. He was the owner of the designated omnibus bearing registration No. GRP 3581. She was doing the household work and not conversant with the law governing the motor vehicle but as legal representative, registered ownership of the said bus was transferred in her name. Composite tax for the said bus was paid up to 30.4.1994 under section 3-A of the Motor Vehicles Tax Act, 1958 ("the Act" for short) and the Bombay Motor Vehicles Tax Rules, 1959 ("the Rules" for short). As the bus required repairs, declaration in the prescribed form NT was submitted for the period from 1.5.1994 to 30.11.1994. The petitioner has averred that though the non-use is intimated by the petitioner in prescribed manner for the period from 1.5.94 to 30.11.94, respondent No. 2 did not sanction non-use for the period from 1.8.94 to 30.11.94 which resulted in imposing tax and penalty for the

aforesaid amount. The petitioner has raised contention that once non-use of the vehicle is intimated for the period beyond three months, the owner of the vehicle is not required to satisfy the authority as to reasons for non-use of the vehicle exceeding three months and, therefore, respondents were not justified in accepting the non-use only for the three months and ordering for payment of tax and penalty for remaining period on the ground that the petitioner has not provided reasons for non-use of omnibus for the period exceeding three months.

2. The petition is opposed by affidavit in reply. It is mainly stated that during the financial year 1994-95, non-use of the passenger bus of the petitioner has been accepted by the respondent No. 3 for three months from 1.5.94 to 31.7.94 in normal circumstances but respondent No. 2 has refused to accept non-use beyond the period of three months i.e. from 1.8.94 to 30.11.94 as no evidence was produced by the petitioner to show that the bus has not been used beyond the period of three months for the reasons beyond the control of the petitioner.

3. I have heard the learned advocate for the petitioner. Since the affidavit-in-reply is filed by the Deputy Director of Transport, Gujarat State, learned AGP Mr. P.P. Banaji was also asked to make the submissions.

4. Learned Advocate Ms. Nildhara Desai for the petitioner submitted that the issue involved in this petition is no longer *res integra*. She submitted that Hon"ble the Supreme Court in the case of *State of Gujarat and Others Vs. Kaushikbhai K. Patel and Another*, , held that when the non-use is accepted for the period exceeding three months, the authorities cannot give benefit only for the period of three months and impose tax and penalty for the period of non-use beyond three months. Ms. Desai submitted that there is no dispute about the fact that proper intimation in prescribed forms for non-use of the omnibus of the petitioner between 1.5.94 to 30.11.94 was given to the respondents. Even the reasons about need of repairs for the vehicle were declared by the petitioner. Ms. Desai submitted that though the non-use of the vehicle for the period as above is not doubted and in fact accepted by the respondent authorities, however, respondent No. 2 refused to sanction non-use for the period from 1.8.94 to 30.11.94 for the reasons not tenable in the eye of law. Ms. Desai submitted that as held by Hon"ble the Supreme Court, owner of the vehicle is not required to give reasons for claiming benefit of non-use of vehicle and once the non-use is believed beyond the period of three months, respondent No. 2 ought not to have refused to sanction such non-use for entire period. She, thus, urged to allow this petition and quash and set aside the impugned orders.

5. Learned A.G.P. Mr. Banaji drew attention of the Court to the affidavit in reply and pointed out that though non-use of the passenger bus of the petitioner was accepted for first three months in normal circumstances, however, respondent No. 2 refused to accept non-use for the remaining period as respondent No. 2 was of the view that the petitioner was required to provide reasons beyond her control for keeping the vehicle in non-use for more than three months. Mr. Banaji however could not dispute that Hon"ble the Supreme Court has ruled in *State of*

Gujarat and Others Vs. Kaushikbhai K. Patel and Another, that the owner of the vehicle is not required to satisfy the authority as to reasons for non-use of the vehicle.

6. Having heard the learned advocates for the parties, it appears that undisputedly, the petitioner had given declaration in the prescribed forms NT for non-use of her omni: bus for the period from 1.5.94 to 30.11.94. Such fact of giving intimation in prescribed form for non-use of the vehicle by the petitioner for the said period appears to be accepted by the respondents as stated in the impugned order. However, non-use of the omnibus of the petitioner was not sanctioned for the period from 1.8.94 to 30.11.94 and for the said period, composite tax with penalty is ordered to be recovered from the petitioner by the impugned orders.

7. In the affidavit in reply, it is stated in para 7 at page 50 that during the financial year 1994-95, non-use of the passenger bus of the petitioner was accepted for three months from 1.5.94 to 31.7.94 in normal circumstances. However, non-use for the remaining period was refused. Thus, the factum about intimation about non-use of the vehicle for entire period gets supported by the affidavit in reply. However, reason given for accepting non-use only for three months in the affidavit is that the respondent No. 2 has not sanctioned part of the non-use beyond three months on the ground that the petitioner has not provided reasons beyond her control for non-use for the said period.

