(2008) 01 MAD CK 0234

In the Madras High Court

Case No : Writ Petition No. 38214 of 2005

Rajalakshmi Genguswamy Matriculation School APPELLANT

Vs

Regional Transport Authority RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(47)
Tamil Nadu Motor Vehicles Rules, 1989 — Rule 204, 279
Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 7

Citation : AIR 2008 Mad 178

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : N. Umapathi, for the Appellant; A. Arumugam, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—The petitioner has sought a Writ of Mandamus, directing the respondent to accept the surrender of permit of the vehicle bearing Registration No. TNF-3885 and for further orders.

2. Brief facts leading to the Writ Petition are as follows:

Rajalakshmi Genguswamy Matriculation School, represented by its Correspondent is the petitioner. It has established schools of all levels throughout the State from Primary to College levels. The School owns a vehicle bearing Registration No. TNF-3885 with valid permit bearing No. P.S.V.P.: 81 /PDY/ 01, for transportation of students studying in the said school and the permit is valid from 24-8-3001 to 23-8-2006. The petitioner has submitted that the Government of Tamil Nadu issued an amendment to the Motor Vehicles Taxation Act (Act 13/2003), increasing the rate of tax by 15 times more than the original tax in respect of the vehicle owned by the Educational Institutions, with effect from 1-8-2003. The Association of the Tamil Nadu Nursery, Primary, Matriculation and Higher Secondary Schools, filed W.P. No. 32203 of 2004. for declaration, declaring that the Tamil Nadu Motor Vehicles Taxation Act (Act 13/2003) as null and void, in so far as it substitutes the rate of tax in Clause (8) of the I Schedule to the Principal Act by increasing the Motor Vehicles Tax in respect of the vehicles owned by the Educational Institutions from Rs. 500/- per quarter to Rs. 150/- for every person. The said Writ Petition was admitted and interim stay of operation of the relevant provisions of the Act was granted by this Court, by an order dated 5-11-2004.

3. The petitioner has further submitted that pursuant to the interim order of this Court, the respondent accepted the tax as per the revised rate, without insisting on payment of tax on seating capacity. The petitioner has paid the entire tax as per the pre-revised tax. Since the relevant provisions under the Amendment Act in respect of enhanced taxes to the vehicles owned by the Educational Institutions has been stayed by this Court, the petitioner is not liable to pay the increased tax till the stay is vacated or the Writ Petition is disposed of. While that be the position, as the petitioner has intended to sell their vehicle bearing Registration No. TNF 3885, the correspondent of the school approached the respondent for surrender of permit of the said vehicle. The respondent informed the petitioner that if the surrender of the permit has to be accepted, the State would be losing the enhanced tax in respect of vehicle and therefore, unless a separate order from the Court is obtained, the request of the petitioner would not be considered.

4. Challenging the action of the respondent, the petitioner has stated that as per Section 7 of the Motor Vehicles Taxation Act, 1974, the transport authority can recover the tax either from the transferor or from the transferee, who is having possession and control of the vehicle and in view of the interim stay of the Amendment Act 13 of 2003, the petitioner Is not liable to pay the enhanced tax and Rule 204 of the Tamil Nadu Motor Vehicles Rules, is not applicable to the facts of this ease. Therefore, the action of the respondent in refusing to accept the surrender of the permit is arbitrary and without Jurisdiction. It is further submitted that the question of payment of tax is not related to surrender of permit, but it is applicable only to levy of tax and therefore, there is no legal Impediment in accepting the surrender of permit.

5. Heard the counsel appearing for both parties and perused the materials available on record.

6. The Educational Institution bus permit is issued in the name of Rajalakshmi Genguswamy Matriculation School by the Secretary to Regional Transport Authority, Pollachi and it is valid from 3-10-2001 to 2-10-2006. Admittedly, the vehicle owned by the School is a transport vehicle, falling u/s 2(47) of the Motor Vehicles Act, 1988. The Division Bench of this Court has upheld the validity of Amendment Act 13 of 2003 and therefore, the petitioner has to pay the differential tax applicable to the Educational Institution.

7. Rule 204 of the Tamil Nadu Motor Vehicles Rules, deals with surrender and

cancellation of permit and it reads as follows:

(1)(a) If the holder of a permit proposes to surrender the permit for cancellation he shall make an application in Form "ACC" to the Secretary of the Transport Authority concerned for the acceptance of surrender of the permit and issue of a Clearance Certificate.

(b) Such application shall be accompanied by the permit and a fee as specified in the Table under Rule 279.

(c) No application for the surrender of permit in respect of contract carriage (maxi cab and motor cab allotted under Taxi Trade Quota) shall be considered if such application is made within a period of three years from the date of first registration as maxi cab and motor cab:

Provided that such an application may be considered if the permit holder pays the difference of excise duty as applicable to private cars and produce the evidence for such payment obtained from the competent Central Excise Authorities along with the application.

