

(2015) 06 KAR CK 0231

In the Karnataka High Court

Case No : W.A. Nos. 4820/2010 and 543-545/2011 (T-MVT)

The Assistant Regional Transport Officer and Others

APPELLANT

Vs

S. Ravishekar

RESPONDENT

Date of Decision : 11-06-2015

Acts Referred:

Karnataka Motor Vehicles Taxation Act, 1957 — Section 3, 4

Citation : (2015) 4 KarLJ 549

Hon'ble Judges : Mohan M. Shantana Goudar, J;Aravind Kumar, J

Bench : Division Bench

Advocate : S.V. Girikumar, AGA, for the Appellant; M.E. Nagesh, Advocates for the Respondent

Judgement

Mohan M. Shantana Goudar, J.

1. Order dated 23.07.2010 passed in W.P. Nos. 32788-91/2009(T-MVT) is assailed in these appeals by the State.

2. Records reveal that respondent purchased chassis of four vehicles on 04.03.2008; they were temporarily registered as such; chassis were taken to Tamil Nadu State for the purpose of building body of lorries to suit the specifications of the vehicles used for contract carriage; according to the petitioner the body building was completed in the month of February, 2009 and immediately thereafter the lorries were brought back to Karnataka State and were registered in the month of February, 2009. However, the State relies upon certain documents to contend that the construction of bodies in respect of all the four vehicles was completed in the month of April, 2008 itself and therefore the respondent is liable to pay tax under the provisions of Karnataka Motor Vehicles Taxation Act from the month of April, 2008 to February, 2009 inasmuch as vehicles were deemed to have been put in use by the respondent.

3. Thus, the demand notices came to be issued on 22.07.2009 as per Annexures-B-1 to B-4 (Annexed to the writ petition Nos. 32788-91/2009 by the State

against the respondent demanding certain amount of tax under sections 3 and 4 of Karnataka Motor Vehicles Taxation Act. Such demand notices were questioned by the respondent before the appellate authority i.e., Deputy Commissioner of Transport, Shivamogga Division, Shivamogga in appeals Nos. DCT SMG.TAX-5, 6, 7, 8/2009-10. In all the four appeals interim order came to be passed by appellate authority directing the respondent to pay 60% of tax by cash and to furnish local bank guarantee from any nationalized bank in respect of the remaining amount of 40% within 30 days in respect of each of the vehicles in question.

4. Since the respondent did not comply with the said interim order dated 08.09.2009 passed by the appellate authority appeals came to be dismissed by order dated 21.10.2009 as per Annexure-D.

5. Said order Annexure-D dated 21.10.2009 passed by the appellate authority dismissing the appeals on the ground of non-fulfillment of the conditions laid down in the interim order passed by the appellate authority, respondent herein approached this court in W.P. Nos. 32788-91/2009 (T-MVT). After hearing, writ petitions came to be allowed by impugned order dated 23.07.2010.

6. All through it is the contention of respondent that he did not get opportunity to defend himself before the original authority as well as before appellate authority; document relied upon by the appellate authority to conclude against respondent was not confronted to the respondent and therefore such document obtained by the department from the body builder at M/s. Super Coach has not been relied upon; on merits, it was contended by respondent that demand made against him was erroneous inasmuch as there is nothing on record to show that the vehicles were not put to use from April, 2008 to February, 2009. Certain other arguments were also advanced before learned Single Judge, as also before the appellate authority on facts. Learned Single Judge has accepted the arguments of respondent and allowed the writ petitions. Consequently demand notices were quashed.

7. Practically, there was no adjudication of the amount of tax by any of the authorities.

8. Demand notices were issued by the original authority. Thus, first appellate authority could have applied its mind on facts to find out as to whether four vehicles were put to use or not before the aforementioned period. But that stage did not reach at all inasmuch as respondent did not comply with the conditions laid down in the interim order passed by the appellate authority. As aforementioned the appellate authority while granting interim order directed respondent herein to pay 60% of the tax demanded by cash and to furnish local bank guarantee in respect of remaining 40% within stipulated period. Said order was not questioned. Since conditions laid down in the interim order is not complied with, appeals came to be dismissed by the appellate authority solely on the said ground. There was no opportunity to the first appellate authority to

adjudicate the core issue namely as to whether vehicles were really put to use or not during the aforementioned period. In other words on facts there was no adjudication of the liability to pay tax by the first appellate authority. On the other hand the disputed facts remained as such even before the first appellate authority without being adjudicated. However, learned Single Judge chose to enter into the merits of the matter on facts for concluding that the demand made against respondent is bad in law.

9. We are of considered opinion that learned Single Judge is not justified in adjudicating the disputed facts inasmuch as first appellate authority itself did not adjudicate on facts as aforementioned. It is the case of the respondent himself that he was not given opportunity of being heard before the authorities below. If it is so, learned Single Judge ought to have directed 1st appellate authority to grant an opportunity to respondent to substantiate his claim of vehicles having not been put to use during the relevant period by remanding the matter to appellate authority. Only when the facts are on record in its entirety writ court could have decided the matter on merits. Hence, order of the learned Single Judge is liable to be set aside. Accordingly same stands set aside. Matter is remitted back to the first appellate authority for adjudication of appeal on merits.

Respondent shall deposit 50% of the amount demanded against him by furnishing bank guarantee from any Nationalized Bank and for remaining amount of 50%, four vehicles themselves can be taken as adequate security. For the said purpose respondent shall execute bond to the satisfaction of the first appellate authority.

Respondent shall comply with the aforementioned order within four weeks from the date of receipt of this order. Thereafter first appellate authority shall decide the appeals on merits within six weeks.