

S. Adappa Vs. Transport Commissioner in Mysore and anr.

S. Adappa Vs. Transport Commissioner in Mysore and anr.

SooperKanoon Citation : sooperkanoon.com/374267

Court : Karnataka

Decided On : Sep-21-1968

Reported in : AIR1969Kant222; AIR1969Mys222; (1968)2MysLJ581

Judge : A.R. Somnath Iyer and ;Ahmed Ali Khan, JJ.

Acts : Mysore Motor Vehicles (Taxation on Passengers and Goods) Act, 1961 - Sections 2(9) and 6; Income-tax Act

Appeal No. : Writ Petn. No. 1576 of 1966

Appellant : S. Adappa

Respondent : Transport Commissioner in Mysore and anr.

Judgement :

Somnath Iyer, J.

1. This writ petition concerns a best judgment determination of the tax which the petitioner was called upon to pay under the provisions of the Mysore Motor Vehicles (Taxation on Passengers and Goods) Act, 1961. From the order of the tax officer who made that determination there was an appeal to the Commissioner of Transport who dismissed it. The petitioner asks us to quash the orders made against him.

2. It is undisputed that the motor vehicle with which we are concerned in this writ petition is a tractor trailer in respect of which the petitioner obtained a public carrier permit. A public carrier vehicle, according to the definition contained in S. 2(9) of the Act, means a motor vehicle carrying or adapted to carry goods for hire or reward. During the proceedings before the Tax Officer for the determination of the tax payable by him on the hypothesis that the tractor trailer was used by him for carrying goods, notices were taken out to the petitioner twice and those notices were served on him personally. But when he did not appear, the Tax Officer rightly proceeded to make a determination of the tax to the best of his judgment under the proviso to Section 6 of the Act. The relevant portion of that Section reads.

Procedure where no returns are submitted, etc.--In the following cases, that is to say,--

(a) where no returns have been submitted by the operator in respect of any stage carriage or public carrier thereof, or

(b) where the returns submitted by the operator in respect of any stage carriage or public carriage vehicle for any month or portion thereof appear to the Tax Officer to be incorrect or incomplete, the Tax Officer shall, after giving the operator a reasonable opportunity in case (a) of making his representation, if any and in case (b) of establishing the correctness and completeness of the returns submitted by him, determine the sum payable to the State Government by the operator by way of tax during such month or portion thereof;

** ** *

3. Section 4 directs every operator of a public carrier vehicle to produce periodically returns in the prescribed form, and, it is common ground that the petitioner produced no such returns. It is explained by Mr. Rangaswamy, the learned Advocate for the petitioner, that no such returns was produced since the tractor-trailer owned by the petitioner was not a public carrier and was not used as such. It was submitted that a public carrier permit was obtained by the petitioner under some mistaken supposition.

4. However that may be, what is clear from the provisions of Section 3 is that, if the vehicle owned by the petitioner is a public carrier vehicle and goods are transported in that vehicle, the tax charged by that section becomes payable. When the petitioner was served with a notice on the second occasion he was intimated that if he failed to appear on the date of hearing, the determination of the tax payable by him would be made in his absence. But he did not appear before the Tax Officer, who, therefore, rightly proceeded to make the determination to the best of his judgment. The Transport Commissioner in appeal did not accept the story of the petitioner that that notice was not served on him, and, that finding which is a finding on a question of fact is not open to discussion in this Court.

5. But we are of the opinion that the determination made by the Tax Officer suffers from a fundamentals defect. Section 6 of the Act confers power on the Tax Officer to make a best judgment determination in a case where no return has been submitted by the operator, after giving him a reasonable opportunity for making his representation if any. Although that opportunity was made available to the petitioner and that opportunity was not utilised by him for making representation, it is clear that the Tax Officer did not make any best judgment determination. His order discloses that there was an incorrect comprehension by him of the nature of the best judgment determination which he had to make. He appears to have thought that in a case where a best judgment determination has to be made, the basis for such determination in every case should be the assumption that the operator had carried the full complement of goods during the relevant period.

6. That, that was the process by which he made his determination is clear from that part of his order which reads.

'As per his request a date of hearing was adjourned to 26-6-64 and the same was informed under this office letter No. 1310/TPG/RFR/64, dated 10-6-1964 which was served on him on 18-6-1964. But he failed to attend the hearing on due date. According to provision of Section 6 of the Act it is therefore necessary to determine the tax on the basis that the public carrier had covered its full complement during the period.'

7. It is plain that that is not how the determination could be made under S. 6. That determination, although Section 6 does not say so in so many words, is what may be described as the best judgment determination. That determination should not emanate from a desire to punish the defaulting operator and must rest upon the consideration of some material which should be gathered and collected by the Tax Officer.

8. What was said by the Privy Council in *C. I. T. v. Lakshminarayan Badridas*, 1937 ITR 170 with respect to a best judgment assessment under the Income-tax Act, is, we think, equally applicable to at best judgment determination under Section 6 of the Mysore Motor Vehicles (Taxation on Passengers and Goods) Act. 1961. What the Privy Council observed in that case reads--

'The Officer is to make an assessment to the best of his judgment against a person who is in default as regards supply of information. He must not act dishonestly or vindictively or capriciously, because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by assessment of the assessee and all other matters which he thinks will assist him in arriving at a fair and proper estimate; and though there must necessarily be a guess-work in the matter it must be honest guess-work. In that sense too, the assessment must be to some extent arbitrary.'

9. So the Tax Officer could not make a best judgment determination without regard to any material, and if not material was available he should have proceeded to collect some material on the basis of which a fair and honest estimate could be made. It is clear that the Tax Officer did not think that it was any part of his duty to make an estimate in that way. The view that he took was that section 6 incorporated an inflexible basis for determination, and that that basis was the presumption that the public carrier vehicle had carried its full complement of goods. It is obvious that that erroneous assumption which he depended was the product of his imperfect understanding of the proviso to S. 6 which only fixed the

upper limit of the tax which the defaulting operator could be called upon to pay. The prescription of the maximum in that way was mistaken by the Tax Officer for a basis, which obviously it is not. The Transport Commissioner overlooked this basis infirmity in the order made by the Tax Officer.

10. So we set aside the orders made by the Tax Officer and the Transport Commissioner.

11. But we make no direction in regard to costs.

12. Order set aside

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