(1997) 01 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No. 1016 of 1988

Smt. S.A.R. Janakiammal — APPELLANT

Vs

The Regional Transport Officer and Others — RESPONDENT

Date of Decision : 21-01-1997

Acts Referred:

Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 13, 3, 4(2)
Tamil Nadu Motor Vehicles Taxation Rules, 1974 — Rule 14

Citation : (1997) 1 CTC 549 : (1997) 2 MLJ 74

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : S. Varadahachari, for the Appellant; M. Govindarajan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—The writ petitioner, a stage carriage operator, has filed the above writ petitioner seeking for the issue of a Writ of

Certiorarified mandamus to call for the records of the 3rd respondent in Memo. No. A2/102060/86 dated 6.4.1987 and directing the respondents

to refund the tax applied for in respect of the petitioner''s stage carriage TNZ 8127 for the period commencing from 29.1.1986 to 31.3.1986.

2. The petitioner, owner of the stage carriage bearing registration No. TNZ 8127 has stated that the said vehicle met with an accident, that permit

was granted for the stoppage of the said vehicle for the period commencing from 29.1.1986 to 14.2.1986, that the said vehicle was entrusted to

M/s. T.V. Sundaram Iyengar and Sons Limited, Pudukottai for major repairs, that the vehicle was returned only on 18.4.1986, that the vehicle

was not used on the roads during the said period, that the tax for the quarter ending with 31.3.1986 amounting to Rs. 13780 had been remitted by her, that the petitioner had applied for refund of the amount which was verified by the 1st respondent, that the physical verification report in respect

of the said vehicle was also received by the 1st respondent, certifying that the vehicle did not at all play during the relevant period, that her

application for refund the tax for the period commencing from 29.1.1986 to 31.3.1986 had been rejected solely on reasoning that the petitioner

had filed to surrender the taxation licence, that on highly technical ground the request for refund has been rejected, that she had complied with the

requirements prescribed under Rule 14 of the Tamil Nadu Motor Vehicles Rules and that there is delay in forwarding the taxation licence fro the

said vehicle for the said period It is contended that rejection of refund by the 1st respondent is invalid, as it has been proved that the vehicle was

off the road during the relevant period. There is no reason to deny the refund. The 1st respondent rejected the request for refund by the impugned

proceeding dated 20.5.1986.

3. As appeal was preferred before the 2nd respondent which was rejected by the 2nd respondent on 24.9.1986. Further revision to the 3rd

respondent was also rejected on 6.4.1987. Being aggrieved, the present writ petition has been filed.

4. Thought the writ petitioner had merely challenged the proceedings of the 1st respondent and sought for a direction to refund the tax, she has not

challenged the proceedings of the respondents 2 and 3. However, on this technical ground, I did not proposes to deny the relief prayed for by the

petitioner.

5. A Counter has been filed on behalf of the respondents seeking to sustain the impugned proceedings.

6. The respondents mainly contend that the taxation licence which is required to be surrendered within 3 days from the date of issue of within a

reasonable period in terms of Rule 14(a) of the Tamil Nadu Motor Vehicle Taxation Rules, 1974, herein after referred to as Rules, has been

surrendered after a lapse of 65 days and hence, the refund was rejected. The 1st respondent has admitted that the stoppage report in respect of

the vehicle in question for the said period was received on 31.3.1986 that taxation licence for the quarter ending with 31.3.1986 was surrendered

with the 1st respondent on 7.4.1986 (after the quarter was over) and that R.C.

and permit were deposited with in the 1st respondent on

31.1.1986. It is also admitted that for the quarter ending with 31.3.1986 the petitioner had paid the tax on 29.1.1986 amounting to Rs. 13,780.

The solitary ground on which the refund has been rejected being the failure on the part of the petitioner to surrender the taxation licence within a

reasonable period.

7. In this respect, the learned counsel for the petitioner placed reliance upon the order of Ramalingam, J. as he thane was, in W.P.Nos. 6115 and

6116 of 1982 (Anjaneya Motor Transport (P) Limited Erode v. The Regional Transport Officer, Erode and two others, order of Raju, J. in W.P.

No. 9284 of 1982 besides a decision of Lakshmanan, J. reported in Gopu Transport Madras 83 v. R.T.O. Madras West, 1994 W.L.R. 263.

That apart the counsel for the petitioner relied upon the report received from the Motor Vehicle Inspector, Pudukottai which was forwarded to the

Regional Transport Officer, Pudukottai. The inspection report which was placed before me by the respondent makes it clear that the vehicle in

question, was garaged with M/s. T.V.S. and Sons from 1.2.1986 to the date of Inspection i.e., on 18.4.1986 Certificate issued by the T.V.S. is

also relied upon by the counsel for the petitioner which is dated 18.4.1986. Based upon the said report and certificate issued by the garrage

owner, the learned counsel contends that the vehicles was actually off the road during the material period and merely because there is delay in

surrendering the taxation licence, the request of refund cannot be denied by the respondent. The petitioner is supported by decisions of this Court

referred to above.

