(1991) 12 AP CK 0035

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17717 of 1990

Syed Hafiz APPELLANT

Vs

The Licensing Officer RESPONDENT

Date of Decision : 18-12-1991

Acts Referred:

Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 3
Constitution of India, 1950 — Article 226

Citation : (1992) 3 ALT 81

Hon'ble Judges : P. Venkatarama Reddi, J;M.N. Rao, J

Bench : Division Bench

Advocate : Noushad Ali, for the Appellant; Govt. Pleader, for the Respondent

Judgement

P. Venkatarama Reddi, J.—The petitioner is the registered owner of a medium goods vehicle bearing No. ABC 5171. The vehicle has a public carrier permit valid upto 2-6-1994 and it is authorised to ply within the State. The tax of Rs. 460/- for the quarter ending 30-6-1990 was paid by the petitioner. It is the case of the petitioner that the vehicle is used mostly for the purpose of transporting milk and vegetables by vendors who accompany the goods. On 31-5-1990, the vehicle was chacked by the Motor Vehicles Inspector, Piler on Piler-kallur road. It was found that the vehicle was carrying ten persons out of whom six were a group of passengers who paid Rs. 10/- each. It was noted in the check report that the vehicle was fitted with seats on both sides to carry 12 passengers conveniently. On the allegation that the vehicle was misused as passenger vehicle, the vehicle was seized. On the same day, i.e., 31-5-1990, the licensing officer (respondent herein) issued a show cause notice as to why a tax of Rs. 3,600/- for the quarter ending 30-6-1990 and penalty as per rules should not be collected from him. The tax of Rs. 3,600/- was calculated at the rate applicable to contract carriages, on the basis of seating capacity of 12 multiplied by Rs. 300/- per seat per quarter. The show cause notice was served on him on 13-9-1990. Stating that there was no explanation on the part of the petitioner, the respondent confirmed the proposed levy of tax and also the levy of penalty at double the tax, by an order dated 22-11-1990. In all, a sum of Rs. 10,800/- was demanded. It is against this demand, the present writ petition was filed.

2. The petitioner claims to have submitted his explanation on 17-9-1992 stating that the seats were temporarily made to hold the goods and that it was not fitted with permanent seats. Such explanation is not found in the record and the filing of such explanation has been denied by the respondent. In the record, there is a representation dated 17-9-1990 wherein the petitioner requested for one month''s time to pay the amount and to get the vehicle released.

3. This Court by an interim order dated 28-12-1990 directed release of the vehicle on condition of the petitioner paying the entire amount of tax mentioned in the demand notice.

4. The learned Counsel for the petitioner has contended that there is no provision in the Motor Vehicles Taxation Act to treat the goods vehicle as contract carriage of the purpose of demanding tax thereon and even if the goods vehicle was found carrying passengers for hire, the tax as applicable to a contract carriage cannot be demanded in the absence of a specific provision to that effect in the Act or notification. The learned Counsel contends that a provision similar to Explanation-I to para 4 of the notification issued in G.O.Ms. No. 175 Tr. R & B (Tr.II) dated 28-5-1985 is absent in the case of goods vehicle. The learned Counsel therefore submits that the impugned levy of tax and penalty is without authority of law. It is contended that if at all the licensing officer can only initiate appropriate action for cancellation of permit for violation of the conditions of the permit. The learned Counsel also submits that even if the tax applicable to a contract carriage is to be levied, the rate of tax adopted by the respondent - at Rs. 300/- per seat is not correct. The learned Counsel finally submits that in any case, the penalty cannot be sustained in the light of the Full Bench decision of this Court in Y. Peda Venkaiah Vs. The Regional Transport Officer, Nellore, .

5. In order to appreciate the contentions of the learned Counsel, we have to refer to the relevant provisions of the Andhra Pradesh Motor Vehicles Taxation Act. ''Medium goods vehicle'' according to Section 2(23) of the Motor Vehicles Act, 1988 means any goods carriage other than a light motor vehicle or a heavy goods vehicle. The expression ''goods carriage'' as defined in Section 2(14) means, any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. ''Contract Carriage'' means, a motor vehicle which carries passenger for hire or reward under a contract express or implied for the use of the vehicle as a whole or for a fixed or agreed rate or sum on a time basis or from one point to another without stopping to pick up or set down along the line of route passengers not included in the contract. (Vide Section 2(7)).

