

(2003) 11 KL CK 0034
In the High Court Of Kerala
Case No : W.A. No. 103 of 2001

Sales Tax Inspector

APPELLANT

Vs

Ittoop

RESPONDENT

Date of Decision : 26-11-2003

Acts Referred:

Kerala Tax on Entry of Goods Into Local Areas Act, 1994 — Section 2, 3
Motor Vehicles Act, 1988 — Section 2(28), 39

Citation : (2004) 1 ILR (Ker) 503 : (2004) 1 KLT 327 : (2006) 143 STC 1

Hon'ble Judges : Jawahar Lal Gupta, C.J.; Nauvdip Kumar Sodhi, J

Bench : Division Bench

Advocate : Raju Joseph, Spl. Government Pleader, for the Appellant; P.K. Mayadevi, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, C.J.—Is a Mechanical Pavar Finisher, which is used for spreading the concrete mixed with coal tar on the road, a motor vehicle so as to be exigible to the levy of Tax u/s 3 of the "Kerala Tax on Entry of Goods Into Local Areas Act, 1994:" This is the short question that arises for consideration in this appeal. The learned Single Judge has answered this question in favour of the writ petitioner. Hence, the respondents have filed this appeal.

2. The respondent-writ petitioner is the Managing Director of the partnership firm. It is engaged in the construction of the roads, etc. The respondent purchased the Pavar from M/s. Gujarat Apollo Equipments Limited, Gujarat. It was dismantled and loaded on a lorry. It reached the State of Kerala on October 4, 1998. The Sales Tax Inspector served a notice dated October 4, 1998 on the respondent's firm calling upon it to deposit an amount of Rs. 92,880/- by way of Entry Tax. The value of the Pavar was fixed as Rs. 9,28,780/-. The respondent objected. However, since he was in need of the equipment, the deposit was made. Thereafter, he approached the authorities for refund. Having failed, he filed a petition under Article 226 of the Constitution, viz. O.P. No. 5060 of 1999.

The matter was considered by the learned Single Judge. The authority was directed to consider the representation dated October 23, 1998 and decide it within a period of one month. Thereafter the matter was kept pending for a considerable length of time. Ultimately, the respondent's request was rejected with the observation that he had "not produced any documents to substantiate" his claim. Thus, the request for refund was declined. A copy of the order passed by the authority on February 19, 2000 has been produced as Ext.P9.

3. Aggrieved by the order, the respondent again approached this Court through a petition under Article 226 of the Constitution. In this petition, it was specifically pleaded that the equipment imported by the writ petitioner was used only for making roads. It was not a motor vehicle. It was not exigible to levy of entry tax. In fact, it fell within Entry 21 - "other machinery", which had been exempted from the levy of tax vide notification dated June 3, 1998. Thus, the action of the authorities in levying and collecting tax was illegal.

4. The Department filed a counter affidavit. It was pleaded that the writ petitioner had not produced any material to show that the "Pavar" was a machine. In fact, it was after giving due and reasonable opportunity that the impugned order was passed. The writ petitioner filed a reply affidavit controverting the averments in the counter affidavit.

5. The matter was considered by the learned Single Judge. A perusal of the judgment shows that during the course of hearing it was admitted that the equipment imported by the writ petitioner was "transported from place to place mounted on a lorry. It is not capable of carrying passengers on the road. It is also admitted that there was no practice of registering the above as Motor Vehicle." In view of this factual position, the learned Single Judge took the view that "imposition of entry tax on the above vehicle was misconceived." Thus, a direction for refund along with interest was given. Hence, this appeal.

6. Mr. Raju Joseph, learned counsel for the appellants has vehemently contended that the goods imported by the respondent fall within the definition of a motor vehicle as contemplated u/s 2(28) of the Kerala Motor Vehicles Act. Thus, the tax was validly levied and collected. He has placed reliance on the decision of their Lordships of the Supreme Court in *Base Abraham v. State of Kerala* (2001 (1) KLT 730 (SC): 2001 AIR SCW 446). The claim made on behalf of the appellants has been controverted by Ms. Mayadevi, learned counsel for the respondent.

