

(2007) 01 KL CK 0109

In the High Court Of Kerala

Case No : W.A. No. 1917 of 2004 and W.P. (C) No. 23570 of 2003

Regional Transport Officer

APPELLANT

Vs

K.V. Abdurahiman

RESPONDENT

Date of Decision : 22-01-2007

Acts Referred:

Kerala Motor Vehicles Taxation Act, 1976 — Section 10, 11, 22, 23, 24
Kerala Motor Vehicles Taxation Ordinance, 1975 — Section 22
Kerala Motor Vehicles Taxation Rules, 1975 — Rule 10
Motor Vehicles Act, 1988 — Section 66

Citation : AIR 2007 Ker 140 : (2007) 1 ILR (Ker) 616 : (2008) 1 KLJ 268

Hon'ble Judges : S. Siri Jagan, J;M. Ramachandran, J;K. Padmanabhan Nair, J

Bench : Full Bench

Advocate : V.V. Ashokan, GP, for the Appellant; Sumathi Dandapani P. Deepak, Mathew Sebastian and Millu Dandapani, for the Respondent

Judgement

S. Siri Jagan, J.—Whether the owner/person in possession or control of a vehicle, which has been seized and detained for non-payment of tax under the Kerala Motor Vehicles Taxation Act, 1976 (hereinafter referred to as the Act), is entitled, to claim exemption from payment of tax u/s 5 and in cases where tax has already been paid, to claim refund u/s 6 of the Act, of the tax paid by him for the period during which the vehicle was under detention", are the issues which come up for decision in these three cases which have been referred to a Full Bench by a Division Bench, since the Division Bench perceived an apparent conflict between decisions of two Division Benches in W.A. Nos. 82 of 1986 and 1429 of 2002 on the one hand and the decision of another Division Bench in W.A. No. 1861 of 2004 on the other.

2. The question that arose for consideration in W.A. No. 1861/2004 referred to in the reference order was as to whether in respect of a vehicle under police custody for non-payment of tax under the Act, a claim for exemption from payment of tax u/s 5 of the Act would lie on the ground of non-use of the vehicle. In that case the question of entitlement for refund u/s 6 of the Act did

not come up for consideration either directly or indirectly. The Division Bench, in that appeal held that the person liable to pay tax on the vehicle in police custody for non-payment of tax under the Act is not entitled to claim exemption from tax either u/s 5 or under Clause 27 of the SRO No. 878/75 issued u/s 22 of the Act.

3. In W.A. Nos. 82/86 and 1429/02 also the main issue which came up for consideration was the same viz. whether a claim for exemption from payment of tax u/s 5 of the Act would lie in respect of a vehicle in police custody for non-payment; of tax under the Act. In those cases also the answer given by the respective Division Bench to that question was the same, i.e. in the negative. But in those decisions the Division Benches took that view for want of appropriate notice, in accordance with the statutory provision, regarding non-use of the vehicle with effect from the date of seizure. In fact the Division Bench which heard W.A. No. 1429/02 only followed the dictum in W.A. No. 82/86. But in both cases the Division Benches went on further to hold that despite such ineligibility to claim exemption u/s 5 of the Act for want of non-compliance with statutory formalities, it would be open to the party to claim refund of the tax after payment by invoking Section 6 of the Act.

4. As such, we are of opinion that there is in fact a conflict between the two sets of decisions referred to in the reference order in so far as one holds that in respect of a vehicle in detention for non-payment of tax no exemption is available u/s 5 at all, whereas the other two decisions held that exemption u/s 5 is not available only for want of compliance with the statutory requirement of appropriate notice, in accordance with the statutory provision, for the relevant period of detention. Although in the two writ petitions under consideration the question of exemption u/s 5 is not an issue, in W.A. No. 1917/2004 the State is challenging the decision of the learned Single Judge holding that if G Form is filed, exemption u/s 5 is available even in respect of vehicles under detention for non-payment of tax.