8. Section 3 of the Tamil Nadu Motor Vehicles Taxation Act, 1974 herein after referred to as Taxation Act, provides for levy of tax under the Act

on every motor vehicle used on kept for use in State of Tamil Nadu at the rates specified in the first schedule or the 2nd schedule as the case may

be. Sub-section (2) of the Section 4 of the Act provides that no motor vehicle shall be used or kept for use in the State of Tamil Nadu at any time

unless licence has been obtained, which lances can be issued only on payment of tax. Rule 3 of the Tamil Nadu Motor Vehicles Taxation Act

introduces a statutory application whereby, motor vehicle shall be deemed to be used or kept for use in the State of Tamil Nadu for the purpose of

Section 3 of the Taxation Act. Taxation Act provides for elaborate procedure with respect to collection of taxes, recovery thereof and

adjudication in case of dispute as well as for refund. Section 13 of the Taxation Act provides for refund of tax if the vehicle had not been used on

any public road during the whole of that quarter, half year or year or life time or continuous part there of not being less then one month, a refund of

the tax at such rates as may from time to time, be notified by the Government and the same shall be payable application made within the said

period as may be prescribed and subject to such conditions as may be specified in such notification. Rules 11 and 14 of the Taxation Rules relates

to refund of tax. Rule 11 prescribes the rates at which refund should be granted. Rules 12 and 13 prescribes the authority to whom application for

refund shall be made and the sanction thereon. Rule 14 which is relevant for the purposes of the present Writ Petition prescribes the conditions for

refund of tax. Clause (a) of the Rules provides that taxation license shall be surrendered to the Regional Transport Officer concerned within three

days from the date of issue of the licence in the case of refund of tax for the first moth of the quarter/half year/year for which tax was paid and for

any subsequent month or moths within three days from the commencement of the month or within a reasonable period thereafter. Clause (b)

provides that the non- use of the vehicle shall be intimated in writing to the Regional Transport Officer concerned by Registered Post with

Acknowledgment Due together with reasons for such non-use and details of the place where the vehicle is garaged on or before the date of

stoppage of the vehicle or within a reasonable period and shall thereafter surrender, in the case of transport vehicles, the certificates of registration

and permit. A reading of those provisions would lead to the conclusion that unless a person complies with the said Rules, refund cannot be claimed

and unless and until it is proved by evidence that the vehicle has not been used or not kept for use.

9. Raju, J. in W.P.No. 9284 of 1982 occasion to consider identical issue wherein Rule 14 of the Rules was considered elaborately. The learned

Judge after consideration of the order passed by Nainarsundaram, J. as he then was in W.P.No. 1512 of 1979 on 16.12.1981, Order of

Sathiadev, J. In W.P.No. 4925 of 1978 dated 21.7.1981 and Ismail, J. in W.P.No. 777 etc. of 1974, had laid down that character of Motor

Vehicle Tax is compensatory in nature and Section 13 confers right of refund to tax conditioned upon the non-user of any public road ny the

vehicle during the period in question in a particular period. Raju, J. had held thus.

This Court considers that notwithstanding certain amendments to the rules made subsequently, the ratio of the decision referred to above, which is

based on the competency to the Rule making authority to frame a rule which is destructive of the very right conferred under the statute, still enures

to support the claim of the petitioner is this case this Court considers that instead of taking the extreme causes of striking down the very rules

themselves stipulating conditions which are destructive of the very right of refund, it will be, enough if in their operation and application of rules are

read down and reasonably construed as merely relevant and guiding factors in determining the correctness of the claim made for refund in an

individual case. That it should be reasonable course to be adopted is best illustrated by the experience gained from the case under consideration.

Mere is the case were even in the counter affidavit the Department admits that during the relevant period the vehicle in question did not use any

public road. If even in such a case, the terms of Rules 11 and 14 have to be constructed and enforced so as to deny the claim of the petitioner for

refund, it will have the inevitable consequence of rendering the rules themselves arbitrary, unreasonable and violative of Article 14 of the

Constitution of India, besides being in excess of the rule making powers of the State. As stated already, the drastic consequence of striking down

the rule could be avoided by reasonably restricting their application atleast to cause where, as in this case, the Department and the authorities

entrusted with the task of enforcing the statute may themselves be satisfied that factually that the vehicle did not use any public road during the

relevant period in question.

I entirely agree with the said view of the learned Judge. In Gopu Transport Madras 83 v. R.T.O. Madras West, 1994 W.L.R. 263 Lakshmanan,

J. had occasion to consider the same statutory provides of the Taxation Act and the rules framed thereunder, and held that when the vehicles was

not authorised to operate on any public road including the roads in the State of Tamil Nadu and when the vehicle was not operated on any public

road, the question of levy of tax does not arises at all.

10. On the other hand, the counsel for the respondent sought to reply upon the decision of Srinivasan, J. reported in 1993 W.L.R. 476 as well as

1993 W.L.R. 689. In my considered view, Srinivasan, J. had no occasion to consider the issue that has been decided by Raju, J. and the said

judgment cannot be relied upon by the counsel for the respondents.

11. In the light of the pronouncement of Raju, J. and when the respondents themselves were satisfied that the vehicle is question was not in use

during the relevant period, merely because there is delay in rendering the taxation licence, the request for refund cannot be denied. The petitioner is

entitled for the refund and it has been established by the petitioner that the vehicle was not in use and the petitioner has also been granted permit for

the stoppage of the vehicle in question. Factually it has also been verified by the respondents that the vehicle was not in use and it was garaged, in

the above circumstance, the Writ petition is allowed and there shall be a direction to refund the tax as prayed for by the petitioner.

12. In the result, the Writ petition is allowed with a cost of Rs. 1000.

