(2008) 01 MAD CK 0012

In the Madras High Court

Case No : Writ Petition No. 2196 of 2004 and W.P.M.P. No. 2463 of 2004

V.I. Microo System Pvt. Ltd. APPELLANT

Vs

State of Tamil Nadu and Others RESPONDENT

Date of Decision : 09-01-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 3, 3(2), 4, 76
Motor Vehicles Taxation Rules — Rule 13(1), 13(1A)
Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 11, 13, 13(1), 13(1A)

Citation : AIR 2008 Mad 232

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : G.T. Subramanian, for the Appellant; Arumugham, AGP, for the Respondent

Judgement

S. Manikumar, J.—The petitioner has sought for a writ of mandamus, directing the respondents to refund the life tax paid by the petitioner to

the vehicle bearing registration No. TN 09 P 7450 and to adjust the same payable by the petitioner towards future years.

2. The case of the petitioner in brief is as follows:

The petitioner is the Managing Director of V.I. Micro System Private Limited Company, dealing with electronic computers, software etc. The

petitioner has purchased Mahindra Van in September 1999 and paid life tax vide life tax token No. 09674 dated 29-9-1999 and paid Rs.

30,120/-. Subsequently, on 26-12-2000, the vehicle was converted as private Omni van and the petitioner was asked to pay annual tax and the

petitioner paid the same and necessary endorsement also was made in the registration certificate book. After payment of annual tax for the

converted vehicle, the petitioner requested the Regional Transport Officer

Chennai West, the third respondent herein, to refund the life tax which

was paid earlier. By way of reply the respondent asked the petitioner to produce the original registration certificate and life tax token, vide letter

dated 15-10-2001. Though the required documents were submitted on 25-1-2002, the third respondent has passed an order dated 26-2-2003,

directing adjustment for future payments in the life tax paid earlier. While so, the third respondent without any prior intimation has sent a

clarification letter dated 1-4-2003 to the second respondent taking a different stand. Since the respondents have neither made any refund nor

adjusted the life tax paid earlier, in respect of the vehicle bearing registration No. TN 09 P. 7450, the petitioner has come forward with the present

writ petition for the relief as stated supra.

3. The respondents, in their counter-affidavit have submitted that the petitioner V.I. Electronic System Private Limited got a light Motor Vehicle

(Omni Bus) registered on 20-9-1999 at the Regional Transport Office Chennai West with registration No. TN 09 P 7450. At the time of

registration, life tax of Rs. 30,120/- was collected for the vehicle as per Part I of the third schedule to the Tamil Nadu Motor Vehicles Taxation

Act 1974, as applicable to non-transport vehicle. Subsequently in December 2000, the vehicle was converted into a ""Private Service Vehicle"" and

permit was also issued to ply the vehicle u/s 76 of Motor Vehicles Act, 1988 for a period of five years from 5-1-2001, for use of the vehicle to

transport the staff of the company. Since the vehicle was converted into private service vehicle, the quarterly tax leviable on the basis of the seating

capacity was collected from the Company from 29-12-2000 and the petitioner has been paying tax regularly for the Private Service Vehicle.

4. In view of the conversion of the vehicle from LMV (Omni bus) to Private Service Vehicle, the company applied for refund of proportionate life

tax, paid already to the vehicle. The third respondent herein examined the issue in consultation with the Assistant Accounts Officer and then

referred the matter to the second respondent for clarification on 9-5-2003. Similar clarification required by the Regional Transport Officers for

refund of life tax and adjustment of tax on conversion of a non-transport vehicle into a transport vehicle was under examination with the second

respondent.

5. As the existing provisions do not allow for ""refund of proportionate life time tax except on three circumstances mentioned in Rules 13(1) and

13(1-A) of Motor Vehicles Taxation Act, 1974, the matter was taken up with the first respondent and necessary amendment to Tamil Nadu

Motor Vehicles Taxation Act is under consideration of the first respondent.

6. It is further submitted that pending receipt of the orders from the first respondent, the application of the petitioner for refund is kept pending and

on receipt of the same, the application for refund would be taken up and orders would be passed by the third respondent. Hence he submitted that

the writ petition is premature and the same is liable to be dismissed.