6. Section 3 of the A.P. Motor Vehicles Taxation Act provides for levy of tax by the Government by means of a notification on every motor vehicle used or kept for use in a public place in the State. Sub-section (2) of Section 3 enjoins that the

notification issued shall specify the class of motor vehicles on which the rates for periods at which and the date from which the tax shall be levied. The maximum rates of tax leviable are set out in the First Schedule read with proviso to Section 3(2). Section 4 provides for the mode of payment of tax and grant of licence to the registered owner on payment of the prescribed tax. If the tax due in respect of any motor vehicle has not been paid as specified in Section 4. Section 6 provides for levy of penalty which may extend upto twice the quarterly tax payable in respect of the vehicle.

7. The State Government issued G.O.Ms. No. 175 Tr.R & B (Tr.II) dt. 28-5-1985 in exercise of the powers conferred by Section 3 of the A.P. Motor Vehicles Taxation Act, the opening para of the notification ordains that "with effect from 1st July, 1985, a tax for a quarter shall be levied on every motor vehicle used or kept for use in a public place in the State, at the rates specified in column (2) of the Schedule below in respect of the classes of motor vehicles specified in column (1) thereof." The notification then gives the Schedule. There are two columns in the Schedule - (1) Class of motor vehicle; and (2) Rate of quarterly tax for motor vehicle fitted with penumatic tyres. The relevant item or paragraph in the notification relating to contract carriages is as follows:

Rate of quarterly tax for Class of motor vehicle motor vehicle fitted with pneumatic tyres. (1) (2) 4. (vi) (a) Vehicles permitted to carry more than six passengers and plying as contract carriages covered under All India Tourist permits issued u/s 63(7) of the Rs. 450-00 Motor Vehicles Act, 1939, for every passenger other than the driver which the vehicle is permitted to carry. (b) Vehicles permitted to carry more than six passengers, and plying as contract carriages on inter-state routes on All India Tourist permits u/s 63(6) Rs. 300-00 of the Motor Vehicles Act, 1939 (i.e., within the State of Andhra Pradesh for every passenger other than driver) which the vehicle is permitted to carry. (c) Contract carriages plying within the Home District and any one Rs. 250-00 contiguous distinct.

8. Obviously, the Licensing Officer applied para 4(vi)(b) of the notification and calculated the rate of tax at Rs. 300/- per seat. By multiplying the said figure with 12 representing the number of seats provided to the petitioner''s goods vehicle, the tax of Rs. 3,600/- per quarter was arrived at by him. In our view, Clause (c) of sub-para (vi) of para 4 of the notification governs the case of the petitioner. That is a specific provision prescribing the rate of tax for the contract carriage plying within the home district and a contiguous district. That the vehicle of the petitioner was being plied within the home district i.e., Chittoor, is not in dispute. If so applying the well-known rule of taxation that when there is a general entry and specific entry, the specific entry should be looked into, we take the view that it is not clause (b) of sub-para (vi) that applies but it is clause (c) that comes into play. The problem does not rest there. The learned Counsel then argues that the rate of Rs. 250/- prescribed by Clause (c) of sub-para (vi) is a lumpsum of Rs. 250/- for the entire quarter but it is not per seat. On a

superficial scrutiny of Clause (c) of sub-para (vi) read with the heading in the Schedule (referred to above), it looks as though the tax of Rs. 250/- is per quarter for the vehicle as such on the whole. However, on a deeper examination, we are unable to uphold the contention of the petitioner''s counsel in this behalf. It would be incongruous to think that for a contract carriage plying within a district, as little tax as Rs. 250/- per quarter has been imposed by the State Government. Even for an omnibus with a seating capacity of more than six, which is kept as an idle vehicle without having a particular route permit, the tax prescribed is Rs. 45/- per quarter for every person. It would be highly irrational if not absured to suggest that the State Government wanted to prescribe only a lumpsum of Rs. 250/- per quarter for a contract carriage having permit to ply within the home district and the contiguous district. Keeping this consideration in view, we have to give a reasonable interpretation consistent with the scheme of the notification so as to avoid absurd and anamolous results. We are of the view that the collocation and contextual setting of Clause (c) of sub-para (vi) of para 4 shall be kept in view while ascertaining the measure of tax chargeable. There are three types of contract carriages in sub-paragraph (vi). The first category is the contract carriage plying on All India Tourist permit. The rate specified in clause (a) is Rs. 450/- per quarter for every passenger which it is permitted to carry. The second category of contract carriage is the one plying on an inter-state route on temporary permits and on intra-state route routes. The rate of tax is Rs. 300/- per quarter for every passenger which the vehicle is permitted to carry. Thus, the rate per category (a) contract carriage and category (b) contract carriage is in relation to each passenger and the total tax is arrived at with reference to its seating capacity. The third category is the contract carriage plying within the home district. Though it is not specifically stated in Clause (c) that the rate for this third category is per seat or passenger, in our view, the language used in the preceding two clauses should be read mutatis mutandis into the immediately following clause to avoid an interpretation leading to irrational or anamolous consequences.

