
(2010) 01 KL CK 0026

In the High Court Of Kerala

Case No : Writ Petition (C) No. 14336 of 2004

Motor and General Finance Ltd.

APPELLANT

Vs

Dy. Transport Commissioner

RESPONDENT

Date of Decision : 30-01-2010

Acts Referred:

Citation : (2010) 2 KLJ 1032

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : G. Hariharan, for the Appellant; Mathew Vadakkal, Government Pleader, for the Respondent

Judgement

P.R. Ramachandra Menon, J.—Two questions arise for consideration in this Writ Petition:

(i) Whether the financier in respect of a hire purchase agreement on re-possession of the vehicle, due to the failure on the part of the transferee, is liable to clear the arrears of tax under the Kerala Motor Vehicles Taxation Act, as an "operator" as contemplated in the statute;

(ii) Whether quantification of the liability in the case of the petitioner is correct or proper?

2. The sequence of events as narrated in the Writ Petition shows that the petitioner, who is the financier, had extended a loan to the third respondent under a "Hire Purchase" agreement in respect of the vehicle bearing No. KL/01E 3474. But the transferee failed to discharge his obligations, under which circumstance, there was no other alternative for the petitioner, but to re-possess the vehicle which in fact was done on 28.08.1998. Immediately, "G" form was submitted before the concerned authorities in respect of the period from 01.09.1998 onwards. The case of the petitioner is that, since the vehicle was admittedly in garage and was not put to use from 01.09.1998 and was covered by the "G" form stated as received by the first respondent in Ext.P5 letter, no tax

liability could have been mulcted on the shoulders of the petitioner/financier in respect of the said period, which is contrary to the actual facts and figures. Ext.P4 notice was issued in the year 2001 demanding huge amount of more than Rs. Eight lakhs in respect of the above period from 1.4.1996 till 31.8.2000 and also including overdue amount from 10.11.1994 to 31.3.1996, by virtue of the binding statutory prescription as to the revised rate of tax payable.

3. Challenging Ext. P4 demand notice, the petitioner had taken up the matter before the first respondent where interference was declined as per Ext. P5 order. This was further challenged in Revision filed before the 4th respondent leading to Ext.P6 order passed on 11.3.2004, confirming the orders passed by the lower authorities and thus dismissing the Revision, which in turn has been subjected to challenge in this Writ Petition.

4. The second respondent has filed a counter affidavit, seeking to justify the orders and proceedings issued by the respondents. In para.No.4 of the counter affidavit, it has been stated that the petitioner had filed necessary "G" forms in respect of the period from 1.9.1998 to 31.1.2001. After verification, it was revealed that the vehicle was not put to use on the road for the said period and accordingly exemption was granted for the said period on the basis of service verification report of the Regional Transport Officer, Thiruvananthapuram. Accordingly, only the balance sum of Rs. 1,25,504/- was ordered to be remitted towards the balance tax, in respect of the period from 10.11.1994 to 31.3.1996, which constitutes the amount to be paid by virtue of the amendment of the Taxation Act as per the Finance Act, 1994, by fixing the rate of tax at "Rs. 1000/- per quarter, per passenger, with respect to the contract carriage holding interstate service, having seating capacity of more than "12" passengers.

5. The learned Counsel for the petitioner submits that by virtue of conclusion of the legal position as above, this extent of liability is not disputed by the petitioner and that the dispute is confined with regard to the liability in respect of the period from 1.4.1996 to 31.8.1998, which by itself comes to nearly Rs. Six lakhs. The subsequent liability in respect of the period 1.9.1998 to 31.1.2001 has been exempted, as stated in para. No. 4 of the counter affidavit.

6. In the above circumstances, the liability, if any, other than the admitted extent shown as above, can only be with respect to the period from 1.4.1996 to 31.8.1998, the rest of the period having been exempted and dealt with separately as mentioned herein before. Since the respondents themselves have conceded in the counter affidavit that exemption has been granted for the period from 1.9.1998 to 31.1.2001, Ext.P4 demand notice showing the liability to the tune of Rs. 8,17,254/- which is inclusive of the tax liability for the period from 1.4.1996 to 31.8.2000, obviously is not correct or sustainable and hence the same is liable to be set aside on this score itself, to be reconsidered.

7. With regard to the sustainability of the contentions raised by the petitioner as to the disputed period i.e., from 1.4.1996 to 31.8.1998, it is very much clear

from the second paragraph of Ext.P5 order passed by the first respondent that necessary G-forms had already been filed by the owner in respect of the period from 1.4.1996 to 30.9.1998 stating that the vehicle was garaged in the compound of N.C. Hospital, Jagathy, Thiruvananthapuram. But exemption was not given stating that the enquiry revealed that the vehicle was not garaged at the above place during the above period. The reasoning given therein was vehemently disputed and even though the factual position was highlighted before the 4th respondent, also with specific reference to the contents of the Circular No. 31/89 dated 20.12.1989, it has not been properly considered by the 4th respondent while passing Ext.P6, which hence is subjected to serious challenge in this Writ Petition.