5 Before considering the issues involved it would be advantageous to note the provisions of the Act relevant for our purpose. The levy of tax is u/s 3 of the Act, the relevant portion of which reads thus:

3. Levy of tax.--(1) Subject to the provisions of this Act, on and from the date of commencement of this act, a tax shall be levied on every motor vehicle used or kept for use in the State, at the rate specified for such vehicle in the Schedule.

xxxx xxxx xxxx (emphasis supplied)

Section 5 provides for claiming exemption from tax on previous intimation of non-use of the vehicle for a specified period. That Section reads as under:

5. Exemption from tax.--(1) In the case of a motor vehicle which is not intended to be used or kept for use during the first month or the first and second months of a quarter, or the whole of a quarter or year, as the case may be the registered owner or the person having possession or control of such vehicle shall give

previous intimation in writing to the Regional Transport Officer from whom the endorsement of tax has been obtained, that such vehicle would not be used for such period and thereupon, the registered owner or such other person shall not be deemed to have used or kept for use the vehicle for such period, and no tax shall be payable in respect of such vehicle for such period.

(2) Nothing in Sub-section (1) shall exempt a person from liability to pay tax in respect of a motor vehicle, if, on verification, it is found that the motor vehicle has been used during such period or any portion thereof.

(3) Notwithstanding anything contained in Sub-section (1), in an appeal u/s 23 or a revision u/s 24, the burden of proving that a motor vehicle has not been used during any period shall be on the registered owner of the person having possession or control of the motor vehicle, as the case may be.

(emphasis supplied)

Eligibility for refund of tax already paid on the ground that the vehicle has not been used or kept for use is provided for in Section 6 which provides thus:

6. Refund or Tax: (1) where the tax for any motor vehicle has been paid for any quarter or year and the vehicle has not been used or kept for use during the whole of that quarter or year or a continues part thereof not being less than one month a refund of the tax at such rates as may, from time to time, be notified by Government, shall be payable subject to such conditions as may be specified in such notification.

2) Notwithstanding anything contained in this Act, a registered owner who has paid tax for a year or more shall be entitled to refund of tax at such rates as may be prescribed on cancellation of the registration of the vehicle or removal of the vehicle to any place outside the State on account of transfer of ownership or change of address.

(Emphasis supplied)

Provision for seizure and detention of vehicle under the Act is as per Section 11 which is in the following terms:

11. Seizure and detention of motor vehicles pending production of proof of remittance of tax.- Any Officer not below the rank of Assistant Motor Vehicles Inspector authorised in this behalf by the Government or any police officer not below the rank of Sub-Inspector my, if he has reason to believe that a State without paying the tax, seize and detain that vehicle and make arrangements for the safe custody of the tax.

There is one more section, which the Special Government Pleader (Taxes) relies on in support of his arguments which is Section 22 which reads as follows:

22. Exemption from or reduction or tax.- The Government may, if they are satisfied that is it 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 retrospective, in regard to the tax payable under this Act or under the Kerala Motor Vehicle 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.

Since in order to appreciate the contention of the Special Government Pleader it is necessary to refer to S.R.O. No. 878/75 issued u/s 22, we shall extract the relevant portion of that notification also:

SRO. No.878/75: In exercise of the powers conferred by Section 22 of the Kerala Vehicles Taxation Ordinance (Ordinance No. 7 of 1975) xx xx xx the Government of Kerala, being satisfied that it is necessary in the public interest, so to do, hereby exempt the following classes of Motor Vehicles from the payment of tax payable under the said Ordinance:

xx xx xx xx 27. All Motor Vehicles held in the custody of the Police or other authorities for offences other than non-payment of tax, for the period during which such vehicles are in such custody.

xx xx xx xx (emphasis supplied)

While, at it we may also note the rule framed u/s 5 prescribing the formalities for claiming exemption under the Section, which is Rule 10 of the Kerala Motor Vehicles Taxation Rules, 1975, which reads thus:

10. Exemption from tax: The previous intimation referred to in Sub-section (1) of Section 5 shall be made to the Regional Transport Officer concerned in Form G or in writing with the particulars required therein so as to reach him within one week from the date of commencement of the period for which exemption from payment of tax in respect of the vehicle is claimed due to non-use.

(2) On receipt of the intimation the Regional Transport Officer concerned shall certify after such verification as may be deemed necessary, the non-use of the vehicle for the period for which tax is not payable, by making necessary endorsement in the certificate of registration of the vehicle.

