(2015) 02 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 12855, 10726, 14473, 12396, 12398, 12485, 12487, 12981, 12982, 12983, 13154, 13367, 13368, 14120, 14121, 14133/2014 and 203/2015

Lat Sahab and Others APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Citation : (2015) 02 RAJ CK 0030

Hon'ble Judges : Alok Sharma, J.

Bench : Single Bench

Advocate : Satish Khandelwal, Lokesh Sharma and Swaraj Sharma, for the Appellant; V.D. Gathala, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—Facts of writ petition No. 12855/2014 are taken as the lead case for a decision on the legal question which arises in these writ petitions.

2. Taxation on motor vehicles in State of Rajasthan is levied under the Rajasthan Motor Vehicles Act, 1951 (hereinafter ''the 1951 Act''). Thereunder both road tax and Special road tax are payable with reference to Section 4A and 4B. Vide notification dated 9-3-2011 in the exercise of powers under Section 3(1) of the 1951 Act, the State Government being of the opinion that it was expedient in public interest to do so, exempted new stage carriage passenger vehicles (hereinafter ''buses'') purchased from the date of notification and registered before 31-3-2013 and plying exclusively on rural routes and other routes (as classified under the provisions of the Rajasthan Motor Vehicles Rules, 1990) from the payment of special road tax otherwise payable under Section 4B of the 1951 Act for a period of two years from the date of registration of newly purchased vehicles. Vide notification dated 6-3-2013, it was further provided that new stage carriage passenger vehicles (buses) purchased on and after 1-4-2013 and registered upto 31-3-2014 also plying exclusively on rural routes and other

routes as classified under the provisions of the 1990 Rajasthan Motor Vehicles Rules, 1990 (hereinafter ''the 1990 Rules'') were exempted from payment of special road tax under Section 4B of the 1951 Act for a period of three years from the date of registration.

3. The petitioner a holder of stage carriage permit for running his bus on an inter-state route Jhunjhunu to Delhi, states that the bus was purchased subsequent to 9-3-2011 and registered before 31-3-2014. The inter-state route on which the bus is plied, the petitioner states, falls within the meaning of "other routes" under notifications dated 9-3-2011 and 6-3-2013 and hence is exempted from payment of special road tax under Section 4B of the 1951 Act. It has been submitted that initially the respondents took a view that petitioner''s bus was so exempted, but subsequently owing to the letter dated 24-7-2014 issued by the Additional Transport Commissioner (Taxation) to all Regional Transport Officers and District Transport Officers, they seek to backtrack and assert that both the notifications dated 9-3-2011 and 6-3-2013 do not apply to inter-state routes and therefore arrears of special road tax, interest and penalty thereon from the petitioner running his vehicle an inter-state route is to be recovered. And the jurisdictional taxation officer in compliance with the order dated 24-7-2014 is demanding arrear of special road tax under pain of seizure of the petitioner''s vehicle (bus) in issue. The letter dated 24-7-2014 issued by the Additional Transport Commissioner (Taxation) and the action thereon by the jurisdictional taxation officers is impugned as wholly illegal, arbitrary and contrary to the plain language of exemption notifications dated 9-3-2011 and 6-3-2013. The case of the petitioner is that the letter dated 24-7-2014 entails an unwarranted and unsustainable change of opinion on the question of liability of the petitioner to pay special road tax in respect of a bus, plying on an inter-state route which was admittedly newly purchased and registered within the period set out in the two notifications dated 9-3-2011 and 6-3-2013. It is submitted that earlier the District Transport Officer vide receipt dated 13-3-2013 while levying road tax of 12,600/- on the petitioner''s bus in issue, running on an inter-state route, had specifically recorded that special road tax under Section 4B of the 1951 Act thereon was not payable. In the aforesaid facts, a challenge has been made to the order dated 24-7-2014 issued by the Additional Transport Commissioner (Taxation) to jurisdictional taxation officers and the consequent demand seeking payment of special road tax allegedly due with interest and penalty under the pain of seizure of the petitioner''s bus.

4. Reply to writ petitions has been filed. It has been submitted that the petitioner''s vehicle RJ-18/PA-3618M plies on an inter-state route i.e. Jhunjhunu to Delhi via Nrishinghpura, Narnol, Gurgaon and is not covered under exemption notifications dated 9-3-2011 and 6-3-2013. According to respondents the aforesaid exemptions are in terms of their plain intendment confined to rural routes and other routes of a similar discount as an incentive by the state government to encourage plying of new buses on routes which were not premium in nature and where old buses in dilapidated conditions were ordinarily

run leading to poor and unreliable transport service. It has been submitted that the words "other route" in the aforesaid exemption notifications dated 9-3-2011 and 6-3-2013 have to be construed on the principle of nositur-a-sociis, take their color from the accompanying words, and be limited to routes akin to rural routes as an expansive interpretation of aforesaid words would defeat the purpose of notifications and end up including premium inter-state routes for conferment of unintended benefit.

