

Pious vs District Collector

Pious vs District Collector

SooperKanoon Citation : sooperkanoon.com/1373990

Court : Kerala

Decided On : Jul-21-2023

Judge : Honourable Mr. Justice Amit Rawal

Appeal No. : WP(C)/4170/2014

Appellant : PIOUS

Respondent : District Collector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL FRIDAY,
THE 21ST DAY OF JULY 2023 / 30TH ASHADHA, 1945 PETITIONER:
PIOUS AGED 48 YEARS S/O PAPACHAN, ARACKAL HOUSE, SOUTH
KALAMASSERY, ERNAKULAM DISTRICT BY ADVS. SRI.GEORGE
C.VARGHESE SRI.SHERRY J. THOMAS RESPONDENTS: 1
DISTRICT COLLECTOR CIVIL STATION, KAKKANADU 682030 2
DEPUTY TAHSILDAR REVENUE RECOVERY, ERNAKULAM COCHIN
682011 3 VILLAGE OFFICER EDAPPALLY SOUTH, EDAPPALLY
682024 4 THE REGIONAL TRANSPORT OFFICER CIVIL STATION,
KAKKANADU 682030 BY ADV SRI.SYED MOHAMMED THANGAL,
SR.GP TAX THIS WRIT PETITION (CIVIL) HAVING COME UP FOR

ADMISSION ON 21.07.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: -2-

JUDGMENT

1. Petitioner, a driver by profession, was the owner of stage carriage vehicle Matador-307(13 seater)

bearing registration No. KL-07AU-5825. Owing to the financial stringency, could not remit the motor vehicle tax for the period 2004-2005 and surrendered the vehicle

to the department allegedly on 12.01.2005. The total arrears of tax upto 2005 was Rs.12,000/- (Rupees Twelve thousand only). However, revenue recovery proceedings were initiated to recover an amount of Rs.1,71,660/- (Rupees One lakh seventy one thousand six hundred and sixty only) alleging that the surrender of the vehicle was in 2008 and the arrears are from 2008 till the date of

demand notice in 2013. It was contended that the petitioner is liable to pay the tax only when the vehicle was in use as per the plain and simple language of Section 3(1) of Motor Vehicle Taxation Act (Kerala) 1976.

2. Attention of this Court has also been drawn to the interim order of stay dated 19.02.2014 of this Court -3- whereby petitioner was directed to deposit the admitted amount of Rs.12,000/- (Rupees Twelve thousand only).

3. On the other hand, learned counsel appearing on behalf of the State submitted that petitioner, being registered owner of the vehicle is liable to pay the tax arrears upto 2013. The surrender of the vehicle was admitted but disputing the date of surrender, instead of 2005 to be as 2008. The revenue authorities have auctioned the vehicle for an amount of Rs.7600/- after

due notices to the petitioner, on 17.4.2013. Government had already floated a scheme for settlement of tax arrears for 4 years or more through one time settlement vide G.O(P) No.5/2023/TRANS dated 31.3.2023 and in case the petitioner would have availed, was liable to pay a fixed amount and the demand

amount would be rendered immaterial. Government Pleader has placed reliance on the Larger Bench judgment of this Court reported in Jomon M.Arackal v. Tahsildar 2015(1) KLT 163 (L.B.). -4-

4. I have heard learned counsel for the parties and appraised the paper book.

5. Contents of the counter affidavit reveals that

the seizure of the vehicle was on 10.03.2008 though the petitioner alleges to have surrendered in 2005, but there is no proof or receipt of surrendering the vehicle. Thus, I would take the date of surrender at 2008. In view of the counter affidavit, arrears for the period 2005-2008 comes to Rs.67,680/-(Rupees Sixty seven thousand six hundred and eighty only) whereas in the demand notice, arrears from 1.1.2005 to 31.12.2012 has been claimed at Rs.1,71,660/-(Rupees One lakh seventy one thousand six hundred and sixty only).

6. In paragraph 12 of the judgment reported in

Jomon M.Arackal cited supra, it has been held that exemption from payment of tax would be available only if the procedure is complied with. In other words, when a statute prescribes that a particular thing shall be done in a particular manner, it shall be done only in that manner -5- and no other manner. By noticing the provisions, it was

held that exemption can be granted if there is

compliance of the procedure, otherwise it cannot be. In this case, petitioner failed to make the payment, though he had surrendered the vehicle in 2005. In the absence of any proof of surrender of the vehicle, even if the date is taken as 2008, dues which was required to be paid by the petitioner at the relevant point of time was not paid cannot be prayed for exemption for the period when he

was not in custody of the vehicle, 2005-2008. In this view of the matter petitioner would be liable to pay tax for the period for which tax was claimed.

Writ petition stands disposed off. Sd/- AMIT RAWAL JUDGE vv -6- APPENDIX OF WP(C) 4170/2014 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE DEMAND NOTICE DATED 28-06-2013 RECEIVED BY THE PETITIONER ON 04-02-2014 EXHIBIT P2 TRUE COPY OF THE CERTIFICATE OF REGISTRATION DETAILS EXHIBIT P3 TRUE COPY OF THE QUESTIONNAIRE UNDER RTI DATED 05-02-2014 SUBMITTED BEFORE THE 4TH RESPONDENT EXHIBIT P4 TRUE COPY OF THE PETITION DATED 05-02- 2014 SUBMITTED BEFORE THE 1ST RESPONDENT EXHIBIT P5 TRUE COPY OF THE REPRESENTATION DATED 05-02-2014 SUBMITTED BEFORE THE 4TH RESPONDENT RESPONDENT EXHIBITS EXHIBIT R4(a) TRUE COPY OF THE NOTIFICATION VIDE G.O(P) NO. 5/2023 TRANS DATED 31.03.2023

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com