Note: The previous intimation referred to in this rule shall be sent by registered post acknowledgment due or presented to the office of the Regional Transport Officer in person and in the latter case, acknowledgment for its receipt shall be obtained.

6. The argument of the Special Government Pleader is based on the underlined portion in SRO No. 878/75. For a moment we may presume that the SRO is to be put in full vigor, although it is pointed out that it was set aside by this Court in

some other proceedings. He would contend that the intention behind the same is clear to the effect that once the vehicle is detained for non-payment of tax under the Act itself, there is no justice or logic in giving the offender a benefit by way of refund of tax for the period of detention. He would submit that even after detention, the offender continues to be liable for payment of tax in respect of that vehicle under detention. When exemption from payment of tax for non-use is denied specifically in the case of detention of vehicle for non-payment of tax, as a converse proposition the offender would not also be entitled for refund of the tax already paid for the period of detention, contends the learned Special Government Pleader. He relies on two decisions, one of the Supreme Court in AIR 2005 1431 (SC) and another of a Division Bench of this Court in R.T.O. Vs. Sajith, . He would further submit that when it is settled law that in case of detention u/s 11 no exemption from tax can be claimed u/s 5, as a corollary it should be held that no claim for refund would also lie in respect of such vehicle under detention.

7. The counsel for the respondent in W.A. No. 1917/2004 would contend that since motor vehicle tax is compensatory in nature, once the person liable to pay tax complies with the procedure prescribed u/s 5 and the Rule framed thereunder, irrespective of the fact that the vehicle is detained for non-payment of tax, for the period of detention exemption u/s 5 is available to the owner/person in possession or control of the vehicle especially in the absence of any exclusion from eligibility for the same in the Act and Rules. On that contention, he would argue for sustaining the judgment of the learned Single Judge and for dismissal of the appeal.

8. The counsel for petitioners claiming refund of tax in the two writ petitions would refute the said contentions relying on the decisions in W.A. Nos. 82/86 and 1429/2002 as also the decision of the Supreme Court in State of Gujarat and Ors. v. Kaushikbhai K. Patel and Anr. (2005) 5 SCC 615. Their contention is that exemption from tax is different from refund of tax. For claiming exemption of tax, the procedure prescribed under the Act and Rules have to be complied with strictly, whereas in the case of refund of tax all what the person claiming refund has to do is to prove either that the vehicle has not been used or that it has not been kept for use during the period in respect of which refund is claimed. According to them, when the vehicles were admittedly under the custody of the police, the question of using or keeping the vehicle for use does not arise, and since motor vehicle tax is compensatory in nature, for use in public roads of the State, eligibility for refund of tax for the period of custody be denied going by Section 6, especially in the absence of any exclusion from eligibility in the Act and Rules in respect of vehicles detained for non-payment of tax.

We have considered the rival contentions in detail. First we shall deal with the due regarding eligibility for exemption u/s 5.

9. At the outset we must note that as early as in 1974, in the case of Bolani Ores Ltd., as reiterated in Travancore Tea Ltd. v. State of Kerala 1980 KLT 568 the

Supreme Court has held that motor vehicle tax is compensatory in nature and would be attracted only if the vehicle is used or kept for use in the public roads of the State. In Travancore Tea Co.'s case, the Supreme Court while construing the Sections of the Act relating; to exemption and refund held as follows:

Section 5 of the Act provides for exemption from payment of tax under certain circumstances. It enables the registered owner or the person having possession or control of such vehicle to give previous intimation in writing to the R.T.O. that the vehicle would not be used for such period and at the same time surrender certificate of registration and permit of the vehicle. Section 6 enables the registered owner or a person in possession or control of such a vehicle to get refund of tax if conditions specified in Section 6 are satisfied. Thus in order to enable the registered owner or person in possession or control of a vehicle to get exemption of tax, advance intimation to the R.T.O. along with the surrender of certificate of registration is necessary. The provision of Section 3 Sub-section (2) as well as Section 5 and Section 6 are meant to prevent evasion of tax and to provide for exemption from tax in proper cases. Though the purpose of the Act is to tax vehicles that are used or kept for use on the public roads of the State, the State is entitled for the purpose of safeguarding the revenues of the State and to prevent evasion of the tax, to enact provision like provision as in Section 3 raising a presumption that the vehicle is used or kept for use in the State without any further proof unless exemption is claimed u/s 3(2), Section 5 and Section 6. It may be observed that reading Sections 3, 5 and 6 it is clear that a levy of tax is contemplated only on the vehicles that are used or kept for the use on the public roads of the State.

