(1979) 07 KAR CK 0035

In the Karnataka High Court

Case No : WP. 9108/1979

Sri Mukesh Textile Mills (P) Ltd. APPELLANT

Vs

Regional Transport Officer and Lincensing Officer, Shimoga and Others RESPONDENT

Date of Decision : 24-07-1979

Acts Referred:
Karnataka Motor Vehicles Taxation Act, 1957 — Section 16

Citation : (1979) 2 KarLJ 380

Hon'ble Judges : Chandrakantharaj Urs, J

Judgement

1. This writ petition by M/s. Mukesh Textile Mills (P) Ltd., (Part of Tungabhadra Sugar Works (P) Ltd.) is directed against the order made by the Deputy Commissioner for Transport, Shimoga, Division, Shimoga, in the appeal filed by the petitioner, against the demand notice dated 14-12-1978 issued by the Regional Transport Officer, Shimoga.

2. It is stated by the petitioner that on 28-9-1976, the Company intimated the 1st respondent-Regional Transport Officer that its vehicle MYS 8442 would not be used on road upto 31.12.1977. Along with the intimation of non-user the petitioner-Company also surrendered the documents pertaining to the, vehicle in accordance with the instructions contained in the notification issued by the State Government under S. 16 of the Karnataka Motor Vehicles Taxation Act (hereinafter referred to as the Act).

3. On 30-11-1978 the petitioner-Company wrote to the 1st respondent intimating non-use of the, vehicle for a; further period upto 31-12-1980. But, in so far as the Regional Transport Officer is concerned, there was no intimation of non-user between 1-1-1978 to 30-11-1978. It is the case of the petitioner that one of its clerks played mischief in sending the original intimation of non-user and set the date at 31-12-1977 instead of 31-12-1978. The first respondent had issued the impugned demand notice as per Ext. A for the period between 1-1-1978 to 30-11-1978 on the ground that there was no intimation as per the

afore-mentioned notification of the Government. It is against the said notice that the appeal was preferred by the petitioner to the 2nd respondent the Deputy Commissioner. In the appeal, the demand notice was confirmed in spite of the petitioner-Company pleading before the appellate authority that the intention to surrender was for the period ending 31-12-1978 in the first instance and that the mischief committed by the concerned clerk was being dealt with by the Company in separate domestic proceedings for incorrect intimation. The appellate authority has rejected the plea and has taken a strict view of the matter and has observed as follows:

"The vehicle in question is an Omnibus and it is a non-transport vehicle for which no fitness Certificate is required to be granted or renewed and therefore the explanation under S. 3 of the, K.M.V. Act 1957 applies on all fours to this case and as long as the registration certificate is current and the same is not cancelled the vehicle is liable to payment of tax unless exemption is obtained from payment of tax by following the procedure contemplated under the Government Notification No. HD 70 MVT 58, dated 9/13-3-1959. In view of these facts it is difficult to accept the contentions of the learned officer appearing for the appellant. The decisions cited by the learned officer for the appellant are carefully perused by me. The facts in those cases are not similar to the facts in the present case,. In the result the appeal is liable to be dismissed and the same is hereby dismissed confirming the impugned demand notice of the respondent."

4. A Division Bench of this Court has taken the view that it is always open to the owners of vehicles situated in circumstances similar to the one in which the present petitioner has been placed, to pay the tax demanded and have recourse to the provisions of the Act, particularly to S. 7 of the Act to claim refund on proof of non-use.

5. The learned Counsel, Sri M.S. Gopal, appearing for the petitioner has strenuously contended that the 2nd respondent ought to have taken a lenient view of the matter when it was brought to his notice that in the first instance the intimation was sent showing the period incorrectly by the mischief of the clerk and for which the petitioner-Company ought not to be penalised.

6. It is difficult to accede to this contention because this Court thereby will be accepting a statement of fact made by the petitioner without having investigated the same. On the other hand, the petitioner is liable to pay the tax demanded when the first intimation sent, was, for the period ending 31-12-1977. If it was on account of the mischief played by the clerk then the petitioner cannot absolve itself of its liability under the Act on account of mischief committed by its employee. The 1st respondent was correct in issuing the demand notice for the period for which there, was no intimation of non-user in accordance with the provisions contained in the notification aforementioned, issued under S. 16 of the Act. I do not see any apparent error of law in the impugned demand notice and the appellate order thereon. Hence, this petition is liable to be rejected without issuing rule.

7. It is further made clear that it is open to the petitioner to avail itself of the benefits available to it under S. 7 of the Act. If such an application is made and the fact of non-user of the vehicle for the, period between. 1-1-1978 and 31-12-1978 is proved the 1st respondent shall dispose of the application in accordance with law.

8. The petition is dismissed subject to the above observations.