(2011) 08 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25627 of 2010

V. Balakrishnan APPELLANT

Vs

Deputy Transport Commissioner, Chittoor and another RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 3, 88(9)

Citation : (2011) 5 ALT 688

Hon'ble Judges : N. Ravi Shankar, J;Goda Raghuram, J

Bench : Division Bench

Advocate : B. Chandra Sekhar, for the Appellant; G.P. for Transport for the Respondents., for the Respondent

Final Decision : Allowed

Judgement

Goda Raghuram, J.—Challenging the demand notice dated 22-09-2010 issued by the 1st respondent, whereby the petitioner is directed to pay tax of Rs. 2,13,150/- within the stipulated time, failing which the bank guarantee submitted by him at the time of release of the vehicle would be encashed for remitting into the Government account, the present writ petition is filed.

2. The petitioner is the owner of a bus bearing Regn. No.TN47/Z3917. On 19-07-2010, the petitioner''s vehicle was intercepted and found to be plying without a valid and operative permit. The petitioner''s vehicle had entered Andhra Pradesh and Tamil Nadu on a temporary permit for a period of 24 hours i.e. from 17-07-2010 to 18-07-2010 midnight, but was intercepted in the early hours of 19-07-2010, within the State.

3. Show cause notice was issued on 24-08-2010 calling upon the petitioner to pay tax u/s 3 of the A.P.Motor Vehicles Act read with Explanation (iv) (a) (iii) of G.O.Ms.No. 68, dated 13-04-2006, for the quarter ending 30-09-2010 @ Rs. 3,675/-P.S.P.Q for 56 seats. The petitioner submitted his response thereto denying liability under the provision set out in the show cause notice. However,

by the impugned demand notice, dated 22-09-2010, the 1st respondent determined the tax liability on the ground that the quantum of liability arises as per the Explanation IV (a) (iii) of G.O.Ms.No.68, dated 13-04-2006.

4. The learned counsel for the petitioner contends that para-(v) (a) in Explanation V under entry 4 of the Schedule set out in G.O.Ms.No. 68 has clearly no application. The said provision pertains to the ''vehicles'' permitted to carry more than 6 (six) persons and plying as contract carriages covered by All India Tourist Permit issued u/s 88(9) of the Motor Vehicles Act, 1988, for every passenger other than the Driver and Conductor/Attender, which the vehicle is permitted to carry. The quarterly rate of tax for these vehicles is Rs. 3,675/-. It is contended on behalf of the petitioner that since the vehicle is not plying as a contract carriage covered by All India Tourist Permit, the provision cited in the impugned demand notice does not apply.

5. The learned Government Pleader for Transport appearing for the respondents concedes the position that entry in para (v) (a) of Explanation V in G.O.Ms.No. 68 has no application. It is, however, contended by him that the liability of the petitioner arises under G.O.Ms.No. 285, dated 15-09-1984, whereby the liability of tax shall be levied at the rate of 1/3rd of the quarterly tax payable in respect of such vehicles in Andhra Pradesh State provided the overstay or stay does not exceed a month; together with a penalty in an equal amount, irrespective of the date/the month of detection of the overstay. It is also the admitted position that since the computation of the tax liability of the petitioner is done on the basis of G.O.No. 285, dated 15-09-1984, the liability of the petitioner would be Rs. 2,13,150/-.

6. In the light of the submission made on behalf of the respondents, the demand notice dated 22-09-2010 is unsustainable as there is a clear error both in respect of the relevant provisions on the basis of which the tax liability of the petitioner is determined as well as the amount of liability so determined.

7. Accordingly, the demand notice is quashed. The respondents are however at liberty to issue a fresh show cause notice clearly specifying the provision under which the tax liability of the petitioner is proposed to be assessed and after receiving the response from the petitioner, are at liberty to determine the liability and issue a demand notice, in accordance with law.

8. The writ petition is allowed as above, but in the circumstances, there shall be no order as to costs.