7. The 1994 Act was enacted to "provide for levy of tax on the entry of goods into the local areas for consumption, use or sale therein." Section 2 gives the definitions. Clause (j) defines the motor vehicle to mean a vehicle "as defined under Clause 28 of Section 2 of the Motor Vehicles Act, 1988." Section 3 provides for the levy of tax. It lays down that "tax shall be levied and collected" on "the entry of any goods into any local area for consumption, use or sale therein. The tax shall be at such rate or rates as may be fixed by the Government by notification on the purchase value of the goods, but not exceeding the rates

specified for the goods in the first schedule in the KGST Act." The remaining provision is not relevant for the purpose of the present case. After the initial enactment, various other items were also entered. Entry 21 was also added. It provides for the levy of tax on "other machinery." Since Section 2(j) adapts the definition of the Motor Vehicle as given in the 1988 Act, the provision of Section 2(28) may also be noticed. It reads thus:

"Motor Vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty five cubic centimetres".

8. A perusal of the above provision shows that a "motor vehicle" is mechanically propelled. It is adapted for use "upon roads". The vehicles fixed upon rails or of a special type adapted for use in a factory are excluded. Section 39 provides for compulsory registration of the motor vehicles. It precludes a person from driving any motor vehicle "in any public place or in any other places" unless it is registered in accordance with the provisions of Chapter IV.

9. A perusal of the provisions as contained in Sections 2(28) and 39 shows that a motor vehicle is one which is used "upon roads." Not for making the roads. It has to be compulsorily registered. The short issue in the present case is that - Does the Mechanical Pavar imported by the respondent answer the definition of a motor vehicle and is it required to be registered?

10. In the present case, it has been found by the learned Single Judge that the equipment is carried on a lorry. It was conceded that it does not require registration. It was used for making the roads. These facts clearly militate against the claim made by the appellants that the equipment is a motor vehicle.

11. Mr. Raju Joseph has contended before us that it was wrongly conceded before the learned Single Judge that "there was no practice to register the equipment as a motor vehicle." He has shown to us a letter dated July 16, 2003 from the Transport Commissioner, in which it has been stated that the Mechanical Pavar Finisher "is liable to be registered under Chap.IV of the Motor Vehicles Act." We have perused this letter. A photocopy is retained on record as marked "A". Even in this letter it has not been indicated that even a single "Mechanical Pavar Finisher" has been registered in the entire State of Kerala. Thus, it cannot be said that the statement as made before the learned Single Judge was wrong or that there was any practice of actually registering the equipment as a motor vehicle. The letter, at best, embodies the view of the Officer. It is not supported by any evidence on the file.

12. Mr. Raju Joseph contends that a Road Roller and an Excavator have been held to be motor vehicles in Bose Abraham's case. We have perused the

judgment. A perusal of the observations in paragraph 7 shows that the appellants before their Lordships of the Supreme Court had admitted before the High Court that "an Excavator and a Road Roller are suitable for use on roads." It was also found by their Lordships that the machinery was registered under the Act. In the present case both the requirements are not fulfilled. The Pavar can be used for making a road and not on the road. In fact, it has to be carried on a lorry from one place to another where the road has to be made or laid. It has not been registered till today. No such order has been passed. Thus, it is clear that the goods imported by the respondent would fall within Entry 21 - "other machinery." It was exempted from the levy of tax vide notification dated June 3, 1998, which was given retrospective effect from May 10, 1998. Thus, the goods as imported by the respondent were exempted from the levy of Entry Tax on the date of import as well as the levy of tax.

13. No other point has been raised.

In view of the above, we find that there is no merit in this appeal. It is, accordingly, dismissed. However, we make no order as to costs.