Balachandran Vs. State of Kerala

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Court : Kerala

Decided On : Jan-06-2005

Reported in : II(2005)ACC124; AIR2005Ker187; 2005(1)KLT641

Judge : Thottathil B. Radhakrishnan, J.

Acts : Motor Vehicles Act, 1988 - Sections 2(48)

Appeal No. : W.P. No. 33889 of 2004

Appellant : Balachandran

Respondent : State of Kerala

Advocate for Def. : M.A. Fayaz, Government Pleader

Advocate for Pet/Ap. : N.K. Karnis, Adv.

Judgement :

B. Radhakrishnan, J.

1. Petitioner is the owner of a Maruthi Zen Car. The issue relates to the question as to what is the rate of tax payable by him for the said vehicle. This, in turn, would depend upon the unladen weight of the vehicle. If that is above 750 kgs., he has to pay tax at a rate higher than the rate to which he concedes.

2. In the presence of an Assistant Motor Vehicle Inspector (A.M.V.I.), the vehicle of the petitioner was weighed. Ext.P3 is the computerised extract which shows that the weight of the vehicle as recorded on 2.11.2004 is 720 kgs. Ext.P4 statement prepared by the A.M.V.I. was submitted to the 2nd respondent, the Joint Regional Transport Officer. This statement shows that the fuel level of the vehicle at the time of weighing was below 5 litres and that spare wheel, jack, jack lever, wheel spanner and tools were not provided in the vehicle at the time of weighing.

3. A counter-affidavit is placed on record by the 2nd respondent. Referring to Ext.P4, it is stated in paragraph 5 of the counter-affidavit that the unladen weight has to be calculated by including also the weight of those items enumerated in the said paragraph of the counter-affidavit. The weight of each of the said items is also stated therein. The weight of the spare tyre with wheel disc, jack, jack lever and wheel spanner and tool kit adds up to 15.350 kgs., going by the counter-affidavit. If that is added on to the 720 kgs. reflected by Ext.P3, the unladen weight of the vehicle would come to 735.350 kgs. In such event, the unladen weight of the vehicle will be below the bench mark of 750 kgs.

4. The controversy between the parties is as to whether the unladen weight of the vehicle should also include the weight of the fuel (petrol) that is needed to fill its fuel tank to the full capacity which, in the instant case, is the weight of 30 litres of petrol, which according to the counter-affidavit, is 27 kgs. If the weight of the fuel thus calculated is also added on, the unladen weight of the vehicle would exceed 750 kgs.

5. To resolve this issue, it becomes necessary to advert to Sub-section (48) of Section 2 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), which defines the term 'unladen weight'. It reads as hereunder:

'(48) 'unladen weight' means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body.'

The above definition starts by the use of the legislative tool 'means'. The tool 'includes' is used only to add on such equipments as are stated. Therefore it cannot be taken to include anything more than what is specifically stated in the said definition. By this well accepted principle of interpretation, the definition does not include anything other than the equipments.

6. 'Equipment' is a term which is not defined in the Act. In common parlance, petrol is not an equipment. 'Equipments' are 'things used in equipping or furnishing: outfit' as per the Chambers Twentieth Century Dictionary.

7. Though in a different context, Sir Henry Gordon Willmer had to consider the question whether fuel oil supplied to an oil-burning ship comes within the word 'equipping'. (See Secony Bunker Oil Co. Ltd. v. Owners of the Steamship D'Vora (1953 (1) WLR 34). The learned Judge was considering whether the supply of fuel oil can be treated as equipping the ship so as to make it a matter amenable to the admiralty jurisdiction of the Supreme Court of Judicature (Consolidation) Act, 1925. To answer the said issue, after observing that a perusal of the Oxford Dictionary has not thrown any great light on the problem, the learned Judge proceeds to state that'......'equip', to my mind, connotes something of a more permanent nature than consumable stores. I can well understand that anchors, cables, hawsers, sails, ropes, and such things, may be said to be part of a ship's equipment, and that, none the less, though they have to be renewed from time to time; but such things as fuel oil, coal, boiler water and food-consumable stores- seem to me to be in quite a different category.' It was held in that case that the word 'equipping' is not wide enough to cover the supplying of consumable stores, such as fuel oil. The learned Judge exclaims during the course of that judgment 'I cannot help reflecting on what consequences might follow if I were to decide that the word 'equipment' is wide enough to cover the supply of consumable stores. If I were to lay that down as a matter of law in this context, I can well imagine that it might have wide repercussions in quite different fields of the law.'

8. I am of the considered view that the term 'equipment' is never relatable to the fuel in a machine, at least until clear statutory inclusion is made in that behalf. The fuel used in a vehicle, cannot be treated as an element, the weight of which will

also have to be added on to determine the unladen weight of a vehicle. That apart, there is no statutory requirement to weigh the vehicle with its full capacity of fuel to have its unladen weight determined. I therefore hold that the weight of the fuel is no part of those items which would go into the unladen weight of a vehicle as defined in Section 2(48) of the Act.

9. Ext.R2(a) is a letter addressed by the Transport Commissioner to all the Deputy Transport Commissioners and other Officers of the Department stating that as per the technical specification issued by M/s. Maruthi Udyog Ltd., the unladen weight of Maruthi Zuzuki Zen ranges from 755 kgs. to 830 kgs. This is a letter dated 8.2.2000, obviously, long after 1995, the year of manufacture of the vehicle in question. Ext.R2(a) letter will therefore have no bearing, as far as this case is concerned.

10. On the basis of the facts and materials available in the counter-affidavit and Exts.P4 and P3, it can be safely concluded that the unladen weight of the vehicle in question is 735.350 kgs. I venture to hold so, without directing the parties to have the vehicle weighed again, because the counter-affidavit has been sworn to by the competent officer, the 2nd respondent and the facts stated by him would lead only to the conclusion that I have arrived at.

In the result, the Writ Petition is allowed declaring that the Maruthi Zen vehicle bearing No. KL-7-L-4773 has an unladen weight of 735.350 kgs. The respondents are directed to take further actions as are required to secure the requirement of the writ petitioner in terms of the aforesaid declaration. No order as to costs.