(2008) 03 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No. 14302 of 2005

M.S. Vishwanath APPELLANT

Vs

The Deputy Commissioner for Transports, Bangalore Division and Another RESPONDENT

Date of Decision : 03-03-2008

Acts Referred:

Citation : (2008) 6 KarLJ 198

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : B.R. Sundararaja Gupta, for the Appellant; S. Sujatha, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—Petitioner, questioning the correctness of the endorsement dated 6th February, 2004 bearing No. RTO/BNG/TR/SR/AKA-01/A-1919 and the notice of demand dated 16th September, 2004 marked under Annexure-A and B and the order dated 21st April, 2004 of the first respondent passed in Taxation Appeal No. 65 of 2004 marked under Annexure-F, has presented the instant writ petition. Further petitioner has sought to grant such other reliefs as this Court deems fit to pass, in the interest of justice and equity.

2. Petitioner in this petition is a registered owner of a stage carriage vehicle bearing Registration No. KA-01/A-1919 and the said vehicle is covered under a stage carriage permit under lease agreement under Permit No. P.St.P. 5/97-98 to operate on the route Santhepete to Bangalore and back and that, petitioner has paid the tax upto 31st January, 2004. It is the case of petitioner that, since the vehicle required a major repair and same could not be operated on any public road, petitioner surrendered the documents of the said vehicle before commencement of the quarter claiming exemption from payment of tax from 1st February, 2004 and surrendered all the documents which were in his possession and since the petitioner was not a permit holder, he only enclosed Xerox copy of

the permit, requesting the second respondent to accept the non-use intimation claiming exemption from payment of tax. It is his case that, the second respondent instead of accepting the non-use intimation, has proceeded to issue the impugned endorsement dated 6th February, 2004, rejecting the non-use intimation and a notice of demand has also been issued on 16th September, 2004, demanding a total sum of Rs. 86,064/- for the period from 1st February, 2004 to 31st October, 2004 and rejected the request of petitioner by issuing the impugned endorsement and demand notice vide Annexure-A and B. Assailing the correctness of the impugned endorsement dated 6th February, 2004 and the notice of demand, petitioner has filed the appeal before the Appellate Authority and the said appeal filed by petitioner had come up for consideration before the Appellate Authority on 21st April, 2005 and the Appellate Authority, after hearing both sides and after considering the material available on record, has dismissed the appeal filed by petitioner, upholding the endorsement issued by second respondent. Being aggrieved by the impugned endorsement, demand notice and also the order passed by the Appellate Authority, vide Annexure-A, B and F respectively, petitioner herein felt necessitated to present the instant petition seeking appropriate reliefs, as stated supra.

3. I have heard learned Counsel appearing for petitioner and learned Additional Government Advocate appearing for respondents.

4. After careful perusal of the impugned order passed by the Appellate Authority, I do not find any error of law or material irregularity as such committed by the said authority in dismissing the appeal filed by petitioner and confirming the impugned endorsement issued by the second respondent and notice of demand issued to petitioner. The Appellate Authority has rightly considered the notification issued by the Competent Authority of the respondent-department dated 6th August, 2003 and the same was published in the Karnataka Gazette on 27th August, 2003. As per condition No. 2 of the said notification dated 6th August, 2003. "The registration certificate, taxation card and permit, if any in respect of the motor vehicle, shall be surrendered to the Regional Transport Officer concerned along with the application. Provided that, where such documents were seized or retained by any authority, a certificate obtained from such authority regarding such seizure or retention shall be produced". Further, as per condition No. 4 of the very same notification, the "address proof or consent letter of the garage owner where the vehicle is intend to be kept during the period of non-use shall be produced for physical verification of the vehicle". Therefore, from the aforesaid two conditions of the said notification, it is clear that, petitioner has not produced any authenticated document before the second respondent and hence, the second respondent was constrained to issue endorsement dated 6th February, 2004, demanding the tax liability. Further, the Appellate Authority, has observed that, the appellant has not furnished any reasons for non-production of the permit nor stated with which authority the vehicle is there or which authority has seized or detained such permit. Therefore, the contention of the appellant that he has produced the Xerox copy of the

permit before the respondent along with intimation of non-use is false. The Appellate Authority after critical evaluation of the documentary evidence coupled with the conditions of the notification and the circumstances, has come to the conclusion that, petitioner has made a false statement in saying that, he has produced the Xerox copy of the permit before the respondent at the time of intimation of non-use of the vehicle even though no such copy was produced by the petitioner, as per the mandatory conditions of the notification dated 6th August, 2003. Therefore, the Appellate Authority opined that, the second respondent was justified in rejecting the intimation of non-use and demanding the payment of tax and rejected all the grounds urged by petitioner as untenable. Further, the Appellate Authority, observed that, it is however open to the petitioner to first pay the tax and then seek refund of the same u/s 7 of the Act on the proof of non-user of the vehicle to the satisfaction of the Registering Authority as held by the Apex Court and this Court in host of judgments. The said reasoning given by the Appellate Authority is after critical evaluation of the relevant material available on file and on the basis of the relevant conditions of the notification issued by the Competent Authority. Therefore, interference by this Court in the impugned endorsement, notice of demand and the order passed by the Appellate Authority is not justifiable nor I find any good grounds a such made out by petitioner for such interference.

5. However, learned Counsel appearing for petitioner has placed heavy reliance on the judgment of this Court in Sundaram Finance Limited v. Commissioner for Transport and Anr. 1966(1) Mys. L.J. 794, wherein it is held that, it is not a condition precedent to produce the permit or whatever is available is sufficient for the jurisdictional authority to consider and non-intimation of non-user of the vehicle is not a condition precedent. The said reliance placed by learned Counsel appearing for petitioner is not applicable to the case on hand. It is significant to note here itself that, the Under Secretary to Government, Home and Transport Department (Transport) has issued the notification dated 6th August, 2003 bearing No. HTD/170/TMA/2003, Bangalore, which was published in the Karnataka Gazette, dated 27th August, 2003. Once petitioner has accepted the terms and conditions of the said notification, at this juncture, petitioner cannot contend that condition Nos. 2 and 4 are not applicable to him.

6. The said contention of the petitioner cannot be accepted as long as the same has remained unchallenged and when petitioner has chosen to assail the correctness or otherwise of the said notification. Therefore, when the said notification is still in force, it is very much binding on the parties. The Competent Authority has taken the decision in strict compliance of the said notification and rejected the request of petitioner.

7. In the light of the facts and circumstances of the case, as stated above, the writ petition filed by petitioner is liable to be dismissed as devoid of merits. Accordingly, it is dismissed.