(2)(a) On receipt of an application in Form "ACC" the Secretary of the Transport Authority shall forthwith issue the Clearance Certificate in Form "CC".

(b) A Clearance Certificate issued under Clause (a) shall be valid for a period not exceeding 30 days from the date of its issue as mentioned therein.

(3)(a) In case where the holder of the permit has no liabilities outstanding or where there is sufficient documentary evidence to prove that the liabilities have been cleared by the permit holder concerned the Secretary of the Transport Authority shall direct the permit holder to produce the certificate of registration of the vehicle.

(b) On receipt of the records referred to in Clause (a) the Transport Authority, or the Secretary of the Transport Authority if authorised in this behalf by the Transport Authority shall forthwith cancel the permit so surrendered, cancel the endorsement for payment of tax in the certificate of registration and send them together with an order mentioned in Part II of Form "ACC" with copies of the said order marked to the registering authority and countersigning authority/ authorities, if any.

(4) In case the holder of permit has liabilities outstanding and there are disciplinary proceedings pending against him or there are orders in force suspending or cancelling the permit, the Secretary of the Transport Authority concerned shall issue a notice simultaneously along with the certificate in Form "CC" to the holder of the permit that his application for surrender of permit shall be summarily rejected if further proof or intimation clearing the liabilities or of having undergone the disciplinary proceedings or if the permit has been ordered to be suspended and the suspension having been undergone or is otherwise modified on appeal or if the holder of the permit has agreed to or has been

permitted to pay a certain sum of money in lieu of cancellation or suspension of the permit, and that the same has been fully paid, is not received from him within thirty days from the date of issue of notice. If even after the expiry of the aforesaid period of thirty days the aforesaid defects are not cleared, the Transport Authority, or the Secretary of the Transport Authority may refuse to accept the surrender of the permit. The order refusing the acceptance of surrender shall be in part II of Form "ACC".

8. Section 7 of the Motor Vehicles Taxation Act, 1974, deals with the liabilities of transferor, person in control or possession of the Motor Vehicle to pay tax and it is extracted hereunder:

If the tax leviable in respect of any motor vehicle remains unpaid by any person liable for the payment thereof and such person, before paying the tax, has transferred the ownership of such vehicle or has ceased to be in possession or control of such vehicle, the person to whom the ownership of the vehicle has been transferred or the person who is in possession or control of such vehicle, shall be liable to pay the said tax:

Provided that nothing contained in this Section shall be deemed to affect the liability to pay the said tax of the person who has transferred the ownership or has ceased to be in possession or control of such vehicle.

9. A reading of Rule 204 makes it clear that the tax for the vehicle has to be paid and the permit holder should not have any outstanding liability and unless sufficient documentary evidence is produced to the Secretary of the Transport Authority, orders for surrender of permit will not be issued by the competent authority. Therefore, when the petitioner has intended to sell only the Motor Vehicle, the holder of the permit has to necessarily pay the differential tax to obtain the Clearance Certificate from the Secretary of the Transport Authority for the purpose of surrender of permit and for cancellation of endorsement for payment of tax in the certificate of registration. Payment of outstanding tax is a condition precedent for acceptance of surrender. Section 7 of the Motor Vehicles Taxation Act deals with the liability of the transferor as well as the person in possession and control of the vehicle to pay the unpaid tax. Section 7 of the Taxation Act would be applicable In a case where the transfer of ownership of the vehicle has already been effected, before payment of tax livable in respect of the vehicle. Such a situation has not arisen in this case. The said Section enables the taxation authorities to collect the unpaid tax from the transferor or from the person, who is in control of the vehicle. The proviso to the Section makes it clear that the liability of the transferor is not discharged on transfer. Proviso to Section 7 of the Taxation Act, makes it clear that the liability of the purchaser or the person in charge of the vehicle to pay tax shall not affect the liability of the person who has transferred the ownership or ceased to be in possession or control of such vehicle, to pay the tax. When the liability of the petitioner is not discharged and the application for surrender of permit is not in accordance with Rule 204 of the Rules, the petitioner cannot insist the authorities should bye-pass

the rule and accept the surrender of permit. In view of the above, the petitioner has no legal or statutory right to compel the respondent to accept the surrender of permit of the vehicle without clearing the outstanding tax liability.

10. Hence, the petitioner is not entitled to the relief sought in the Writ Petition. It is open to the petitioner to pay the arrears of tax within a period of three months from the date of receipt of a copy of this order and make necessary application as provided under Rule 204 of the Rules, for surrender of permit.

In the result, the Writ Petition is dismissed. No costs.

