
(2015) 02 KL CK 0062

In the High Court Of Kerala

Case No : Writ Petition (C) No. 33125 of 2011

Shamnad

APPELLANT

Vs

Regional Transport Officer

RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Constitution of India, 1950 — Article 245, 246

Citation : (2015) 1 KLT 931

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : K.N. Sivasankaran and Sunil Shanker, for the Appellant; V.K. Rafeeq, Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—Three sets of Writ Petitions are placed before this Court for consideration. Identical prayers in all the Writ Petitions are for treatment of the motor vehicles owned by the petitioners as "Non-transport Vehicle". The majority of the petitioners are purchasers of brand-new vehicles, having a seating capacity of five, with an open platform for goods carriage on the rear; who, before registration, came to this Court for registration as "Non-transport Vehicle". Some of the Writ Petitions are with respect to identical vehicles which were purchased earlier and registered as "transport vehicle" but now seeks conversion as "Non-transport Vehicle". The others are with respect to "Pick-up Vans" which have a seating capacity of only two, but are provided with a carriage for goods in the rear. The owners of vehicles having seating capacity of five persons and an open platform for carriage of goods, on the rear, sought for registration as a "Private Light Motor Vehicle" or specifically as "Non-transport vehicle", so as to, not attract the liability to comply with the provisions of a "Transport Vehicle" as stipulated in the Motor Vehicles Act, 1988 (for short "the M.V. Act). Some are purchasers of new vehicles and others seek conversion to "Non-transport vehicles" after having already registered as "transport vehicles".

They also claimed that, if classified as "Non-transport vehicles" their tax liability would be lesser. The aforesaid cases were filed on the strength of the judgment of a learned single Judge in *Cherian v. Transport Commissioner* (2009 (2) KLT 583). The said decision stands overruled in W.A. No. 1757 of 2013 and connected cases by judgment dated 9.1.2015 *Hassan Koya v. Transport Commissioner* 2015 (1) KLT 916ENDLAWFINDER Hence, all the above Writ Petitions are to be dismissed.

2. However, the learned counsel seek a distinction insofar as the Tata Xenon Crew Cab vehicles, which are said to be classified by Automobile Research Association of India (ARAI) as N1 or M1 which classification would depend upon the use of the person purchasing the vehicle. The learned Government Pleader alertly points out that the vehicles are brought out (i).as "LMV Goods Carriage" with seating capacity of 6 with an open platform for carriage of goods and also (ii). as "LMV" with seating capacity of 8. The very same manufacturer brings out two models; one a "LMV Goods Carriage" which comes under N1 category of Rule 2(p) of the Central Motor Vehicles Rules, 1989 (for brevity "C.M.V. Rules") and yet another a "LMV" covered under M1 category of Rule 2(1). The purchase of a goods carriage can hence, only be understood as a purchase for carriage of goods.

3. Primarily it is to be emphasized that having purchased a "LMV Goods Carriage" with an open carriage for goods, none can contend that they do not intend to carry goods. The intention proclaimed in the Writ Petitions too, is not to that effect, but to the effect that the purchasers intend to use it for their personal/private use. There is no such categorization available for registration under the M.V. Act. No such distinction is available to determine taxation too.

4. Essentially it is to be noticed that, registration and taxation are concepts, the source of power to legislate on, will have to be traced to Articles 245 and 246 of the Constitution of India. The Union Parliament has enacted the M.V. Act under Entry 35 of the Concurrent list, List II to regulate the former and power to levy tax is conferred on the State Legislature under the field of legislation covered by Entry 57 of the State List, List II; subject to Entry 35 of the Concurrent list. The State too has enacted the Kerala Motor Vehicles Taxation Act, 1976, (for brevity "the Taxation Act").

5. The M.V. Act does not speak of "Non-transport vehicle". The C.M.V. Rules definitely provide for categorization as per clause (i) to (r) of Rule 2; the distinctive nature of clause (1) and (p) of which has been noticed herein above. The Rules also speak of "Non-transport Vehicle" as being a motor vehicle which is not a "transport vehicle" as per clause (h) of Rule 2. But there can be no registration as a "Non-transport vehicle" since any vehicle which is not registered as a "transport vehicle" would be a "Non-transport vehicle". A private motor car not used to carry passengers for hire or reward would be registered as "Light Motor Vehicle" and would be a "non-transport vehicle". The M.V. Act defines "Goods Carriage", "Private Service Vehicle" and "Transport Vehicle", the

definitions of which are extracted hereunder:--

(14) "Goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods:

(33) "Private service vehicle" means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes.

