
(2009) 01 KL CK 0033
In the High Court Of Kerala
Case No : W.A. No. 32 of 2009

Satheesh A.

APPELLANT

Vs

The Joint Regional Transport Officer, Kazhakkootam

RESPONDENT

Date of Decision : 15-01-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 11, 22, 5, 6

Citation : (2009) 1 ILR (Ker) 525 : (2009) 1 KLJ 361 : (2009) 1 KLT 420

Hon'ble Judges : V. Giri, J;J.B. Koshy, J

Bench : Division Bench

Advocate : K.V. Gopinathan Nair, Prasad Chandran and G. Chitra, for the Appellant; Mohammed Rafiq (G.P.), for the Respondent

Final Decision : Allowed

Judgement

V. Giri, J.—The appellant/petitioner, is the registered owner of Mahindra Van Contract carriage. Tax for the quarter ending 31-3-2004 was remitted on 23-1-2004. The petitioner then went abroad entrusting the vehicle to this driver. As evidenced by Ext. P3, the check report, the vehicle was checked on 25-2-2004 and taken into custody by the respondent. One of the reasons stated therein is non-production of proof of payment of tax. It is admitted that the vehicle has been remaining in the custody of the respondents from 25-2-2004. There is no serious dispute also that the tax for the quarter ending 31-3-2004 was actually paid on 23-1-2004. Certain other alleged irregularities were noted in Ext. P3, for taking custody of the vehicle. On return to India, the petitioner moved an application for release of the vehicle. It was pointed out therein that the driver did not take any steps in getting the vehicle released, that it could be seen from the registration certificate as well as the licence (token) that tax was actually remitted on 23-1-2004. Appellant had returned from abroad only on 6-5-2007 and he filed Ext. P4 request seeking release of the vehicle.

2. The respondent herein conducted an enquiry and noted that the vehicle is a contract carriage and has been registered in the name of the appellant. The

vehicle was seized on 25-2-2004 and one of the reasons for seizure is that evidence for remittance of tax was not produced. The appellant contended that he was entitled to be exempted from payment of tax for the period during which the vehicle was kept in the safe custody of the respondent. The respondent noted in Ext. P5 that on a verification of the registration certificate, it was found that tax was remitted for the quarter ending 31-3-2004, on 23-1-2004. The respondent, therefore, sought for appropriate clarification from the superior authority.

3. Since no action was taken for release of the vehicle, the appellant moved the instant writ petition praying for a direction to the respondent to release the vehicle.

4. It seems that the appellant had taken up a specific contention that the seizure of the vehicle was not for non-payment of tax and therefore, the vehicle was entitled to be exempted from payment of tax for the period when it was in the custody of the police or other authorities in terms of Item No. 27 of S.R.O. No. 878/75, notification issued u/s 22 of the Motor Vehicles Taxation Act (for short "the Act"). Item No. 27 reads as follows:

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.

5. This fact was sought to be fortified with reference to Ext. P5 communication issued by the respondent himself. The respondent resisted the prayer for release of the vehicle without any liability for payment of tax for the period during which the vehicle was kept in the custody by the respondent, on the basis of the dictum laid down by the Full Bench in Regional Transport Officer Vs. K.V. Abdurahiman, . The learned single judge accepted the contention of the respondent that the issue is covered against the petitioner by the decision of the Full Bench in Abdurahiman's case and proceeded to dismiss the writ petition. It is aggrieved thereby that the present writ appeal has been filed.

6. We heard counsel for the parties. We have gone through the notification S.R.O. No. 878/75 and also the judgment of the Full Bench of this court.

7. Before referring to the judgment of the Full Bench, it will only be appropriate to refer to the principal contention raised by the appellant that he is entitled to be exempted from payment of tax under the Act by virtue of S.R.O. No. 878/75 item No. 27 of the said notification which exempted those vehicles which are in the custody of the police or other authorities, from payment of tax, provided, such vehicles were taken into custody for reasons other than for payment of tax. In the present case, it is admitted by the respondent in Ext. P5 that the tax for the quarter ending 31-3-2004 was actually remitted on 23-1-2004. It is further admitted that the vehicle was taken into custody on 25-2-2004. It is clear from Ext. P3 as well that the seizure of the vehicle was, therefore, for reasons other than non-payment of tax. If that be so, then it is clear that the appellant/

petitioner is entitled to the benefit of S.R.O. No. 878/75.

8. The learned single Judge had proceeded to reject the petitioner's claim on the basis of the dictum laid down in Abdurahiman's case, finding that the issue is covered by the said decision. If this is so, then it is obvious that we are also bound by the dictum laid down by the Full Bench.

9. We have gone through the judgment of the Full Bench in Abdurahiman in detail. As could be seen from paragraph 3 of the judgment, the main issue which came up for consideration before the Full Bench was 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. It was contended on behalf of the Government that if the vehicle is detained for non-payment of tax, then the owner of the vehicle is not entitled to exemption even u/s 5 of the Act. This contention was raised on the basis that since the seizure of the vehicle was for non-payment of tax, the liability to pay tax will continue even in respect of the period under detention. The contention further taken up by the State was that the claim for refund will not lie even if non-intimation of the user had been given u/s 5 of the Act, for the period during which the vehicle kept in custody. This contention was considered and negated by the Full Bench. The conclusions arrived at by the Full Bench is contained in paragraph 17 of the judgment which reads as follows:

The result of the above discussion is that in respect of a vehicle detained under S. 11 for non-payment of tax,

(a) A claim for exemption under 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 read with R. 10 by filing Form G; and

(b) a claim for refund of tax paid, for the period during which the vehicle was detained under S. 11 would lie,

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

10. In our view, the Full Bench was really concerned with the question of either a claim for exemption u/s 5 of the Act or a claim for refund of the tax already paid u/s 6 of the Act, in cases where the vehicle is taken into custody, for non-payment of tax. In cases coming under the former category, the Full Bench held that a claim for exemption will be maintainable in cases where the vehicle is taken into custody for non-payment of tax provided "G" form is filed in time. It was further held that in the cases coming under the latter category a claim for refund of tax will also lie for the period during which the vehicle was detained u/s 11. What, therefore, is worthy of being reiterated is that the Full Bench was concerned with cases of detention of vehicles for non-payment of tax. Even in

such cases, a claim for exemption and a claim for refund was found to be maintainable, subject to compliance with the formalities prescribed under the statute. The present case obviously stands on a different footing. The seizure of the vehicle on 25-2-2004 was not for non-payment of tax. It was for other minor reasons. One of them being non-production of evidence regarding payment of tax at the time of seizure. That the tax for the quarter ending 31-3-2004 had actually been paid on 23-1-2004 is not a matter which is in dispute at all. It is admitted by the respondent himself, as evidenced by Ext. P5. If that be so, the seizure of the vehicle on 25-2-2004 were for reasons other than non-payment of tax. Consequently, the claim for exemption from payment of tax as claimed by the appellant would be squarely covered by S.R.O. No. 878/75. Such a claim is not, in any manner, negatived by the dictum laid down in Abdurahiman's case. We are of the view that the finding arrived at by the learned single Judge, in the circumstances, is unsustainable.

For all the reasons, the appeal is allowed. The judgment of the learned single Judge is set aside. There will be a direction to the respondent to release the vehicle belonging to the appellant/petitioner viz., Mahindra Van bearing registration No. KL-01/K-781 as early as possible to the appellant, at any rate, within two weeks from the date of production of a copy of this judgment.