5. Mr. Satish Khandelwal, Lokesh Sharma and Swaraj Sharma have submitted that the words "other routes" in the exemption notifications in issue have to be construed in accordance with the classification under the Rules of 1990 and Additional Transport Commissioner (Taxation) has no jurisdiction to classify the routes contrary thereto by his letter dated 24-7-2014 requiring the taxation officers under the Act of 1951 to recover special road tax from vehicles purchased and registered during the period set out in exemption notifications merely on account of such stage carriages (buses) plying on inter-state routes. It has been submitted that "other routes" have been classified in terms of Rule 5.5.(3b) of the Rules of 1990. Thereunder clause 4 of Explanation 1 defines "other routes" to mean a route which is not covered under a sub-urban route, rural route, route lying exclusively within the area of Municipality or UIT or both, and the existing stage carriage routes lying beyond the area or Municipality or UIT or both at the time of commencement of the Rajasthan Motor Vehicles (IInd amendment) Rules 2004 unless the category is changed by the State Government. An inter-state route is neither of the routes excluded from the definition of "other route" and hence is a route entitled to avail the exemption, on a literal interpretation of the notifications dated 9-3-2011 and 6-3-2013 from special road tax on satisfaction of the time of purchase and registration requirements. It has been submitted that the mere fact of inter-state routes being premium and lucrative would not dislocate the plain meaning of "other routes" as defined. It is submitted that the taxation officer had earlier rightly considered the exemption notifications dated 9-3-2011 and 6-3-2013 for the petitioner''s benefit by recording at the time of advance payment of road tax on 28-4-2011, that special road tax on the petitioner''s bus plying the interstate route Jhunjhunu-Delhi route was not payable. This view is now sought to be revised and special road tax, interest and penalty visisted upon the petitioner under the illegal directions of Additional Transport Commissioner (Taxation) under letter dated 24-7-2014 which is liable to be set aside.

6. Mr. V.D. Gathala, learned counsel for the respondents has submitted that the petitioner has an alternative remedy under Section 14 of the 1951 Act where under a person aggrieved of demand for tax on motor vehicles can within sixty days of such demand file an appeal before the Appellate Authority appointed by the State Government, albeit only if the appeal is accompanied by satisfactory proof of payment of 50% amount under demand and sought to be recovered. It has been further submitted that the route on which vehicle of the petitioner is engaged is admittedly an inter-state route not within the object and purpose of

the exemption under the two exemption notifications dated 9-3-2011 and 6-3-2013. Counsel has submitted that the purpose of the notifications dated 9-3-2011 and 6-3-2013 was to encourage and incentivise better bus/ transportation service in the rural area through the induction of new buses. He submits that it is inconceivable that the words "other routes" following the words "rural routes" could be considered to include just the absolute opposite of the preceding words inasmuch as while rural routes are in effect the least preferred routes for the business of transportation, inter-state routes are the most lucrative and profitable ones. The absurdity of classifying opposites under one category should not be attributed to the state government, counsel emphatically submitted. It has been submitted that on a misconstruction of the aforesaid two notifications dated 9-3-2011 and 6-3-2013 in issue the petitioners have failed to deposit special road tax as the words "other routes" as defined in explanation 4 to Rule 5.5(3) of the 1990 Rules are confined for the purposes of aforesaid rule and are not generally a classification under the Rules of 1990 or relevant for the purpose of interpretation of the exemption notifications dated 9-3-2011 and 6-3-2013. It has been submitted that the writ petition is baseless, as are other similar connected ones, and liable to be dismissed.

7. Heard learned counsel for the parties and perused the material available on record on the petition.

8. Exemption notifications in respect of fiscal statute are to be strictly construed, but yet a literal interpretation leading to absurdity should be avoided, as held in Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others, . In the case of Commissioner of Customs, Kolkata Vs. Rupa and Co. Ltd., the Hon''ble Apex Court has held although an exemption notification has to be construed strictly, the object and purpose of the notification cannot be ignored. In the case of Damodar Valley Corporation Vs. State of Bihar and Others, the Hon''ble Apex court held that where clause (e) of Section 3(2) of the Bihar State Electricity Duty Act, 1948 as amended in 1963 expressly granted exemption from levy of electricity duty on units of energy to be consumed for the generation transmission and distribution of electricity it warranted no inference that the exemption was also applicable in respect of units not covered by clause (e) of Section 3(2) of the 1948 Act. Another rule of interpretation of exemption under fiscal statutes is that in cases of ambiguity in exemption notifications, such ambiguity has to be to the advantage of the revenue and against the assessee. In the case of Liberty Oil Mills (P) Ltd., Bombay Vs. Collector of Central Excise, Bombay, the Hon''ble Apex Court in para 7 held as under:--

