(2012) 10 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No''s. 33654-33658 of 2012 (T-MVT)

Mrs. Bhagylakshmi Radhakrishna Holla and Others — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:
Constitution of India, 1950 — Article 14, 19 (1) (g)
Income Tax Act, 1961 — Section 3 (1), 32

Citation : (2012) 10 KAR CK 0017

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : K.P. Kumar, for Sri R. Rama Murthy, of M/s Vasan Associates, for the Appellant; K.M. Nataraj, A.A.G. for Sri K.M. Shivayogiswamy, AGA, for the Respondent

Final Decision : Dismissed

Judgement

H.G. Ramesh, J.—In these writ petitions, the petitioners who are owners of motor cabs are challenging the constitutional validity of Karnataka Act Nos. 14 of 2012 and 29 of 2012 (''the amending Acts'' for short) amending the Karnataka Motor Vehicles Taxation Act, 1957 (''the Act'' for short). The effect of both the amendments is, with effect from 1st April 2012, lifetime tax shall be leviable on motor cabs, the cost of which exceeds Rupees fifteen lakhs, at the rates specified in Part-A8 of the Schedule to the Act. The lifetime tax is 15% of the cost of the vehicle. For motor cabs which had already been registered prior to 01.04.2012, the lifetime tax of 15% of the cost of the vehicle is scaled down depending on the age of the motor cab. The percentage of scaling down of the tax is shown in Part-A8 of the Schedule. It is relevant to refer to Part-A8 of the Schedule:

Part-AB

(See Section 3 (1))

Lifetime Tax for Motor Cabs the cost of which exceeds Rupees fifteen lakhs

Notes:

1. In respect of vehicles for which tax was due prior to the 1st day of April 2012, but has not been paid, such tax shall be collected at the rates prevailing prior to such day along with the penalty due, if any.

2. Cost of the vehicle in relation to a motor vehicle means:-

(a) In respect of a vehicle manufactured in India, cost of the vehicle as per the purchase invoice issued either by the manufacturer or by the dealer of the vehicle including the excise duty, sales tax, surcharge or cess entry tax etc., as payable in the State of Karnataka; and

(b) In respect of an imported motor vehicle, irrespective of its place of manufacture, the total cost incurred in importing the vehicle, that is to say, the value of the motor vehicle as endorsed in the Bill of Entry or such other document and assessed as such under the Customs Act 1962, together with the Customs Duty levied, freight charges incurred and other taxes levied thereupon including additional duty/penalty levied if any, by the Customs Department or any other Department

Sri K.P. Kumar, learned Senior Counsel appearing for the petitioners submitted that relating to old motor cabs, the cost of the vehicle should have been fixed as per its market value as on 01.04.2012 and 15% of it should have been levied as lifetime tax. According to the learned Senior Counsel, the rate of scaling down of the lifetime tax payable on old motor cabs based on the original cost of the vehicle is not rational and hence is violative of Article 14 of the Constitution of India. He referred to Section 32 of the Income Tax Act, 1961 to determine the cost of the vehicle. He further submitted that the tax imposed is retrospective in nature as the original cost of the vehicle is taken as the basis for scaling down of the rate of tax. He also submitted that the lifetime tax imposed on old motor cabs is confiscatory in nature and hence is violative of Article 19(1)(g) of the Constitution of India. In support of his aforesaid submissions, he relied on a judgment of the Calcutta High Court in Shew Bhagwan Goenka vs. Comml. Tax Officer [(1973) 32 STC 368] and also a judgment of the Kerala High Court in Mega Traders vs. State of Kerala [(1991) 83 STC 59]. He also referred to para 21 of the judgment of the Hon''ble Supreme Court in State of Tamil Nadu vs. M. Krishnappan (2005 AIR SCW 1718).

2. On the contrary, Sri K.M. Nataraj, learned Additional Advocate General, submitted that the question raised in these Writ Petitions is answered against the petitioners by the Hon''ble Supreme Court in Mohan Das N. Hegde (Dead) through LRs. Vs. State of Karnataka and Another, . He also relied on the judgment of the Hon''ble Supreme Court in State of Tamil Nadu vs. M. Krishnappan (2005 AIR SCW 1 718) in support of the impugned amendments. Sri K.P. Kumar, learned Senior Counsel sought to distinguish Hegde''s case on the ground that the present vehicles are motor cabs.

