

(2009) 04 KAR CK 0013
In the Karnataka High Court
Case No : Writ Appeal No. 861 of 2008

The Deputy Commissioner for Transports, Gulbarga Division
and Another

APPELLANT

Vs

Kumaraswamy Mining Company

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Karnataka Motor Vehicles Taxation Act, 1957 — Section 3 (1), 4

Citation : (2010) 5 KarLJ 479

Hon'ble Judges : Anand Byrareddy, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : S.S. Kumman, for the Appellant;

Final Decision : Allowed

Judgement

1. Heard the Counsel for the parties.
2. The respondent though served has remained unrepresented.
3. The facts of the case are as follows.-

The respondent is the registered owner of a goods vehicle bearing Registration No. MEK 9136. Motor vehicle tax in respect of the said vehicle was said to have been paid upto 31-12-1990. For the period subsequent to the same, exemption had been claimed on the ground of "non-use". The application for exemption was provisionally accepted subject to the conditions prescribed under a notification dated 11-9-1980. One of the conditions was that entitlement to such exemption, if made available would cease, if, the vehicle was not found at the declared place of garage at any time when the authorities visit the place. In the instant case, when the declared place of garage was visited on 18-11-2004 and again on 1-2-2005, the vehicle was not available. It is alleged that on the date of the second inspection, the respondent had tried to mislead the authorities by showing a chassis lying at the declared place of garage, which was not the chassis of the registered vehicle. Hence, a show-cause notice was issued and

after receipt of a reply, a demand for tax had been made. The same had been challenged by way of an appeal. The appeal having been dismissed, the respondent had preferred a writ petition before this Court. The learned Single Judge having allowed the writ petition, holding that the demand insofar as it relates to the period between 1-2-1991 and 30-10-2004 stands quashed and that the respondents are at liberty to enforce demand for the subsequent period, the present appeal is filed.

4. The Government Advocate would contend that the application seeking exemption on payment of tax on the ground of non-use was only provisionally accepted. When a condition subject to which the exemption is granted is violated, the liability would stand attracted. The impugned order results in the respondent being granted exemption inspite of such a violation. The certificate of registration of the vehicle was current. There is no averment to the contrary in the writ petition. The case would therefore, be covered by the decision of the Supreme Court in the case of State of Karnataka Vs. K. Gopalakrishna Shenoy and Another, wherein it is laid down as follows.-

8. ...The principle underlying the Taxation Act is that every motor vehicle issued a certificate of registration is to be deemed a potential user of the roads all through the time the certificate of registration is current and therefore liable to pay tax u/s 3(1) read with Section 4. If, however, the vehicle had not made use of the roads because it could not be put on the roads due to repairs, even though the certificate of registration was current, the owner or person concerned has to seek for and obtain refund of the tax paid in advance after satisfying the authorities about the truth of his claim. It is not for the transport authorities to justify the demand for tax by proving that the vehicle is in a fit condition and can be put to use on the roads or that it had plied on the roads without payment of tax. It would be absolutely impossible for the State to keep monitoring all the vehicles and prove that each and every registered vehicle is in a fit condition and would be making use of the roads and is therefore liable to pay the tax. For that reasons, the State has made the payment of tax compulsory on every registered vehicle and that too in advance and has at the same time provided for the grant of refund of tax whenever the person paying the tax has not made use of the roads by plying the vehicle and substantiates his claim by proper proof. Any view to the contrary would defeat the purpose and intent of the Taxation Act and would also afford scope and opportunity for some of the persons liable to pay the tax to ply the vehicle unlawfully without payment of tax and later on justify their non-payment of setting up a plea and that the vehicle was in repair for a continuous period of over a month or the whole of a quarter, half-year or year as they choose to claim.

And further condition No. 5 of the notification dated 11-9-1990 lays down as follows.-

If on such inspection, the motor vehicle is not found at the declared place where it is intimated to have been kept, such motor vehicle shall not be entitled to the

exemption from payment of tax.

5. It is contended that the learned Single Judge has sought to rely upon a judgment of this Court in Tulunadu Finance and Development, Vidya Ratna Building, Udupi v. Regional Transport Officer, Udupi and Anr. 2007 (2) KL.J. 187. The same has been challenged by the State in appeal and was pending in appeal. It is further contended that the learned Single Judge has accepted the shifting stand of the respondent, whereby, it was declared by a letter dated 30-11-2004 that the vehicle was at the declared place and by a subsequent letter dated 30-3-2005, it was stated that the vehicle had been stolen.

6. Having regard to these contentions and in view of a Division Bench judgment of this Court in the case of the Regional Transport Officer, Bangalore West, Bangalore and Anr. v. S. Rajendra 2008 (2) KL.J. 96 : 2008 (64) KL.J. 333 , wherein, the respondent who was the registered owner of a motor vehicle had paid tax upto 3-4-2000. The vehicle having met with an accident on 15-4-2000, respondent therein had filed an application declaring non-user of the vehicle and seeking exemption from payment of motor vehicle tax, the application was provisionally accepted subject to fulfillment of the conditions of the very notification dated 11-9-1980, as is referred to in the present case on hand. The vehicle was kept at a place which was visited by the Motor Vehicle Inspector on 18-7-2000 and was confirmed as being available at the place. However, on a further inspection, on 26-12-2002, the vehicle was not found at the place. The demand for tax thereafter having been challenged by way of an appeal and on dismissal of the appeal, a writ petition before the learned Single Judge of this Court had been allowed, as in the present case, which was in challenge before the Division Bench. The Division Bench of this Court after having examined the legal position at length, has held that the vehicle in respect of which exemption is claimed cannot be moved without prior permission thereof. When the vehicle is not found in the notified place and no prior permission has been obtained for moving the vehicle, the owner is no longer entitled to exemption which was provisionally granted and in the absence of exemption, there is a statutory liability to pay the tax at the prescribed rate and has placed reliance on Gopalakrishna Shenoy's case in this regard.

7. In the light of this settled legal position. We hold that the learned Single Judge was not justified in modifying the order in appeal by the Competent Authority. Accordingly, the writ appeal is allowed. The order of the learned Single Judge is set aside.