"Appellant''s counsel submitted that if due stress is given to the conditions, what the notification means is that exemption is available to the entire quantity of admixture of the vegetable product produced out of rice bran oil, the only condition being that the content of rice bran oil should be more than 1% of the total, in any consignment, and such interpretation of the notification is equally possible. We are of the view that such a construction is not possible. Even assuming that it is so, in the case of an ambiguity or doubt regarding an exemption provision in a fiscal statute, the ambiguity or doubt will be resolved in favour of Revenue and not in favour of the assessee. The matter is concluded by a recent decision of a three-member Bench of this court in Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad, . Further while interpreting an exemption it has to be seen whether the object and purpose of exemption are be achieved by such interpretation." 9. In the context of aforesaid principles of interpretation of exemption notifications, more particularly with regard fiscal statutes the specific case of respondent State is to be seen. It is that exemption notifications dated 9-3-2011 and 6-3-2013 were for the purpose of incentivising the plying of new buses purchased during the prescribed period on the rural routes otherwise suffering poor quality transport service. In my considered opinion in the context of the object/purpose behind the two exemption notifications in issue, the petitioners'' case of exemption notifications attracting to inter-state routes as "other routes" is not tenable as it is not conceivable that premium and lucrative routes would be clubbed together with the "lowly" rural routes from the point of view of profitability. The words "other routes" as defined in Explanation 4 to Rule 5.5(3) of the 1990 Rules are stated in the Rule itself to be confined to the operation of Rule 5.5 itself and cannot be construed to be a general classification under the 1990 Rules. The 1990 Rules define only rural route and sub-urban routes. A rural route specifically excludes municipality/UIT area of the district headquarter and even the tehsil headquarter, panchayat samiti headquarter, municipality, town sub division headquarter. A sub-urban route means any route which the state government in public interest declares as a route and which links district headquarter with the town, which has been developed into an important route by way of industrialisation or by way of organisation. In my considered opinion, in the event the interpretation of petitioners were to succeed, it would entail inclusion of premium and lucrative inter-state routes within the meaning of "other routes" to the exclusion of lesser lucrative sub-urban routes and even routes lying exclusively within the area of municipality or UIT or both. Such a construction of the words "other routes" for the purpose of exemption notifications in issue would be mechanical and quite plainly even absurd. I am of the considered view that one way or the other the petitioners have not been able to satisfy this court that words "other routes" in notifications dated 9-3-2011 and 6-3-2013 include the premium/lucrative inter-state routes, consequent to which buses running thereon and purchased during the prescribed period would be entitled to the benefit of exemption notifications dated 9-3-2011 and 6-3-2013.

10. There is also no force in the contention of counsel for the petitioners that the letter/order dated 24-7-2014 tantamounts to a withdrawal of exemption notifications dated 9-3-2011 and 6-3-2013 and is hit by promissory estoppel. It is not the case of respondent State that the aforesaid two exemption notifications dated 9-3-2011 and 6-3-2013 were at all applicable to inter-state routes or have been withdrawn. Contrarily the case of respondent State is that inter-state routes

were never included in the aforesaid two notifications dated 9-3-2011 and 6-3-2013, and the order dated 24-7-2014 is only clarificatory in nature for general directives to the jurisdictional taxation officers i.e. Regional Transport Officers and District Transport Officers. Similarly there is no force in the contention of counsel for the petitioner that the jurisdictional taxation officers having earlier consciously failed to levy special road tax on vehicle of the petitioner plying under permit granted on inter-state route specifically holding that special road tax was not applicable thereto, a different view cannot now be taken by him under the prodding of the Additional Transport Commissioner (Taxation). It is trite that there is no estoppel against statute. Special road tax under Section 4B of the 1951 Act is leviable inter alia on stage carriages including those plying on inter-state routes. Without a clear and specific exemption from such statutory liability the mere fact that such liability was earlier not enforced for one reason or another cannot be of avail.

11. In my considered opinion, the counsel for the state is right in his submission that the words "other routes" as defined in clause (d) of Explanation-I of Rule 5.5. (3b) of the Rules of 1990 are not a general classification of routes but only relevant for interpretation of Rule 5.5. of the Rules of 1990 as so clearly stated in the rule itself. Consequently, counsel for the petitioner assessee is unable to satisfy this court in terms of burden on an assessee to strictly establish an exemption notification to its/his benefit, that the exemption of 9-3-2011 and 6-3-2013 attracts to buses plying on inter-state routes. This also for reason that such a construction/interpretation categorising the non premium with the premium and lucrative would be an absurdity not attributable to the State and would defeat the very purpose and object of the Exemption Notifications in issue i.e. to incentivize plying of new buses on rural routes.

12. In the circumstances, I find no force in these petitions. Dismissed.

13. A copy of this order be placed in all connected petitions.