Raghavan Vs. R.T.O.

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SooperKanoon Citation : sooperkanoon.com/722506

Court : Kerala

Decided On : Nov-24-1976

Reported in : (1977)6CTR(Ker)288

Appeal No. : O.P. No. 3964 of 1975

Appellant : Raghavan

Respondent : R.T.O.

Judgement :

K. K. Narendran, J. - Questions of some importance in the matter of payment of tax at the compounded rates under S. 4 of the Kerala Motor Vehicles (Taxation of Passengers and Goods) Act, 1963, for short the Act, arise for consideration in this original petition. The questions are : (1) Even though there was originally an endorsement in the certificate of registration regarding the composition fee payable, a further endorsement was made by the Regional Transport Officer. By the endorsement the operator was also directed to pay the arrears of composition fee for four months immediately. On the day next to the date on which the further endorsement was made, composition fee payable for the period covered by the endorsement was paid by the operator. Can the operator be considered as a defaulter in the payment of the composition fee and assessed under S. 7 of the Act; and (2) Tax was enhanced and because of that a fresh endorsement had to be made in the certificate of registration. But the operator continued to pay the composition fee in time at the existing rate till the endorsement was made. As per the endorsement, the operator was directed to pay arrears amounting to Rs. 180/-. The operator paid the arrears only 11 days after the date of the endorsement. Will this Justify an assessment under S. 7 of the Act on the ground that the operator did not pay the composition fee within the time allowed by the Act and the Rules.

2. In this original petition the petitioners, a fleet owner, question Exts. P-1 to P-3 passed by the respondent Regional Transport Officer, Trivandrum. The facts which led to Exts. P-1 to P-3 are as follows : The petitioner was paying T.P.G. in respect of his vehicle KLT. 5675 regularly. But, according to the petitioner, the respondent issued orders assessing the petitioner on daily collections. Accordingly, a sum of Rs. 538.64 was demanded for the months of April, 1972 to August 1972, October 1972, October 1973 and April 1974. According to the petitioner, the order dated 27-1-1975 by which the petitioner was asked to pay the above sum of Rs. 538.64 was not served on the petitioner. The petitioner received Ext. P-1 proceedings dated 15-7-1975 imposing a penalty of Rs. 30 - for non-payment of the above amount. Similarly, a sum of Rs. 3237.91 was demanded from the petitioner by Ext. P-2 proceedings dated 19-6-1975 for non payment of composition fee in time in respect of the very same vehicle for the months of July 1974 and September to December 1974. Then, by Ext. P-3 memo the respondent directed the petitioner to remit the amounts claimed by Exts. P-1 and P-2. By Ext. P-3 the petitioner also was informed that the issue of clearance certificate of the vehicle will be considered only after the clearance of the dues claimed by Ext. P-3.

3. The respondent has filed a counter-affidavit. In para 7 of the counted-affidavit the details of the payments made by the petitioner showing the due dates and the dates of payment are given. It is also pointed out in para 13 that the petitioner did not exhaust the remedy by way of appeal available to the petitioner under S. 13 of the Act. The petitioner has filed a reply affidavit. In para 2 of the reply affidavit it is pointed out than an endorsement in the certificate of registration of the vehicle regarding the composition fee payable from April 1972 was actually made only on 8-8-1972 and the petitioner paid the composition fee for the months of April to August 1972 on 9-8-1972 the next day. Regarding the payment of composition fee for the months of April 1974 and September 1974, the averment in reply affidavit is that as the due dates were holidays, the payments were made on the next working

day and hence the payments have to be taken as made within time. Regarding the payment for the months of October, November and December 1974, the averment is that the petitioner made the payments at the existing rate in time. Thereafter, when an endorsement was made the certificate of registration on 19-12-1974 directing the petitioner to pay the composition fee at the enhance rate, the petitioner paid the balance of Rs. 180/- on 30-12-1974. The respondent has filed an additional counter affidavit also and it is pointed out in para 2 that as early as 7-10-1963 there was an endorsement in the certificate of registration of the vehicle regarding the payment of composition fee under S. 4 of the Act.

