(2006) 02 KL CK 0048

In the High Court Of Kerala

Case No : C.A. No. 92 of 2006

R.T.O. APPELLANT

Vs

Sajith RESPONDENT

Date of Decision : 03-02-2006

Acts Referred:

Kerala Motor Vehicles Taxation Act, 1976 — Section 11, 5, 5(1)
Kerala Motor Vehicles Taxation Ordinance, 1975 — Section 22
Kerala Motor Vehicles Taxation Rules, 1975 — Rule 10

Citation : (2006) 1 KLT 936

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Raju Joseph, Spl. Government Pleader for Taxes, for the Appellant; Sanjeev Kumar K. Gopal, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—This appeal has been preferred by the Regional Transport Officer, Palakkad and others aggrieved by some of the directions issued by the learned single Judge.

2. Original Petition was preferred by the respondent herein seeking a writ of certiorari to quash Ext. P6 notice directing to pay motor vehicle tax for the period when the vehicle was in police custody for non payment of tax and also the order of the Deputy Transport Commissioner dated 22.03.2005 rejecting the appeal holding that the petitioner is liable to pay tax for the period from 1.1.2004 to 30.06.2004. Revision filed by the assessee before the Transport Commissioner was also rejected.

3. Petitioner is the registered owner of stage carriage KL.5/A 3131 operating on the route Palakkad Thacharpady. Tax in respect of the vehicle was paid upto 31.12.2003, Vehicle was intercepted by the Assistant Motor Vehicle Inspector, Alathur on 19.02.2004 since no proof for payment of tax for the quarter ending on 31.3.2004 was produced. Consequently vehicle was seized u/s 11 of the

Kerala Motor Vehicles Taxation Act and handed over to the safe custody of S.I. of Police, Kuzhalmandam. Ext.P1 notice dated 19.8.2004 was issued to the petitioner by the Regional Transport Officer, Palakkad demanding tax upto 30.06.2004. Learned single Judge disposed of the Writ Petition directing the petitioner to pay off the arrears upto and including the quarter in which vehicle was seized at least by 31.12.2005. It was further directed if the petitioner clears the arrears of tax as ordered above, there would be a direction to the Deputy Tahsildar (R.R.), Alathur not to recover any arrears of tax for the next quarter onwards during which period the vehicle was in police custody. Regional Transport Officer was directed to make endorsement in the R.C. book granting exemption from next quarter onwards till date of release of the vehicle. State being aggrieved by the above direction has preferred this appeal.

4. We heard Special Government Pleader for Taxes Sri Raju Joseph for the appellants and Sri Sanjeevkumar Gopal for the respondent-petitioner. We are in this case primarily concerned with the question as to whether the petitioner is entitled to get exemption from tax u/s 5(1) of the Kerala Motor Vehicles Taxation Act, 1976 (for short "the Act") while the vehicle was in police custody due to non payment of tax and whether the petitioner is entitled to get the benefit of Clause 27 of SRO 878/75.

5. Petitioner''s vehicle was in the custody of the police due to non payment of tax for the period from 1.1.2004 to 31.3.2004 and from 1.4.2004 to 30.6.2004. Admittedly No. "G" form was submitted by the petitioner pointing out the fact that the vehicle was not under use in those periods. A Full Bench of this Court in Gracy Vincent Vs. State of Kerala, has taken the view that previous intimation claiming exemption from tax u/s 5 read with Rule 10 is a mandatory requirement for claiming exemption from payment of tax. If the petitioner wanted the benefit of Section 5(1) of the Act, necessarily he had to submit G form which was not submitted. Then the further question is whether the petitioner is entitled to get the benefit of SRO 878/75. Relevant portion of the SRO is extracted below:

S.R.O. No. 878/75 -- In exercise of the powers conferred by Section 22 of the Kerala Motor Vehicles Taxation Ordinance (Ordinance No. 7 of 1975), and in supersession of Notification No. (6) 18998/ 63/PW/TB2 dated 28th June, 1963 published as SRO No. 609/63 in KG. Extra No. 90 dated 20.6.1963, 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.

xxx xxx xxx 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.

(emphasis added)

6. Above mentioned SRO has been issued by the Government in exercise of the powers conferred by Section 22 of the Act. State Government is empowered to

exempt class of motor vehicles or class of persons from payment of tax. SRO 878/75 specifically refers to Clause 27 which gives exemption to motor vehicles held in the custody of police or any other authorities for offences other than non payment of tax. The question as to whether in a given case a person is entitled to get exemption from payment of motor vehicle tax while the vehicle was in police custody for non payment of tax or otherwise if he had submitted G form in conformity with Section 5 read with Rule 10 is not an issue that arises for consideration since so far as this case is concerned since admittedly No. G form was submitted. Furnishing of G form for getting exemption u/s 5(1) read with Rule 10 is a mandatory requirement, so held by the Full Bench in Gracy Vincent''s case, supra.

7. We may in this connection refer to an unreported Bench decision of this Court in W.A. 1861/2004 wherein this Court has taken the view that on a reading of Section 5 along with Section 22 and Clause 27 of the notification SRO 878/75 it would be clear that in the case of a motor vehicle which is not intended to be used or kept for use for any quarter the registered owner or the person having possession or control of the vehicle would be exempted from payment of tax if he gave previous intimation in writing to the Regional Transport Officer regarding non user of the vehicle and obtained endorsement in regard thereto. Clause 27 of the notification exempts from payment of tax to motor vehicles in the custody of police or other authorities for offences other than non payment of tax for the period for which the vehicle was in custody. Similar is the view taken in W.A. No. 1429 of 2002. So also a Division Bench of this Court in W.A.No 82 of 1986. Reference may also be made to the decision of the learned single Judge in Mani v. R.T.O. 1992 (2) KLT 615 wherein this Court took the view that one cannot equate a vehicle kept in custody following its involvement in an offence and another seized for non payment of tax. The rationale and the object sought to be achieved are different and the owner of the vehicle cannot certainly claim exemption from payment of tax for his vehicle having failed to satisfy the conditions of Section 5 of the Act.

8. Above being the legal position, we are of the view, learned single Judge was not justified in granting the benefit of exemption. Appeal filed by the State is accordingly allowed. Direction given by the learned single Judge would stand set aside. We hold that petitioner is not entitled to get exemption for the period from 1.1.2004 to 31.3.2004 and from 1.4.2004 to 30.6.2004 since vehicle was not only in police custody for non payment of tax but also due to the fact that G form was not submitted by the petitioner.