8. In the case of State of Gujarat and Others Vs. Kaushikbhai K. Patel and Another, , Hon"ble the Supreme Court has held and observed in paras 8 and 9 as under:--

"8. We have considered submissions of the learned counsel for the parties. The fact that are not in dispute are: the respondent No. 1 filed Form NT declaring non-use of the vehicle in question for the period 1-7-95 to 31-3-96; the report submitted by the motor vehicle Inspector regarding non-user of the vehicle for three months from 1st July, 1995 to 30th September, 1995 was accepted and refund of tax was ordered. For the remaining period refund was not granted as the Director of Transports was not satisfied of the non-user of the vehicle for reasons beyond the control of the respondents. It is well-settled in law that the tax imposed on vehicle under the Act is compensatory in nature for the purpose of raising revenue to meet the expenditure for making and maintaining the roads and regulation of traffic. To put it differently, the taxes are levied on the vehicles using the roads or in any way forming the part of the flow of traffic on the roads which is required to be regulated and not on the vehicles which do not use the roads at all. What is material and relevant is use of road by vehicles for levy of tax under the Act. The reasons for non-use of roads is immaterial and irrelevant when the nature of the tax itself is compensatory for use of roads. It follows from sub-section (2) Section 3 of the Act that where a motor vehicle is not using the roads no tax is levied thereon. If any tax has been paid in relation to such vehicle then the tax for the period during which it was not put on the road is

refundable. In order to avoid evasion of tax the State can compel the owner to pay tax in advance. In fact sub-section (5) (a) and (b) of Section 3-Aspeak of refund of tax that had been collected earlier.

9. In the Statement of Objects and Reasons appended to the amending Act 3 of 1992, it is stated: "Having regard to the commercial use of omnibuses exclusively used as contract carriages in normal circumstances, it is generally uneconomic for the registered owners of such omnibuses to put such omnibuses to non-use for a very long time. Cases have come to the notice of the Government indicating that many a time such omnibuses which purported to have been put to non-use were operated clandestinely resulting in evasion of the tax and consequent loss of revenue to the Government. In order, therefore to prevent evasion of tax, it was considered necessary to make a provision to restrict the refund of the tax to a total period of three months of non-use in a financial year, in normal circumstances. However, in order to meet with the genuine cases where such an omnibus may have to be put to non-use for a period exceeding three months on account of reasons beyond the control of the registered owner, provision is made for refund of tax for non-use of the omnibus for a period exceeding three months". Otherwise also various provisions and safeguards are available in the Act. The authorities have enough powers to check evasion of tax even without insisting for the reasons beyond the control of registered owner or person as to the reasons for non-use. A registered owner or the person in possession in addition to filing of Form NT, can be directed to surrender the registration certificate, fitness certificate etc. for the period of non-use. If the vehicles are clandestinely put to use without the certificate of registration, fitness certificate or taxation certificate, it is open to the authorities to take action against the owner in accordance with law. Mere apprehension of clandestine use of a vehicle cannot be a ground for imposing tax on omnibuses which are not put on road or kept away from use. In Form NT (Annexure P-4) a declaration is made as to the place where the vehicle is kept for non-use and further declaration is made that the owner shall not remove the said vehicle from the said place without the previous permission of the taxation authority. In the said Form it is also stated that the certificate of taxation in respect of the said vehicle is also surrendered. Motor Vehicle Inspectors could also check and verify about the availability of the vehicle in place of "non-use". Any clandestine operation or the absence of vehicle from the declared place of non-use whenever and wherever detected attracts heavy penalty to the extent of 25% of the tax due and for repetition of such contraventions the amount of penalty is coercively increased. Further claim for refund of tax for the period of non-use of vehicle is allowed only if the owner or any person having possession or control of a designated omnibus proves to the satisfaction of the taxation authority that the bus in respect of which the tax has been paid has not been used or kept for use for a particular period. If the authorities are not satisfied as to the non-use of vehicle it is open to them to deny claim for refund. There is sufficient authority and machinery to the appellants to prevent evasion of tax in this regard. Looking

to the Statement of Objects and Reasons for the amendment, it appears that the appellants do not trust the owners of omnibuses or their own officers and machinery. Mere apprehension of the appellants that omnibuses will be clandestinely operated and claim would be made for refund on the ground of their non-use, in our opinion, cannot justify for the insistence of satisfaction as to the reasons beyond the control of the owner or person for non-use of a omnibus. This apart, there is no good reason put forward as to why the omnibuses are singled out. Even heavy goods transport vehicles are also purchased by investing heavy amount. In other words, the condition that for a period of non-use beyond three months, the owner or a person in possession or control of vehicle should satisfy the reasons beyond the control for non-use of Vehicle is attached to omnibuses and not to other vehicles. If the appellants see any difficulty in working of their officers in the matter of checking evasion of tax, that itself is not a good ground to uphold the validity of the condition that an owner or possessor of a vehicle should satisfy as to the non-use of omnibus for the reasons beyond his control in order to claim refund of tax for a period exceeding three months."

9. In light of the above principles of law laid down by Hon"ble the Supreme Court squarely covering the case of the petitioner, the impugned orders need to be quashed and set aside. For the reasons stated above, the petition is allowed. The impugned orders dated 28.5.1996 and 4.7.1991 (4.7.1995) at Annexures- A and C are quashed and set aside. If the petitioner is entitled to refund of any amount, same shall be paid to the petitioner within a period of two months from the date of receipt of this order. Rule is made absolute to the above said extent.