
(1974) 04 MAD CK 0038
In the Madras High Court
Case No : Writ Petition No. 683 of 1974

V.V. Dorairaj

APPELLANT

Vs

The Regional Transport Officer Vellore and another

RESPONDENT

Date of Decision : 02-04-1974

Acts Referred:

Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 4(1)

Citation : (1974) 04 MAD CK 0038

Hon'ble Judges : Ismail, J

Bench : Single Bench

Advocate : S. Varadachari, for the Appellant;

Judgement

Ismail, J.—The petitioner prays for the issue of a writ of certiorari to quash the communication dated 23rd February 1974 of the Regional Transport Officer, Vellore, North Arcot Dt. calling upon the petitioner to pay the tax under the Motor Vehicles Taxation Act for the quarter ending with 31st March 1974 in respect of his goods vehicle MDJ.4393. The petitioner's case was that the vehicle was stopped from 28th December 1973 due to major repairs and therefore he should be permitted to pay the tax from February 1974 onwards. The first respondent had rejected the case of the petitioner on the ground that he had not surrendered the registration certificate Part A and B permits of the vehicle by sending it with registered post acknowledgment due as required under the new amended taxation Act. The learned counsel for the petitioner contends that under the Rules in question once the fitness certificate of the vehicle was not in existence it must be deemed that the vehicle was not used and no tax is payable. In my opinion, there is no substance in the contention of the learned counsel for the petitioner. S.4(1) of the Act provides for levy of tax on every motor vehicle using any public road in the State of Madras. This was amended by Tamil Nadu Act 33 of 1973 by substituting the words "kept or used", for the words "using any public road". After this amendment came into force, the Government issued rules in G.O. Ms. No 3260 Home dated 24th December 1973 and the same were

published in the Tamil Nadu Government Gazette Extraordinary dated 29th December 1973. That rule stated that for the purpose of sub-sec. (1) of S.4 of the Tamil Nadu Motor Vehicles Taxation Act, a motor vehicle shall be deemed to be kept for use in the State of Tamil Nadu, in the case of transport vehicles, so long as the motor vehicle is covered by a permit or counter signature of permit issued by any transport authority in this State covered by a permit granted in any other State and valid in this State. To this provision, there are two provisos. The first proviso says that in the case of a transport vehicle, if the first vehicle is not covered by a valid fitness certificate or a valid permit, it may be deemed that the vehicle is not kept for use as a transport vehicle and not taxable as such. The second proviso says that in the case of motor vehicles not being intended to be used during any period of a quarter, half year or year as the case may be, the registered owner or person having possession or control of such vehicles shall send intimation, to the Regional Transport Officer in whose jurisdiction the motor vehicle is kept, in writing by registered post with acknowledgment due together with reasons for non-use and details of the place where the vehicle is garaged within seven days of the expiry of the period for which the tax was already paid, that such vehicle will not be used after the said date of expiry of the licence for such period and shall at the same time surrender the certificate of registration, permit, and tax token if any in respect of the vehicle. Admittedly, the petitioner has not complied with the requirements of the second proviso referred to above. However, the learned counsel for the petitioner contends that this case falls within the scope of the first proviso and therefore once the valid fitness certificate was not in existence, the vehicle must be deemed to have been not kept for use and it was not taxable as such. I am unable to accept this argument. The first proviso merely refers to a fiction or constitutes a deeming provision. Even that deeming provision is not intended to be obligatory or mandatory, in the sense, that once a fitness certificate is not there it shall be deemed that the vehicle is not used as a transport vehicle. The word used in the first proviso is "may". As against this the second proviso clearly imposes an obligation on a person like the petitioner to give intimation in writing and surrender the permit and the word that is used in the second proviso is "shall". Therefore, even assuming that the fitness certificate of the petitioner's goods vehicle was not in force during the relevant period, that does not exonerate the petitioner from complying with the requirement of the second proviso which requirement was not admittedly complied with in the present case. Hence the writ petition is dismissed.