This decision explains the rationale behind the provisions relating to exemption and refund in respect of tax under the Act.

10. Let us examine the scope of Section 5 keeping in mind the above decision. Section 5 is available in respect of a vehicle "which is not intended to be used or kept for used". An owner or person in possession/control of the vehicle cannot even form an intention either to use the vehicle or to keep the vehicle for use, since, evidently, he would not have any control over the vehicle while the vehicle is in detention. Therefore, when the vehicle is detained the conditions for eligibility for exemption prima facie becomes available. Further when motor vehicle tax is compensatory in nature as declared by the Supreme Court, when a person is unable to incur the liability to compensate for the use of public road: on account of the very detention of the vehicle, it would be unjust to hold that even though he is incapable of having an intention to use or keep the vehicle for use in public roads, he shall pay the tax, simply because the reason for detention of the vehicle is nonpayment of tax. As is said by great men of law, it is not a crime not to have money, especially to pay tax. We also see no logic in denying exemption in case of detention for non-payment of tax alone when exemption from tax is available for vehicles which is under custody for involvement in very serious crimes, even heinous crimes like murder, going by Clause 27 of SRO No. 878/75

issued u/s 22. Moreover, when motor vehicle tax is a compensation for user of public roads of the State the reasons for non-user becomes irrelevant for the purpose of claiming exemption. Of course, it could have been possible for the legislature to provide for payment of tax in such instances as well, but this having not been done, subsidiary legislative measures may not clothe the Government with power to impose such liability by possibility discriminatory provision.

11. However, since the Section providing for exemption prescribes a procedure for claiming that exemption, exemption would be available only if that procedure is complied with. It is settled law that when a statute prescribes that a particular thing shall be done in a particular manner, it shall be done only in that manner and no other manner. Rule 10 of the Kerala Motor Vehicles Rules provides that for claiming exemption u/s 5, prior intimation as provided in Sub-section (1) thereof shall be made to the RTO concerned in Form G within the period prescribed therein. We are of opinion that going by the plain meaning of the Section, if that procedure is complied with, exemption from payment of tax should be available even in respect of vehicles which are detained for non-payment of tax, which cannot be denied by reading something into the Section which is not there or by giving an interpretation contrary to the express language of the Section.

12. Moving on to the question of eligibility for refund, by the same logic there is absolutely no justice in denying the benefit of refund of tax already paid in respect of a vehicle in custody, simply because the seizure and detention are for non-payment of tax. When vehicle is in detention, the person liable to pay tax on the vehicle does not have any control over the vehicle. Therefore, he cannot either use the vehicle or keep the vehicle for use during the period of detention which are the conditions necessary for becoming eligible for refund. When, going by the plain language of the Section, such a person would be eligible for refund for tax, we do not see why, we should adopt a strained interpretation to the provision to deny the benefit of the provision in respect of vehicles in detention for non-payment of tax when the Act and Rules do not contemplate any such exclusion either expressly or by implication.

13. We find that our above interpretation of both Sections 5 and 6 is perfectly in tune with the decision of the Supreme Court in Koushik Bhai K. Patel's case (supra) cited by the parties who claim refund in these cases. In that case the Supreme Court held as follows:

