
(2002) 03 KAR CK 0016
In the Karnataka High Court

P.K. Balan and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Karnataka Motor Vehicle Taxation Act, 1957 — Section 16, 16 (1) (a)

Citation : (2002) 2 ACC 381 : (2002) 2 KCCR 150 SN

Hon'ble Judges : N.K. Jain, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Judgement

N.K. Jain, C.J.—The appellants aggrieved by the common order of the learned Single Judge dated 25.6.2001 passed in W.P. Nos. 19336-45 and 19346-56/2001 have filed the respective writ appeals.

2. It is stated that the appellants are Tourist Operators recognised by the Department of Tourism and they are the owners of certain vehicles which they are plying in the respective States of Kerala and Goa. It is stated that the State Government in exercise of its power u/s 16(1)(a) of the Karnataka Motor Vehicles Taxation Act, 1957 ("Act" for short) issued a notification dated 31.3.1994 in respect of the motor vehicles of other States covered by permit granted under the Scheme of All India Permit for Tourist Transport Operators Rules, 1993 (in short "Rules") directing that to ply the motor vehicles specified therein the owners of the motor vehicles will have to pay tax by way of composite amount per quarter, as mentioned therein, with effect from 1.4.1994. It is stated that the appellants are plying their motor vehicles under the All India permit in the State of Karnataka by paying the composite amount. It is stated that by another notification dated 31.3.2001, the State Government rescinded the earlier notification dated 31.3.1994. Deprived of the benefit of the concessional rates, the appellants filed the aforesaid writ petitions challenging the notification dated 31.3.2001 (Annexure-F) and the same were dismissed. Against that dismissal, the present writ appeals are filed.

3. Learned Counsel for the appellant submits that the learned Single Judge has

erred in dismissing the writ petition merely on the basis of decision of the Andhra Pradesh High Court in W.P. 10228/2000 and Batch dated 3.8.2000 as in that case, Section 16A of the Act was not considered. He submits that as per the meeting held and in view of the recommendation as per Annexure-C regarding Scheme for National Permits for Tourist Coaches, the State of Karantaka in exercise of the powers conferred by Sub-section (1) of Section 16 of the Act issued the notification dated 31.3.1994 inserting new Section 16A and, therefore, the order of the learned Single Judge is liable to be set aside.

4. On the other hand, the learned Counsel for respondents 1 and 2 submits that once the Government has exercised its power and rescinded the notification, the appellants cannot contend that they are entitled to benefit u/s 16A of the Act all the time. He submits that the appellants cannot agitate this point, as they had not raised the same before the learned Single Judge. He submits that the learned Single Judge has considered the arguments and various case-laws and also the competence of the Government to exercise its power u/s 16(1) of the Act and as such the appellants cannot say that the decision of Andhra Pradesh High Court is not applicable. The decision of the Andhra Pradesh High Court, wherein the constitutional validity of the Notification in G.O.Ms. No. 83 (Transport-II) Dept. dated 5.2.2000, cancelling the concessional rates provided by the earlier order, was challenged and the same was upheld, was approved by the Supreme Court, and therefore, the order of the learned Single Judge needs no interference.

5. In the rejoinder, the learned Counsel for the appellant submits that though the question and point of law was not raised at initial stage, the same being a question of law can be raised in this Court.

6. It will be appropriate to refer to Section 16(1) and so also Section 16A of the Act, which read as follows:

16. Exemption from or reduction of tax--(1) The State Government, if in its opinion it is necessary in public interest so to do, may by notification and subject to such restrictions and conditions as may be specified in the notification.

(a) exempt or reduce whether prospectively or retrospectively the tax payable in respect of,--

(i) any class of motor vehicles, or

(ii) motor vehicles not used on roads.

(b) reduce the rate of tax payable in respect of any class of motor vehicles plying on any route or routes specified in the notification.

16-A. Composition of Tax--(1) notwithstanding anything contained in Section 3, any person liable to pay tax on any motor vehicle under this Act, may at his option, instead of paying tax under the said section, pay such tax by way of composite amount, in respect of such class or classes of motor vehicles, as may be specified by the State Government, by notification, from time to time, subject

to such conditions or restrictions as may be specified therein.

(2) Every notification issued under Sub-section (1) shall be laid before each House of the State Legislature in the manner specified in Sub-section (2) of Section 16.

and the savings clause reads as under:

7. Savings?Where in respect of motor vehicles, tax is already paid in advance for five years or ten years in one lumpsum at the old rates, the difference of tax payable shall be paid within fifteen days from the date of expiry of such period of five years or ten years, as the case may be.

7. Since the point in issue is identical and common both the appeals are heard together.

8. We have heard the learned Counsel for the appellants and the Additional Government Advocate at length and perusal the materials placed and also the case cited.

9. No doubt, the question of law should be raised at the initial stage, and admittedly in the instant case the same was not specifically argued. But, even though if we consider the argument that Section 16A of the Act was not considered in A.P. High Court's case, the same is liable to be rejected as it has no substance.

10. It is not disputed that the earlier notification dated 31.3.1994 was withdrawn by another notification dated 31.3.2001 rescinding Section 16A. Once the Government while exercising its power, u/s 16(1) has withdrawn the notification dated 31.3.1994, the same cannot be challenged, as it is within the competence of the Government and, as stated, the appellants cannot take advantage of the plea that in that decision Section 16A of the Act was not considered. It is also seen that the authority which is competent and has the power to confer a benefit has also got the same competency and power to withdraw the benefit given earlier. More so, the learned Single Judge on overall consideration of the facts and circumstances has observed that "the contention that State has no competence to rescind the notification dated 31.3.1994 on the ground that such cancellation violated the policy of the Central Government regarding Taxation of All India Permit Vehicles is devoid of merit". The other argument that once Section 16A is there, the appellants are entitled to get the benefit of the same at all times is not acceptable for the reason that concession cannot be claimed as a matter of right. More so it has been withdrawn; however if any benefit is available till the date of notification, one is entitled as per rule. The learned Single Judge in the instant case has observed that "if the composite fee has been paid for the quarter ending 30.6.2001 before the issue of the notification dated 31.3.2001, the petitioners will be entitled to the benefit of the notification dated 31.3.1994 till 20.6.2001".

11. The learned Counsel for the appellants has not been able to distinguish the

point in controversy from the decision of the A.P. High Court's case, where the concessional rates of tax provided by an earlier notification was cancelled by Notification in G.O.Ms. No. 83 (Transport-II) Dept, dated 5.2.2000 issued under Clause (b) of Section 9(1) of A.P. Motor Vehicles Taxation Act, which was upheld and SLP was rejected. The only argument advanced is like that of Section 16A of the Act as in Karnataka, there is no corresponding section in the concerned Act, in Andhra Pradesh, and therefore, the Court has no opportunity to consider the point. As already stated, the appellants cannot get any help nor it will give any right to them on that count and the argument is not acceptable. That apart, the learned Counsel has not been able to show any illegality or arbitrariness in the notification dated 31.3.2001 withdrawing the concessional rates rescinding the earlier notification dated 31.3.1994. In the absence of any material, it cannot be said that notification dated 31.3.2001 issued is without jurisdiction. As discussed the arguments of the learned Counsel for the appellants has no substance.

No other point was raised.

12. Under the circumstances, as discussed and on consideration, we find no error or illegality in the elaborate order of the learned Single Judge so as to call for interference.

These writ appeals are dismissed with no order as to costs.