(1981) 06 KL CK 0012

In the High Court Of Kerala

Case No : O.P. No. 4400 of 1977-F

Travancore Rubber and Tea Co. Ltd. APPELLANT

Vs

State of Kerala and Another RESPONDENT

Date of Decision : 18-06-1981

Acts Referred:

Kerala Motor Vehicles (Taxation of Passengers and Goods) Act, 1963 — Section 2, 4

Citation : AIR 1981 Ker 232

Hon'ble Judges : K. Bhaskaran, J

Bench : Single Bench

Advocate : M. Pathuse Mathai, Joseph Vellapally and S. Siri Jagan, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Bhaskaran, J.—The petitioner is the Tra-vancore Rubber and Tea Co. Ltd., Trivandrum. This writ petition has been brought to call for the records connected with the endorsement made by the second respondent, the Regional Transport Officer, Idukki, in the registration certificate of the petitioner''s tractors/trailers KLK 6776, KLK 6705 and lorry KLK 888 and to quash them. There is also prayer for a direction to the second respondent or to issue a writ of mandamus to delete all endorsements made in the Registration books of the petitioner''s tractors/ trailers KLK 6776 and KLK 6705 and lorry KLK 888 u/s 4 of the Kerala Motor Vehicles (Taxation of Passengers and Goods) Act, 1963. Besides these there are other incidental reliefs sought in the writ petition.

2. The counsel for the petitioner company submitted that inasmuch as the vehicles are not being used on public roads, the endorsements requiring payment under the Kerala Motor Vehicles (Taxation of Passengers and Goods) Act, 1963, (for short T.P.G. Act) would not apply in the case of those vehicles. He relied on the decision of the Supreme Court in Travancore Tea Estates Co. Ltd. and Others Vs. State of Kerala and Others, . No doubt a Division Bench decision of this Court, earlier, in R.T.A. Idukki v. Philip 1979 KLT 522 had in reversal of the

view expressed by a single Bench of this Court in Philip v. Regional Transport Officer 1977 KLT 218 taken the view that in cases where the vehicles are not used on public roads they are subiect to payment under the T.P.G. Act. Now that the Supreme Court has overruled the Division Bench rulings of this Court in Travancore Tea Estates Co. Ltd. v. State of Kerala 1972 KLT 760 and Peer-made Tea Co. Ltd. v. State of Kerala 1972 KLT 848 relied on by the Division Bench of this court in support of the decision in R.T.O., Idukki v. Philip 1979 KLT 522, virtually that ruling of the Division Bench stands overruled, and the Single Bench decision in Philip v. Regional Transport Officer 1977 KLT 218 restored.

3. The counsel for the petitioner also submitted that for another reason also the petitioner is entitled to succeed, at least as far as the tractors are concerned, inasmuch as the tractors-trailers are not vehicles attracting tax under the T.P.G. Act. This is the position accepted by this Court in State of Kerala v. Travancore Tea Estates Co. Ltd. ILR (1976) Ker 653. The Government Pleader appearing for the State submitted that the Division Bench decision of this Court in State of Kerala v. Travancore Tea Estates Co. Ltd. ILR (1976) Ker 653 is ponding in appeal before the Supreme Court. For one thing so long as the Division Bench ruling of this Court remains in force that has to be followed. For another thing even by the decision of the Supreme Court in Travancore Tea Estates Co. Ltd. and Others Vs. State of Kerala and Others, the petitioner is entitled to succeed inasmuch as the vehicles involved are not used on the public roads.

4. For the foregoing reasons this writ petition is allowed. A writ of mandamus will be issued directing the second respondent to delete the endorsements with respect to tax under the T.P.G. Act and as a consequence to refund to the petitioner company the amount of Rs. 9697.50 paid by it by way of tax as requested for in prayer (b) in the writ petition.

5. This writ petition is ordered as above. There will be no order as to costs.