8. It is very much relevant to note that no specific date has been mentioned by the first respondent, while passing Ext.P5 order, as to the "date of inspection" conducted, to ascertain the veracity of the contents of the "G" form for the period 1.4.1996 to 30.9.1998. No such reference is also seen in Ext. P6 order passed by the 4th respondent. The position remains to be obscure even in the counter affidavit filed by the second respondent. The specific case put forth by the petitioner is that the so called inspection was conducted by the authorities only after re-possession of the vehicle from the garage in 28.08.1998 and it was so mentioned, only to sustain the subsequent demand raised as per Ext. P4 dated 29.3.2001 when the petitioner filed an application for issuance of a "clearance certificate". It is asserted by the learned Counsel that there is absolutely no merit or bonafides with regard to the contention raised in this regard from the part of the respondents.

9. As rightly put forth by the learned Counsel for the petitioner, Circular No. 31/89, as mentioned above, issued by the 4th respondent himself stipulates the specific course and procedure to be followed on receipt of non-use intimation ("G" Form). Placing reliance on the said Circular, it is asserted by the learned Counsel that there is no case for the respondents that they have followed the course contemplated in the Circular and that absolutely no reference has been made to the actual dates with regard to the conduct of inspection on receipt of the "G" form. No explanation is offered from the part of the respondents as to the said Circular or compliance in this regard.

10. This being the position, this Court finds that there is considerable force in the submission made by the learned Counsel for the petitioner that the "so called inspection" stated as made from the part of the respondents, if at all any, would have been only after the seizure of the vehicle on 28.8.1998 and hence there is no justification to impose huge tax liability upon the petitioner without any supporting materials.

11. It is also brought to the notice of this Court that the issue, though projected before the 4th respondent, was finally heard on 5.12.2001 as observed in Ext. P6, but the order was passed nearly after "three years", on 11.3.2004. It is submitted that, by this time, there was every chance for the 4th respondent to

have forgotten the actual facts and figures and the nature of the arguments put forth, obviously for the reason that the contentions as mentioned above are not seen discussed anywhere in Ext. P6. It appears that the 4th respondent, who passed Ext. P6 order has obviously omitted to note the Circular 31/89 issued by himself, as to the course and procedure to be followed under such circumstances. For this reason also, the matter requires to be re-considered, with specific reference to the actual facts and figures.

12. Imposition of liability upon the petitioner/financier in respect of the period prior to re-possession of the vehicle i.e., in respect of the liability of the previous owner is sought to be justified placing reliance on the decision rendered by a Division Bench of this Court in N.P.R. Finance Ltd. v. State of Kerala 2002 (1) KLT 591. Reliance is also placed on another decision rendered by this Court in A.R.T. Leasing Ltd. v. Addl. Registering Authority 2002 (2) KLT 367. It is contended from the part of the respondents that the financier comes within the definition of the term "Operator" and that "Financier" is very much liable to satisfy the dues of the previous owner. The learned Counsel for the petitioner submits that "Financier" will never come within the purview of the term "Operator", as defined in similar statute-Bombay Motor Vehicles (Taxation of Passenger) Act, 1958 and the position has been made clear by the Apex Court in M/s. Rickmers Verwaltung GMB H Vs. The Indian Oil Corporation Ltd., . Even though the said position was not brought to the notice of the Division Bench while rendering the verdict 2002 (1) KLT 591, it was very much brought to the notice of the learned Single Judge of this Court, who considered the position and distinguished the same, while rendering the judgment reported in 2002 (2) KLT 367, and it was held that the "Financier" will very much come within the term "Operator" and is liable to satisfy the tax liability. In view of the distinction made by this Court as above, it is not found necessary to take a deviation to hold it otherwise, referring to the dictum in M/s. Rickmers Verwaltung GMB H Vs. The Indian Oil Corporation Ltd., and the liability of the petitioner will, of course, be subject to the actual liability, to be re-fixed, if any, taking note of the factual position, as mentioned already.

13. In view of the glaring inconsistency and discrepancy noted hereinbefore, this Court .finds that Ext.P4 demand notice as well as Ext. P5 order passed by the first respondent and Ext. P6 order passed by the 4th respondent are not correct or sustainable and they are hereby set aside. The 4th respondent is directed to re-consider the matter, after affording an opportunity of hearing to the petitioner and with reference to all the relevant aspects including the contents of Circular No. 31/89 dated 20.12.1989 issued by the 4th respondent himself and re-fix the liability of the petitioner, if any, in accordance with law, as expeditiously as possible, at any rate within two months from the date of receipt of a copy of the judgment. The amount stated as satisfied by the petitioner pursuant to the interim order dated 17.5.2004 will be subject to the outcome of the decision to be rendered by the 4th respondent, as stated above.

The Writ Petition is disposed of accordingly.