(1969) 07 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No. 2432 of 1966

Vengaiah Setty APPELLANT

Vs

Transport Commissioner RESPONDENT

Date of Decision : 07-07-1969

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Motor Vehicles Taxation Act, 1957 — Section 16 (1)

Citation : (1985) ILR (Kar) 3327

Hon'ble Judges : Sadasivayya, J;Chandrasekhar, J

Bench : Division Bench

Advocate : M. Rangaswamy, for the Appellant; S.G. Doddakale Gowda HCGP and E.S. Venkataramaiah, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Chandrasekhar, J.—The short question that arises for determination in this Petition under Article 226 of the Constitution, is whether the petitioner is entitled to the benefit of exemption under Notification No. HD 128(2) MVA dated 28th March 1959 issued by the Government in exercise of the powers conferred by sub-section (l) of Section 16 of the Mysore Motor Vehicles Taxation Act, 1957 (Mysore Act 35 of 1957).

2. The petitioner was a transferee of a permit to operate a stage carriage on an inter- State route between Thambadapalli (in Andhra Pradesh) and Chintamani (in Mysore State). He was operating a transport vehicle under a permit which had been granted by the Transport Authorities of Andhra Pradesh and had been countersigned by the Transport Authorities in Mysore State. After the expiry of the period for which such countersignature had been granted, an application was made to the Regional Transport Authority, Kolar, for renewal of the countersignature. It would appear that the countersignature had not been renewed during the period between 4-3-1964 and 18-12-1964, though he continued to operate the stage carriage during that period on the portion of the

inter-State route lying in Mysore State also. The countersignature was granted subsequently but not retrospectively for the above mentioned period.

3. The petitioner claimed the benefit of exemption from payment of Motor Vehicles Tax in Mysore State for the period between 4-3-1964 and 18-12-1964. The material portion of the Notification reads :

" -- The Government of Mysore hereby direct that the transport vehicles registered in the state of Andhra Pradesh and plying regularly on inter-State routes between Mysore and Andhra Pradesh under the reciprocal arrangements agreed to between the two states be exempt from payment of tax in this state under the said Act, provided that tax for the period has been paid in the State of Andhra Pradesh."

4. It is not disputed that the petitioner''s vehicle was registered in Andhra Pradesh and that he had paid Motor Vehicles Tax in Andhra Pradesh for the relevant period. The only ground on which the Taxing Authorities in Mysore State declined to grant him exemption under this Notification is that his operation of stage carriage on the portion of the route lying in Mysore State, was illegal as there was no countersignature of his permit by the Transport Authorities in Mysore State during this period.

5. The Learned Government Advocate who appeared for the respondents, laid emphasis on the word, ''regularly'', which qualifies the word, ''plying'' in the aforesaid Notification and argued that the petitioner cannot be said to have been plying regularly when the operation of his transport vehicle in Mysore State was illegal.

6. We think the word, "regularly", which has been used in the above Notification with reference to transport vehicles, is used in contra distinction to casual or sporadic plying. In the context, all that the word means is that such plying should be recurring or be at uniform intervals according to some time schedule or daily or periodic programme. We do not think that the word, ''regularly'' is used to convey the idea that the plying should be in accordance with the provisions of any law.

7. The Notification does not require that the plying of a transport vehicle on an inter-State route should be in pursuance of a valid permit or a countersignature. In a taxing statute, when an activity is made liable for tax, the legality or illegality of such activity is immaterial for determining liability for tax unless the statute expressly or by necessary implication states that such activity is liable to tax, only if it is not illegal. Likewise, in considering the applicability of an exemption from tax, for an activity, the legality or illegality of that activity is immaterial in the absence of the words, expressly or by necessary implication, restricting such exemption only to lawful activities.

8. In the said Notification, we do not find any words which, expressly or by necessary implication, restrict the exemption to vehicles plying under valid

permits or couater-signature.

9. If a vehicle was plying within Mysore State without a countersignature, the holder of the permit in respect of such vehicle could have been prosecuted or subjected to other penalties under the Motor Vehicles Act or other laws. But that would not be a ground for not giving him the benefit of exemption if he otherwise came within the ambit of such exemption.

10. We think the view taken by the Transport Authorities that the petitioner is not eligible for exemption under the said Notification, is unsustainable. Hence, we allow this Petition and quash the notice issued by the Secretary, Regional Transport Authority, Kolar, dated 30-11-1965 (marked Exhibit-A) and the order of the Commissioner for Transport in Mysore, Bangalore, dated 3-5-1966 (marked Exhibit-B).