8. We have considered submissions of the learned Counsel for the parties. The facts that are not in dispute are: Respondent 1 filed Form NT declaring non-use of the vehicle in question for the period 1-7-1995 to 31-3-1996; the report submitted by the Motor Vehicles Inspector regarding non-user of the vehicle for three months from 1-7-1995 to 30-9-1995 was accepted and refund of tax was ordered. For the remaining period refund was not granted as the Director of Transports was not satisfied of the non-user of the vehicle for reasons beyond

the control of the respondents. It is well settled in law that the tax imposed on a vehicle under the Act is compensatory in nature for the purpose of raising revenue to meet the expenditure for making and maintaining the roads and regulation of traffic. To put it differently, the taxes are levied on the vehicles using the roads or in any way forming the part of the flow of traffic on the roads which is required to be regulated and not on the vehicles which do not use the roads at all. What is material and relevant is the use of roads by Vehicles for levy of tax under the Act. The reasons for non-use of roads is immaterial and irrelevant when the nature of the tax itself is compensatory for use of road. It follows from Sub-section (2) Section 3 of Act that where a motor vehicle is not using the roads no tax is levied thereon. If any tax has been paid in relation to such vehicle then the tax for the period during which it was not put on the road is refundable. In order to avoid evasion of tax the State can compel the owner to pay tax in advance. In fact Sub-section (5)(a) and (b) of Section 3-A speaks of refund of tax that had been collected earlier.

(Emphasis supplied)

When reasons for non-use of roads is immaterial and irrelevant for claiming refund or exemption for non-use of vehicle we do not see any earthly reason why a different yardstick has to be adopted in the case of non-use on account of detention for nonpayment of tax in the absence of any exclusion either express or implied, in the Act and Rules.

14. The decision in Bijaya C. Tripathy's case (supra) cited by the learned Special Government Pleader is distinguishable on facts. That was a case where refund was claimed on the ground that the vehicle did not have a permit u/s 66 of the Motor Vehicles Act, and no tax was payable since in the absence of any permit it is not possible to calculate the quantum of tax payable. Further, in that case the Supreme Court was dealing with Section 11 of the Act under scrutiny in that case, which provided for refund of tax on certain conditions one of which was the requirement of intimation u/s 10 of non-use. In that context only the Supreme Court held that failure to give prior intimation as provided in Section 10 of that Act would disentitle the party for refund u/s 11. On the other hand the decision supports the view we have taken hereinbefore in the case of eligibility for exemption u/s 5. Further we note that in that case the decision of Kaushikbhai K. Patel's case (supra) was referred to and approved by the Supreme Court. As such, we are not satisfied that a different interpretation, than the one we have taken in these cases, is warranted on the basis of the decision cited by the learned Special Government Pleader.

15. The decision in Sajith's case (supra) is also not applicable since that case also was dealing solely with the question of exemption u/s 5 in respect of vehicle in custody without filing G Form under Rule 10. Further in that decision the Division Bench had relied on the decisions in W.A. Nos. 82/86 and 1429/02 which held that although no exemption can be claimed without giving prior intimation for a vehicle in custody u/s 5, a claim for refund u/s 6 would lie which is exactly

the view taken by us.

16. The result of the above discussion is that in respect of a vehicle detained u/s 11 for non-payment of tax,

(a) a claim for exemption u/s 5 would lie for the period of detention, if the condition of previous intimation of intention not to use or to keep for use is complied with in accordance with the Section 5 read with Rule 10 by filing Form G;and

(b) a claim for refund of tax paid, for the period during which the vehicle was detained u/s 11 would lie,

notwithstanding the fact that the detention is for non-payment of tax. We therefore affirm the decisions in W.A. No. 82/86 and 1429/02 and overrule the decision in W.A.No. 1861/2004.

17. Accordingly, W.A. No. 1917 of 2004 is dismissed. Exts. P2 and P3 orders in W.P.(C). No. 23570/2003 and Ext. P6 in W.P.(C) No. 23448/04 by which the refund applications filed by the petitioners u/s 6 have been rejected are quashed. The Regional Transport Commissioner, Alappuzha and the Dy. Transport Commissioner, Thiruvananthapuram are directed to consider the refund applications filed by the petitioners in W.P.(C) No. 23570/03 and W.P.(C) No. 23448/04, respectively, in accordance with the findings in this judgment, within two months from the date of receipt of a certified copy of this judgment. Here we also note that the quantum of refund can only be to the extent provided in the notifications in force at the relevant time for which refund is claimed, issued u/s 6 of the Act, like SRO No. 874/75 or later notification, if any. Those writ petitions are disposed of accordingly.