4. Learned counsel for the petitioner countends that in view of the endorsement dated 8-8-1972, the payment of composition fee on 9-8-1972 cannot be considered as out of time and the respondent has gone wrong in assessing the petitioner under S. 7 of the Act for the period for which the composition fee was paid on 9-8-1972. Regarding payment for the months of October 1972 and October 1973 the payments were made on the next working days since the due dates were holidays. According to the learned counsel, the same was the case as far as the payment for April and September 1974. Learned counsel then contends that as far as the composition fee for the months of September, October and December 1974, since the petitioner continued to pay the same at the rates then existed, even though the petitioner delayed the payment of the balance as per endorsement in the certificate of registration made in pursuance of the enhancement in the rate of tax, the petitioner cannot be considered as a defaulter and assessed under S. 7 of the Act. Learned Government Pleader appearing in the case contends that as there was as endorsement in the certificate of registration as early as 7-10-1963, the petitioner was bound to pay the composition fee in time for all the subsequent months. According to the learned Government Pleader, even though a fresh endorsement was made on 8-8-1972, the petitioners liability to pay tax as per the endorsement on 7-10-1963 continued. Regarding the composition fee for the months of October, November and December 1974, learned, November and December 1974, learned Government Pleader points out that the petitioner was asked to submit collection statement and the petitioner by Ext. R-2, as a matter of fact, submitted the same. Hence, according to the learned Government Pleader, the petitioner cannot now contend

that he is not liable to be assessed under S. 7 in respect of the above period.

5 As far as the payments made after the due dates on the next working days, in view of the fact that the due dates were holidays, it goes without saying that these payments are to be taken as payments made within time. As far as the payment of composition fee for the months of April to July 1972, though there was already as endorsement in the certificate of registration on 7-10-1963 in view of the fact that a fresh endorsement was made on 8-8-1972 can only be as per that endorsement dated 8-8-1972. As the composition fee for the above four months has been paid on the next day, it cannot be said that the payment was not within time. So, it cannot be said that the operator did not pay the composition fee in time and there was no justification in making an assessment under S. 7 of the Act for the above period. Regarding the payments for the months of October, November and December 1974, it is admitted that the petitioner was making the payment at the old rates in time. A fresh endorsement in view of the increase in the tax was made only on 19-12-1974 and as per that endorsement the petitioner was only directed to pay the balance of Rs. 180/- for the above period. In view of this endorsement, by no stretch of imagination it can be said that the petitioner-operator failed of the three months in question in time. The fresh endorsement became necessary because of an increase in the liability of the petitioner was only to pay a balance, an assessment under S. 7 of the Act cannot be made because S. 7 can be invoked only in a case where the composition fee is not paid in time. This is not a case of non-payment of the composition fee in time. As a matter of fact, the petitioner paid the composition fee at the rates then existed in time and had only to pay the balance in view of the increase in the rate of tax. The respondent was not justified in making an assessment under S. 7 of the Act on the assumption that the petitioner did not pay the composition fee at the enhanced rate in time.

6. It cannot be said that the petitioner cannot question the steps taken by the respondent to realise the tax before this Court. Under Article 265 of the Constitution, no tax shall be levied or collected except by authority of law. In this case, the demands are made not in accordance with law because assessments under S. 7 of the Act can be made only when the composition fee is not paid in time. As I have held that the petitioner has paid the composition fee in time for all

the months in question. Ext. P-3 demand cannot be with any authority of law. Hence the petitioner can approach this Court against the orders passed by the respondent. In view of what is said above in this judgment the respondent is bound to issue a clearance certificate of the vehicle in question and the respondent is directed accordingly.

7. Exts. P-1, P-2 and P-3 are quashed and the original petition is allowed. There will be order as to costs.