(47) "Transport vehicle" means a public service vehicle, a goods carriage, an education institution bus or a private service vehicle".

6. Obviously, the petitioners' vehicles cannot be registered as a private service vehicle since the definition speaks of a seating capacity above six. The sale invoice too indicates that the vehicles come under the definition of "Goods Carriage". Though the subject vehicles are constructed for carriage of passengers also, they are constructed with an open carriage for goods at the rear, solely for carriage of goods. If that be so, it is a Goods Carriage and can only be registered as a "Transport Vehicle".

7. However, it is trite that for taxation, a different classification can be employed by the State Legislature. The M.V. Taxation Act speaks of "Non-transport vehicle" which, however, has to be related to the definition of "Private Service vehicle" which definition has to be adopted from the M.V. Act. The Schedule to the M.V. Taxation Act, by item No. 5 speaks of a "private service vehicle", which belongs to the category of "transport vehicle" as distinguished from item No. "6" "Private Service Vehicle for personal use (Non-Transport)".

8. The petitioners hence cannot claim for being included in the category of a "Private service vehicle for personal use" (Non-transport vehicle), as per the Taxation Act; since the petitioners' vehicles ought to be registered as Transport vehicles under the M.V. Act. The Schedule to the M.V. Taxation Act also specifically speaks of "Goods Carriages". Hence for taxation purposes also, the subject vehicles would have to be considered as "Goods Carriage", being covered by a specific entry, and not under the general entry of "Private Service Vehicle (NTV)". In such circumstances, distinction pointed out, on the basis of reference to Central Motor Vehicles Rules, 1989 is of no consequence.

9. The issue of re-registration, sought with respect to vehicles already registered as "Transport Vehicles", on the basis of a new found intention of the registered owners, raised in some of the above Writ Petitions are also covered by the decision of the Division Bench in W.A. No. 1757 of 2013 and connected cases. The petitioners all seek conversion of registration as "Non-transport vehicle"; having earlier registered them as "Goods Carriage Transport vehicles" With respect to the new vehicles sought to be registered as "Non-transport vehicles"

the Division Bench has held that the same is not permissible going by the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989, hence there can be no conversion too.

10. With respect to the "Pick-Up Vans", the vehicle itself has a seating capacity of only "two" and has an open carriage to carry goods. The sale certificates also indicate that the class of vehicle as described by the dealer and manufacturer is "LMV Goods Carrier Truck". The specific contention in the Writ Petition is that the petitioner requires the vehicle for private use. That, however, will not take it away from the classification as a "goods carriage". Definitely, the purpose for which the vehicles are intended to be put to use is carriage of goods.

11. What remains is the consideration of how the tax has to be adjusted. Most of the petitioners are persons who have come to this Court on the purchase of new vehicles, contending that they want their vehicles to be registered as a "Non-transport vehicles" on the basis only of their intention to use it as such. On the ground of a binding precedent, in Cheriyan (supra), this Court had issued interim orders wherein the petitioners' vehicles were directed to be registered as a "Non-transport vehicle" and tax accepted thereon.

12. The petitioners have hence, paid One Time tax for 15 years. The tax payable on "Goods Carriages", is initially for a period of two years and then at quarterly rests. The petitioners have come to this Court with open eyes, seeking registration, against the dictate of the authorities and the provisions under the M.V. Act. The petitioners by virtue of the interim orders have obtained registration and paid tax. Since the petitioners voluntarily did that, on the basis of interim orders which were provisional, there can be no refund made. Petitioners hence would obtain necessary endorsement, as to the payment of tax, for the subsequent periods, when tax is levied for the "Goods Carriages", by approaching the tax authorities; who shall set off such amounts from the one-time tax already paid. Necessary endorsement of the set off shall also be made in the tax certificate; till the amounts paid as one-time tax are fully set-off as against the periodic tax dues. The vehicles shall be subjected to the tax as demanded statutorily for the future period; subject however to the set-off directed above. It is also made clear that any revision in tax would be the liability of the owners of the vehicles and set-off has to be made after reckoning such revision. The petitioners shall approach the Registering authority within a period of one month to make necessary alteration in the registration certificate specifying the category as indicated in the Division Bench judgment. The petitioners shall also be obliged to comply with the conditions as mandated by the M.V. Act on "Transport vehicles".

The Writ Petitions hence, would stand dismissed, respectfully following the judgment in W.A. No. 1757 of 2013 and connected cases.