
(2009) 06 KL CK 0137

In the High Court Of Kerala

Case No : Writ Petition (C) No. 37653 of 2004 (G)

Postmaster General and Others

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-06-2009

Acts Referred:

Constitution of India, 1950 — Article 285, 285(1), 289
Kerala Motor Vehicles Taxation Act, 1976 — Section 22, 3

Citation : (2009) 3 KLJ 425 : (2009) 4 KLT 63

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

Bench : Single Bench

Advocate : S. Krishnamoorthy, CGC, for the Appellant; V.K. Shamsudeen, G.P., for the Respondent

Judgement

P.R. Ramachandra Menon, J.—Whether the vehicles owned, possessed and used by the Postal Department are liable to pay the tax leviable u/s 3 of the Kerala Motor Vehicles (Taxation) Act 1976, is the moot point in both these Writ Petitions.

2. For the purpose of proper adjudication, sequence of events or the factual controversy is not a matter to be looked into, as the contention is mainly based on the legal prepositions referring to Article 285 of the Constitution of India, whereby it has been specifically provided that the property of the Union shall, save in so far as the Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

3. Placing reliance on the constitutional mandate, the learned Counsel for the petitioner submits that, since there is total exemption from all taxes", the vehicles belonging to the Postal Department, being a property of the Union, are not liable to suffer any tax liability imposed by the State u/s 3 of the Kerala Motor Vehicles Taxation Act 1976, Reference is also made to the reciprocal provision as it appears under the Article 289 of the Constitution of India, whereby a similar exemption from the taxation by the Union is provided in respect of the property and income of the State as well. Viewed in such

circumstances, the learned Counsel submits, that the course and proceedings pursued by the respondents imposing tax under the Act for the vehicles being used by the Postal Department is not correct or sustainable under any circumstance. The learned Counsel for the petitioner also placed reliance on the decision rendered by the High Court of Punjab and Hariyana reported in Union of India Vs. State of Punjab and others, to contend that the event of taxation will not be attracted to the case in hand.

4. The learned Govt. pleader, in response to the contentions taken by the petitioner, submits that the reliance placed on Article 285 of the Constitution is thoroughly wrong and misconceived. It is pointed out that the source of power is very much available in view of "entry No. 57" of the 2nd list under the 7th Schedule of the Constitution of India; which undisputedly is a "State subject 1 and as such, no challenge can be raised against the charging provision. It is also pointed out that, as per the law declared by the Apex Court reported in *Karya Palak Engineer, C.P.W.D., Bikaner Vs. Rajasthan Taxation Board, Ajmer and Others*, , it has been clearly held that the protection under Article 285(1) is available only in respect of "direct taxes" and that, it is having absolutely no application with regard to the "indirect taxes" as in the instant case.

5. In the Sea Customs Act case AIR 1963 SC 1760, a "9- Judges" Bench of the Apex Court opined, by a majority, that Article 285 envisaged immunity from "direct taxes" and not from "indirect taxes" such as sales tax. The decision in *In Re: The Bill To Amend S. 20 of The Sea Customs Act, 1878 and S. 3 of The Central Excises and Salt Act, 1944*, was considered by another "9-Judges Bench" in the case of *New Delhi Municipal Committee Vs. State of Punjab, etc. etc.*, , and was affirmed. Both the above verdicts were considered and relied on in 136 STC 641 SC. From the above judgments, it is clear that Union is not exempted from the levy of "indirect tax" under Article 285 of the Constitution.

6. It is brought to the notice of this Court, that the stand being taken by the departmental authorities as clearly reflected in Ext. P4 demand notice is that the petitioners, if aggrieved, had to approach the Government/State, for obtaining "exemption" as provided u/s 22 of the Kerala Motor Vehicles (Taxation) Act.

7. The learned Standing Counsel appearing for the petitioners submits that the "entry 57" of "list 2" of the 7th schedule is only a general provision, which is applicable to all vehicles. In the instant case, the vehicles belonging to the Postal Department being a property owned by the Union, it clearly comes within the sphere of Article 285(1) and hence that the stand taken by the respondents is not correct and is liable to be interfered with. It is further added that the tax imposed/levied u/s 3 of the Kerala Motor Vehicles Act 1976 is actually on the vehicles i.e. On the property of the Union and hence it is having all the colour and characteristics of a "direct tax".

8. It is very much relevant to note that the very scheme of the statute i.e. Kerala Motor Vehicles Taxation Act is never to tax the vehicle as such, but is only to

impose the tax for the "user" of the road in the State. This being the position, it cannot be said that the tax is actually imposed on the vehicle, so as to make it a direct tax, to attract Article 285. In short, the legal position that the benefit of Article 285(1) can be availed of only with respect to "direct tax" stands settled and is no more open to challenge.

9. It is to be noted that the stand of the respondents, right from the beginning, was never that the vehicles belonging to the petitioner can't be given the benefit of exemption under any circumstances and on other hand, it was being let known that the remedy was only to approach the Government/State claiming exemption as pointed out in Exhibit P4 the power being actually vested with the Government u/s 22 of the above Act which is extracted below:

Section 22 of the K.M.V. Act deals with 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 prospective or retrospective, 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 & Goods) Act 1963 (25 of 1963):

- (i) by any person or class of person; or
- (ii) in respect of any motor vehicles or class of motor vehicles;
- (iii) in respect of any motor vehicles or class of motor vehicles using a specified route subject to such terms and conditions as they may deem fit.

This being the position, it is for the petitioners to approach the 1st respondent/ Government of Kerala by filing appropriate representation, claiming exemption u/s 22 of the Act and it is for the first respondent to look into the same and to pass appropriate orders thereon, particularly taking note of the reciprocal provisions in this regard.

10. In the above circumstances the petitioners are permitted to file appropriate representation before the 1st respondent/State within one month and on such an event, the 1st respondent is directed to consider the same as aforesaid and pass appropriate orders after giving an opportunity of being heard to the petitioners within 2 months thereafter. Since there was an interim order in both the cases, the same will continue, till final orders are passed by the 1st respondent as above. The Writ Petitions are disposed of accordingly.