3. In my opinion, the question raised herein is answered against the petitioners by the Hon''ble Supreme Court in Mohan Das N. Hegde''s case referred to above. A similar amendment levying lifetime tax on private cars had come up for consideration before the Supreme Court in Hegde''s case (AIR 2005 SC 2178) and the Supreme Court has held as follows:

6. We do not find any merit in the above arguments. The above classification indicates a measure or a rate of tax applied differently on different vehicles depending upon various circumstances and so long as there is competence to levy and collect the tax under Entry 57, List-II of the seventh schedule to the Constitution, the levy cannot be struck down only on the ground that the incidence of the tax falls differently on different categories of the vehicles. The burden to be distributed on different classes of the vehicles or on different persons who owned the vehicles. How equitable such tax could fall on different persons is not for the Court to decide. Lastly, this matter is squarely covered by our judgment delivered today in the case of The State of Tamil Nadu v. M. Krishnappan & another, etc. [Civil Appeal Nos. 1869-1880 OF 2000].

4. In my opinion, the rate of scaling down of lifetime tax payable on old motor cabs cannot be said to be arbitrary or irrational. For example, if a motor cab is more than 10 years old, the lifetime tax payable is reduced by 55%. In other words, the tax payable is 45% of 15% of the cost of the old motor cab. This cannot be said to be arbitrary. The Legislature in its wisdom, has given appropriate deduction relating to the rate of tax in respect of old motor cabs. Even assuming that the impugned tax is a little excessive on old motor cabs, it is no ground for interference by this Court. Unless a tax is confiscatory in nature, it cannot be interfered with as violative of Article 19(1)(g) of the Constitution of India. As could be seen from Part-A8 of the Schedule referred to above, it cannot be said that the rate of tax imposed is confiscatory or unreasonable. The levy is based on a rational and reasonable classification founded on an intelligible differentia having a rational relation to the object of the enactment. In my opinion, Section 32 of the Income Tax Act, 1961 referred to by the learned Senior Counsel for the petitioners has no relevance to examine the validity of the impugned amendments.

5. The impugned amendments cannot be said to be retrospective as the tax imposed is not for the period prior to coming into force of the Amendment Acts. No retrospective liability is created under the impugned amendment Acts. Hence, the judgments of the Kerala and Calcutta High Courts relied on by the petitioners are of no assistance to them.

6. Before concluding, I deem it appropriate to refer to the observations of the Hon''ble Supreme Court in M. Krishnappan''s case referred to above:

26. Before concluding, we may quote the observations of the Division Bench of the Kerala High Court in the case of Anas v. State of Kerala, reported in 1999 (3) KLT 147 (to which one of us, Dr. A.R. Lakshmanan, J., was a party), which state

as under:-

A taxing statue can be held to contravene Article 14 of the Constitution only if it purports to impose on the same class of property similarly situated an incidence of taxation which leads to obvious inequality. It is for the Legislature to decide on what objects to levy what rate of tax and it is not for the Courts to consider whether some other objects should have been taxed or whether a different rate should have been prescribed for the tax. It is also to be noted that the Legislature is competent to classify persons or properties into different categories and tax them differently, and if the classification thus made is rational, the taxing statue cannot be challenged merely because different rates of taxation are prescribed for different categories of persons or objects.

7. In view of the above, the lifetime tax levied on old motor cabs by the impugned amendment Acts cannot be said to be discriminatory, arbitrary or unreasonable offending Articles 14 or 19(1)(g) of the Constitution of India. The writ petitions are devoid of merit and are accordingly dismissed. At this stage, Sri K.P. Kumar, learned Senior Counsel prays for some time to the petitioners to pay the newly imposed lifetime tax in respect of their old motor cabs. Sri K.M. Nataraj, learned Additional Advocate General, fairly submits that two equal instalments may be granted; the first instalment to be paid on or before 31st December 2012 and the 2nd instalment to be paid on or before 31st March 2013. Accordingly, the petitioners are permitted to pay the tax in two instalments as stated above. In the interest of justice, this benefit of two instalments to pay the lifetime tax shall be extended to all owners of old motor cabs falling within the scope of the amending Acts notwithstanding that they have not filed any writ petitions. Respondent No. 3, namely, the Regional Transport Commissioner, Government of Karnataka shall accordingly instruct all the concerned R.T.O.s to extend this benefit to all owners of old motor cabs coming within the purview of the amending Acts.

Petitions dismissed.