(2001) 07 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11019 of 1991

T. Uma Rani APPELLANT

Vs

Licensing Officer, (Regional Transport Officer) Khammam RESPONDENT

Date of Decision : 03-07-2001

Acts Referred:

Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 3, 9

Citation : (2001) 5 ALD 237 : (2004) 7 ALT 241

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : Mr. S.A. Razack, for the Appellant; Special Government Pleader for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—The short question that arises for decision is whether consequent upon the quashing of the G.O. Ms. No.175, dated 28-3-1985 by this Court by its order dated 29-12-1987 delivered in WP No.9615 of 1986, the petitioner''s vehicle is liable to be taxed in terms of G.O. Ms. No.581, dated 31-12-1983 or in terms of G.O. Ms. No.735, dated 12-8-1983.

2. This question arises in the following factual background.

The petitioner is the registered owner of contract carriage bearing Registration No. TMN 8208, subsequently reassigned AAH 8118. The Government of A.P. issued G.O. Ms. No.581, dated 31-12-1983 fixing the rates of tax on contract carriages on flat basis without providing any concessional rates for short periods at the rate of Rs. 275/-per seat per quarter. The validity of the said G.O. was assailed before this Court by the petitioner and others in WP No.11811 of 1984, During the pendency of that writ petition, by virtue of the interim direction issued by this Court to the Licensing Officer, only the tax at the rate of Rs. 100/- per seat per quarter was collected. When the matter stood thus, the Government of A.P. issued G.O. Ms.No.175, dated 28-5-1985 revising the mode of taxation. The validity of that G.O. was assailed before this Court in WP No.9615 of 1986. When the matter stood thus, WP No.11811 of 1994 was closed by this Court permitting the petitioner and similarly circumstanced others to make representation to the concerned Licensing Officer in terms of G.O. Ms. No.175, dated 28-5-1985. At this stage itself, it is relevant to notice that G.O. Ms. No.581, dated 31-12-1983 is not quashed by this Court. Subsequently, this Court allowed WP No.9615 of 1986 and quashed the G.O. Ms. No.175, dated 28-5-1985. It appears that after the judgment of the Division Bench in WP No.9615 of 1986, the Transport Commissioner, A.P., Hyderabad issued circular Memo No. 1/34/D2/87, dated 6-1-1986 directing all the Unit Officers of the Motor Vehicles Department to collect quarterly tax or pro-rate tax at the option of the owners of the vehicles. After this event, a show-cause Notice No. 902/a2/86, dated 10-9-1990 was issued to the petitioner to explain as to why the difference of tax between the tax payable and paid by her during the period 1-7-1984 to 31-12-1985 should not be recovered. The petitioner submitted her explanation to the show-cause notice as permitted by this Court. On consideration of the explanation of the petitioner, the Licensing Officer, Khammam issued the impugned notice dated 7-8-1991 demanding tax of Rs. 58,213/- for the quarter ending 30-9-1984, 31-12-1984, 31-3-1985, 30-6-1985, 30-9-1985, 31-12-1985. The tax liability is determined by the licensing authority applying G.O. Ms. No.581 in respect of the first four quarters and G.O. Ms. No.175 in respect of the remaining two quarters. Hence, this writ petition assailing the validity of the same.

3. Learned Counsel for the petitioner would submit that when G.O. Ms. No.175 dated 28-5-1985 was quashed by this Court in WP No. 9615 of 1986 by its judgment dated 28-12-1987, there was no statutory provision or Government Order to collect the tax on pro rata basis. By this submission, what the learned Counsel wants to tell the Court is that with the quashing of the G.O. Ms. No.175, dated 28-5-1985, G.O. Ms. No.581, dated 31-12-1983 also got quashed by implication and therefore it was not permissible for the licensing authority, Khammam to apply the non-existing G.O. that is G.O. Ms. No.581, for the purpose of calculation of the tax liability of the petitioner for the quarters ending 30-9-1984, 31-12-1984, 31-3-1985 and 30-6-1985. Further, the contention of the learned Counsel is that since G.O. Ms. No.175, dated 28-5-1985 was admittedly quashed by the High Court in WP No.9615 of 1986, that G.O. should not be applied to determine the tax liability of the petitioner for the quarters ending 30-9-1985 and 31-12-1985.

4. Learned Counsel would further submit that even according to the counter a sum of Rs. 9,800/- demanded and collected for the quarter ending 30-9-1984 had to be deducted from the total demand of Rs. 58,213/-. Learned Counsel would further point out that a sum of Rs. 12,000/- was deposited by the petitioner towards the tax liability as directed by this Court in WP No.9107 of 1991, dated 17-7-1991. On the other hand, learned Special Government Pleader for Taxes would support the impugned demand, and would, however, fairly submit that out of the demanded tax of Rs. 58,213/- a sum of Rs. 21,800/-has

to be deducted from the impugned demand.

5. Therefore, the only question that remains for us to consider is whether by virtue of the order of this Court dated 29-12-1997 made in WP No.9615 of 1985 quashing G.O. Ms. No.175, dated 28-5-1985, the licensing authority acted illegally in applying G.O. Ms. No.581, dated 31-12-1983 in computing the tax liability of the petitioner for the quarters ending 30-9-1984, 31-12-1984, 31-3-1985, 30-6-1985 and in applying G.O. Ms. No.175, dated 28-5-1985 in respect of the remaining two quarters i.e., 30-9-1985 and 31-12-1985. It is trite to state that with the quashing of G.O. Ms. No.175, dated 25-8-1985, G.O. Ms. No.581, dated 31-12-1983 would revive and that would hold the field. It is nobody''s case that G.O. Ms. No.581, dated 31-12-1983 was superseded by any other G.O. issued by the Government u/s 9 of the A.P. Motor Vehicles Taxation Act. Therefore, the appropriate G.O. that ought to have been applied for the purpose of computation of the tax liability of the petitioner for the quarters ending on 30-9-1984, 31-12-1984, 31-3-1985, 30-6-1985, 30-9-1985 and 31-12-1985 should have been G.O. Ms. No.581 only and not G.O. Ms. No.175. There is an error apparent on the face of the order of the licensing authority in applying G.O. Ms. No.175, which stood quashed by the judgment of this Court in WP No.9615 of 1985 as pointed out supra, for determining the tax liability for the quarters ending 30-9-1985 and 31-12-1985. Be that as it may, the State authorities are not before us making any grievance as regards the application of G.O. Ms. No. 175 by the Licensing Officer, Khammam for the quarters ending 30-9-1985, 31-12-1985 and therefore there is no need for us to enhance the tax liability of the petitioner for those two quarters in the absence of challenge.

6. In the result and for the foregoing reasons, we dismiss the writ petition with no order as to costs.

7. However, it is made clear that the total sum of Rs. 21,800/- already paid by the petitioner towards the tax liability for the same period should be given credit to. If it is so given, the lax liability of the petitioner would be Rs. 36,413/- only.

8. Learned Counsel prays the Court to permit him to pay the outstanding of Rs. 36,413/- in some reasonable instalments. The petitioner can approach the Licensing Officer, Khammam in that regard.

