(2016) 07 KL CK 0018

In the High Court Of Kerala

Case No : W.P. (C) . No. 21641 of 2016 (E)

Pahalisha Kalliyath APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 12-07-2016

Acts Referred:
Constitution of India, 1950 — Article 14
Kerala Motor Vehicles Taxation Act, 1976 — Section 22

Citation : (2016) 3 KHC 951 : (2016) 3 KLT 368

Hon'ble Judges : A.M. Shaffique, J.

Bench : Single Bench

Advocate : V.V. Asokan, Senior Advocate and R. Jaikrishna, Advocate, for the Appellant; Smt. Lilly K.T, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Shaffique, J.—Petitioner challenges Ext.P4 notification dated 18/03/2016 by which the Government amended notification GO (MS) No. 16/1998/Tran. dated 31/3/1988, published as SRO No. 301/98, by which exemption granted to certain category of physically disabled persons, from payment of Motor Vehicle Tax under the Kerala Motor Vehicle Taxation Act, 1976 (hereinafter referred as ''the Act'') have been restricted to vehicles having purchase value upto Rupees Five Lakhs.

2. The facts as disclosed would show that the petitioner has a physical disability of 75%. He purchased a Mercedez car as per sale invoice dated 18/03/2016 having a value of Rs. 1,73,46,044/-. The vehicle was temporarily registered on 18/03/2016. When the petitioner applied to obtain permanent registration certificate claiming tax exemption available to physically disabled persons as per SRO No. 301/98, petitioner was informed by the third respondent that the said notification had been varied on 18/03/2016 as per the Amendment Notification published in the Gazette on 29/03/2016, which is Ext. P4.

3. Petitioner has several contentions. First contention is that he purchased the

vehicle on 18/03/2016 and was eligible for exemption as per Notification, SRO No. 301/98, since the amendment notification was published only on 29/03/2016, the same will not apply to the case of the petitioner. Secondly, the Amendment Notification purporting to limit tax exemption benefit to physically disabled persons in respect of vehicles having a purchase value up to Rs. 5 lakhs is unwarranted and without jurisdiction, as no such power can be seen from Section 22 of the Act. Thirdly, the Amendment Notification limiting tax exemption benefit depending upon the value of the vehicle is arbitrary and violative of Article 14 of the Constitution of India.

4. The above writ petition is heard and disposed at the admission stage itself.

5. The learned senior counsel appearing on behalf of the petitioner, placing reliance upon Section 3 of the Act submits that levy of tax under the Act is from the date of purchase of the vehicle and therefore tax implication has to be considered with reference to the said date. On the other hand, learned Government Pleader submits that the issue is covered by a Division Bench judgment of this Court in Hilal B. v. State of Kerala and others [2012(3) KHC 284 (DB). The question that was considered in the said case was the date on which the liability to pay tax arises. That was a case in which while there was a temporary registration and the appellant was waiting for fancy number, which was allotted only after sometime, and in the meantime, tax was revised, a question arose whether the vehicle should suffer tax as amended or the tax which prevailed at the time of purchase. It was held that, in terms of the second proviso to Section 3(1) of the Act, which provides for levy of tax on new vehicles, in so far as it states that the levy of tax on new vehicles is to be made at the time of first registration of the vehicle and is payable from the date of purchase of the vehicle, rate of tax applicable is on the date of first registration of the vehicle. It is therefore contended that the issue is squarely covered by the said judgment.

6. However, learned counsel for the petitioner submitted that the judgment was taken in appeal before the Apex Court. Though the Special Leave Petition was dismissed, the question of law is kept open. It is stated that similar matter is pending before the Division Bench in W.A. No. 1953 of 2014 and therefore the matter requires consideration.

7. Before proceeding further, it would be useful to consider the validity of the Amendment Notification. It is argued that once an exemption is granted, it cannot be taken away by a further Notification under Section 22 of the Act.

8. In fact, challenge to the Amendment Notification has already been rejected by me in a series of cases, one of which was W.P.(C) No. 17895 of 2016, paragraph 3 of the said judgment reads as under:

"3. The main contention urged by the petitioner is that in the explanatory note, the Government had indicated that the privilege need to be given to vehicles having purchase value up to Rupees Five lakhs, which is only for the purpose of ensuring that the privilege is not misused for getting tax exemption for luxury vehicles registered in the name of differently abled persons. According to the petitioner, he has 100% disability and intends to purchase a vehicle having value of more than Rs. 20 lakhs. It is apparent from Ext.P5 itself that the very intention of the Government is to give some relaxation by way of tax being paid under the Motor Vehicles Taxation Act, 1976 only to a class of persons namely disabled persons. For disabled persons, another classification has also been brought in by which it is indicated that the exemption is applicable only for persons who purchase vehicles valuing up to Rs. 5 lakhs. The very purpose of relaxation is predominantly a policy of the Government and the only question is whether there is any violation of Article 14 of the Constitution of India. Government had made it clear that the exemption cannot be extended to luxury vehicles. This appears to be a reasonable classification by limiting the exemption to vehicles having a value of less than Rs. 5 lakhs. Such policy cannot be interfered by this Court in a writ petition under Article 226 of the Constitution of India. Petitioner apparently though a physically handicapped person capable of buying a vehicle having higher value of more than Rs. 20 lakhs, such person under normal circumstances is liable to pay motor vehicle tax and there is no reason why such relaxation should be extended to such persons."