9. The decision of the Supreme Court in Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, illustrates the point that it is not impermissible to read certain words into a statutory provision having regard to its context and setting and the consequences that might follow from the non-addition of such words. The Supreme Court held that the bona fide requirement envisaged by Clause (ii) of Section 10(3)(a) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 should also be imported into Clause (iii) of the same rub-section though such words were absent in Clause (iii).

The Supreme Court observed:

"We are of the view that having regard to the pattern in which clause (a) of Sub-section (3) of Section 10 of the Act is enacted and also the context, the words ''If the landlord required it for his own use or for the use of any member of his family'' which are found in sub-section (ii) of Section 10(3)(a) of the Act have to be read also into Sub-clause (iii) of Section 10(3)(a) of the Act. It is no doubt true that the Court while construing a provision should not eassily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the Court should construe it in a harmoneous way to make it meaningful."

The Supreme Court after citing with approval observations of Denning, L.J. in Seaford Court Estates Ltd. v. Asher, 1949 (2) All.E.R. 155 observed:

"In the present case by insisting on the proof of the bona fides of the requirement of the landlord, the Court is not doing any violence to the statute nor embarking upon any legislative action. The Court is only construing the words of the statute in a reasonable way having regard to the context."

10. By reading Clause (c) of sub-para (vi) of para 4 as containing the words "for every passenger", the tax imposed in the present case on the basis of the tax calculated with reference to the number of passengers which the vehicle was adapted to carry, cannot but be upheld. Accordingly we do so.

11. There remains one more aspect to be considered. The learned Counsel for the petitioner submits that a vehicle which bears the description of ''goods vehicle'' cannot be legitimately treated as having plied as a vehicle meant for transportation of passengers. As far as this aspect is concerned, the Full Bench decisions of this Court in Y. Peda Venkaiah v. R.T.O., Nellore (1 supra) and V. Govindarajulu and Vs. The Regional Transport Officer, Anantapur and Others, provided a complete answer. It is the nature of user of the vehicle that determines the rate of tax. The criterion is not the type of permit that is held by the registered owner of the vehicle. It would therefore follow that there is nothing illogical or irrational in treating a goods vehicle as having plied as a contract carriage if contrary to the avowed normal use of the vehicle, the vehicle has in fact been used for a different purpose. In the present case, there is no difficulty at all in taking the view that the vehicle was used as a contract carriage in view of the incontrovertible finding of the authorities concerned that the goods vehicle in question was specially adapted to carry passengers.

12. The learned Counsel for the petitioner relied upon the decision of the Supreme Court in M. Narasimhaiah Vs. Deputy Commissioner for Transport, Bangalore Division, Infantry Road, Bangalore and Another, . We do not think that it is of any assistance to the case of the petitioner. The language of the provision under which the tax liability was sought to be fastened on the transport operator in that case is quite different from the provision with which we are concerned.

13. The last point that needs to be decided is with regard to penalty. In view of the Full Bench Judgment of this Court in Peda Venkahh case (1 supra), we cannot uphold the levy of penalty in the instant case. The Full Bench while dealing with the case of a vehicle having a contract carriage permit and misused as a stage carriage observed that "it was only when the officer held that the carriage was

used as a stage carriage and tax was payable on that footing and a demand was made to pay that tax, it cannot be said that a tax became due. There was no tax due before such determination and demand." The Full Bench therefore decided on the same facts before it that levy of tax and penalty by the same order is bad in law... The same is the situation in the present case. Following the Full Bench judgment, we set aside the impugned demand notice in so far as the levy of penalty is concerned. The correct tax payable as a result of our judgment works out to Rs. 3,000/-. If any amount has been paid by the petitioner pursuant to the interim order of this Court, the same shall be adjusted and the demand raised for the balance amount.

14. The writ petition is allowed to the extent indicated above. No costs. Advocate''s fee Rs. 350/-.