7. Mr. G.T. Subramaniam, learned Counsel appearing for the petitioner, referring to the proceedings dated 26-2-2003 issued by the third

respondent, submitted that the order passed by the third respondent directing adjustment of the amount already paid towards life tax for the period

between 29-9-1989 and 25-12-2000, for the use of non-transport vehicle is erroneous. According to him, when the vehicle was not used as a

private service vehicle, the petitioner is entitled for refund of proportionate life tax paid by him.

8. Referring to Sections 13(1) and 13(1-A) of the Motor Vehicles Taxation Act, Mr. A. Arumugam, learned Additional Government Pleader

submitted that refund of tax paid for private vehicle can be made under the following circumstances:

1. Non-use of the vehicle.

2. Removal to other States by assigning re-registration and by transfer or change of address.

3. Tax is paid by mistake or in excess.

9. He further submitted that as there is no provision for refund or tax adjustment, the relief prayed for by the petitioner cannot be granted.''

10. Heard learned Counsel for the'' parties and perused the materials available on record.

11. Section 13 of the Tamil Nadu Motor Vehicles Taxation Act deals with ''Refund of tax'' and it reads as follows:

(1) Where the tax for any motor vehicle has been paid for any quarter, half year, year or the life time and the vehicle has not been used on any

public road during the whole of that quarter, half year, year or life time or a continuous part thereof not being less than one month, a refund of the

tax at such rates as may, from time to time, be notified by the Government, shall be payable on an application made within such period as may be

prescribed and subject to such conditions as may be specified in such notification.

(1-A) Where a life time tax for any motor vehicle has been paid and the registration of the vehicle has been cancelled for any reason whatever or

the vehicle has been removed to any place outside the State of Tamil Nadu on account of transfer of ownership or change of address, a refund of

the tax at such rate as may, from time to time, be notified by the Government shall be payable on an application made within such period, as may

be specified in such notification;

...

(2) Where any tax is paid by mistake or in excess, the tax so paid or collected shall, on an application made within such period, be refunded to

such person in such manner and subject to such conditions as may be prescribed.

(3) ...

(4) The amount so refundable in respect of a motor vehicle under this section may, on an application made in this behalf, be adjusted towards the

amount of tax payable for such vehicle, under this Act for any subsequent period.

12. Admittedly, life tax of Rs. 30,120/- has been paid for the vehicle registered in the year 1999. Subsequently, when the vehicle was converted

into Private Service vehicle, the petitioner has also paid the annual tax for the use of the private service vehicle. Section 11 of the Tamil Nadu

Motor Vehicles Taxation Act deals with the payment of additional tax and the same is extracted hereunder:

When any motor vehicle in respect of which tax has been paid is altered or proposed to be used in such manner as to cause the vehicle to become

a vehicle in respect of which a higher rate of tax is payable, the registered owner or person who is in possession or control of such vehicle shall pay

an additional tax of a sum which is equal to the difference between the tax already paid and the tax which is payable in respect of such vehicle for

the period for which the higher rate of tax is payable in consequence of it being altered or so proposed to be used and the licensing officer shall not

grant a fresh licence in respect of such vehicle so altered or proposed to be so used until such amount of tax has been paid.

13. Reading of the provision makes it clear that when there is a conversion in the use of the vehicle, the owner or person who is in possession of

the vehicle has to pay the differential rate of tax, if the rate of tax applicable to such class of vehicle is higher. Section 4 of the Motor Vehicles Act,

1988, envisages that the tax levied under the Act shall subject to the provisions of Sub-section (1-A), be paid in the manner prescribed by the

registered owner or by any other person having possession or control of the motor vehicle, at his choice, either quarterly, half yearly or annually, on

a licence to be taken out by him for that quarter, half-year or year, as the case may be. As per Section 3(2) of the Act, the Government is

empowered to increase the rate of tax specified in the schedule by notification from time to time.

14. In the case on hand, the user of the vehicle is now changed non-transport vehicle to private service vehicle and therefore, the respondent is

empowered to levy appropriate tax for that class of vehicle as per Section 3 of the Act, and can levy or demand tax not more than the amount

specified in the II Schedule to the above said Act. Therefore, if a higher rate of tax has to be paid by the registered owner or any other person

having possession or control of the vehicle, the adjustment of the amount cannot be found fault with. However, taking into consideration, the

averments made in the counter-affidavit that the matter has already been referred to the first respondent for appropriate orders and the same is still

pending consideration, the respondents are directed to pass appropriate orders on the application of the petitioner, on merits and in accordance

with law. Within a period of two months from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of. Consequently, connected W.P.M.P. is closed. No costs.