9. The matter was taken in appeal as W.A. No. 1071 of 2016 and the appeal is dismissed. It is held at paragraphs 7 and 8 as under:

"7. Indeed, be it a classification of discrimination in terms of Article 14 of the Constitution, it applies vis-a-vis the right that has been constitutionally consecrated. In that context, legion are the precedents that the classification or discrimination shall pass the judicial muster as regards the reasonableness or non-arbitrariness.

8. In the present instance, it is only a concession the Government has conferred on physically challenged persons. It being a financial incentive, the Government is well within its powers to impose suitable conditions. In other words, a privilege being entirely different from a right, a Fundamental Right at that, we are of the opinion that the contention of the learned counsel as regards discrimination or unreasonableness does not apply."

10. It is argued that, though Section 22 gives power to exempt or reduce the tax payable under the Act, it applies only to any person or class of persons or in respect of any motor vehicle or class of motor vehicles or in respect of any motor vehicle or class of motor vehicles used in a specified route. There is no power enabling the Government to exempt payment of tax with reference to the value of vehicle. When an exemption has been granted to physically disabled persons, they form a separate class and within the said class, there cannot be any further classification or rather Section 22 does not contemplate any further classification in order to carve out some persons who purchase vehicles having a value of upto Rs. 5 lakhs. This contention, according to me, is unsustainable. Section 22 of the Act reads as under:

"22. Exemption from or reduction of tax.

- The Government may, if they are satisfied that it is necessary in the public interest so to do, by notification in the Gazette make an exemption or reduction in the rate or other modification, either prospectively or retrospectively, in regard to the tax payable under this Act or under the Kerala Motor Vehicles Taxation Act, 1963 (24 of 1963) or the Kerala Motor Vehicles (Taxation of Passengers and Goods) Act, 1963 (25 of 1963).

(i) by any person or class of persons; or

(ii) in respect of any motor vehicles or class of motor vehicles; or

(iii) in respect of any motor vehicle or class of motor vehicles using a specified route, subject to such terms and conditions as they may deem fit."

The provision gives absolute powers to the Government, in public interest, to exempt or reduce the rate or other modification either prospectively or retrospectively any tax payable under the Act. So, the power is available to the Government for any of the said aspects. The sub clauses do not limit the power of the Government in any manner. It is only illustrative in character. Even otherwise, the words ''by any person or class of persons'' used is a clear indication that the Government can exempt payment of tax to physically disabled persons who purchase vehicles having a value upto to Rs. 5 lakhs. Therefore, the above contention is not available.

11. Therefore, in regard to the question of violation of Article 14 of the Constitution is concerned, the said contention has to be rejected. What has been granted by the Government by virtue of Notification SRO No. 301/98 was a concession that was extended to differently abled persons. When the said concession had been limited to a certain class of persons depending upon their financial viability, it cannot be termed as irrational or arbitrary. From the explanatory note itself, it is rather clear that the intention of the Government is not to extent the concession from payment of tax to persons who are capable of buying high value vehicles. That apart, the exemption so granted is found to be misused.

12. The next contention is whether the Amendment Notification will apply to the petitioner, who purchased the vehicle on 18/03/2016. The learned senior counsel placed reliance on the judgments in Union of India and others v. Ganesh Das Bhojraj [(2000)9 SCC 461], Collector of Central Excise v. New Tobacco Co. [AIR 1998 SC 668], M/s. Garware Nylons Ltd v. The Collector of Customs and Central Excise [AIR 1999 SC 844] to contend that the amendment notification has come into effect only on the date of publication.

13. There cannot be any dispute regarding the said proposition. However, the Statute prescribes that the tax can be exempted with retrospective effect or any order can be passed to modify the tax with retrospective effect. Therefore, it cannot be stated that the notification is valid only from 29/03/2016. Though it is

published only on 29/03/2016, it is effective from the date of notification especially when power is available with the Government to make any modification retrospectively in terms of Section 22 of the Act.

14. Therefore, coming to the facts of the present case, petitioner, having purchased the vehicle on the said date, becomes liable to pay tax as he is not a person entitled for any exemption.

15. Even otherwise, when a Division Bench of this Court has considered the obligation to pay tax on the date of registration, in so far as the petitioner is concerned on both counts, the petitioner becomes liable to pay tax and is not entitled for any exemption. Further in W.A.No.1953/2014, the Division Bench, by interim order dated 07/05/2015, made it clear that the judgment in Hilal.B (supra) shall govern the situation. Hence the date of first registration is the relevant factor for the purpose of levying tax.

16. In the above circumstances, none of the grounds warrants interference by this Court and accordingly the writ petition is dismissed.

