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Gracy Vincent Vs. State of Kerala

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Court : Kerala

Decided On : Nov-16-2005

Reported in : 2006(1)KLT7

Judge : Rajeev Gupta, C.J.,; K.S. Radhakrishnan and; Kurian Joseph, JJ.

Acts : Kerala Motor Vehicles Taxation Act, 1976 - Sections 3(3), 5, 5(1), 10, 23 and 24; Kerala Motor Vehicles Rules - Rules 5 and 10; M.P. Motoryan Karadhan Adhiniyam, 1991

Appeal No. : W.A. No. 121 of 2005

Appellant : Gracy Vincent

Respondent : State of Kerala

Advocate for Def. : Raju Joseph, Spl. Government Pleader For Taxes

Advocate for Pet/Ap. : V.B. Hari Narayanan, Adv.

Judgement :

K.S. Radhakrishnan, J.

1. Whether previous intimation claiming exemption from tax under Section 5 of the Kerala Motor Vehicles Taxation Act, 1976 read with Rule 10 of the Kerala Motor Vehicles Rules is a mandatory requirement for claiming exemption from payment

of tax is the question which has been referred for our consideration.

2. A Branch of this Court in Vairavan v. Joint Regional Transport Officer, 2001 (2) KLT 564, held that strict adherence to the provisions is warranted for claiming exemption from tax. When this appeal came up for hearing before another Bench, the Bench felt that the matter requires reconsideration by a larger Bench expressing doubt whether it is the content or the form which is more material for seeking exemption from payment of motor vehicles tax.

3. The Kerala Motor Vehicles Taxation Act, 1976 is an Act to consolidate and amend the laws relating to the levy of tax on motor vehicles which are used or kept for use in the State at the rates specified for such purposes in the schedule. Section 3(3) of the Act states that registered owner of, or any person having possession or control of a motor vehicle shall, for the purposes of the Act, be deemed to use or keep such vehicle for use in the State, except during any period for which no tax is payable on such motor vehicle under Sub-section (1) of Section 5. Section 3 states that tax shall be levied on every motor vehicle used or kept for use in the State. Levy is within the legislative powers of the State Legislature as Entry 57 List II authorises levy on motor vehicles suitable for use on roads. Presumption is that every vehicle is deemed to have been kept for use in the State except in cases where claim under Section 5(1) is made.

4. The Apex Court in Mahakoshal Tourist, Napier Town v. State M.P. : [2002]SUPP2SCR93 , interpreting the provisions of M.P. Motoryan Karadhan Adhiniyam, 1991 held that the presumption is that a motor vehicle for which a certificate of registration is current shall be deemed to be used or kept for use in the State. This is to ensure and safeguard the revenue of the State by relieving it from the burden of proving that the vehicle was used or kept for use on the public road of the State. At the same time, the interest of the bona fide owner is also safeguarded by enabling him to claim or obtain a certificate of non use from the prescribed authority and, in that case, the owner is required to give intimation of non-use. The above mentioned decision was followed by the Apex Court in Commissioner, Transport-cum-Chairman and Ors. v. Tapan Kumar Biswas, AIR 2004 SC 4417, and held that merely because the certificate of fitness was

cancelled, it could not be said that the vehicle had not been kept for use in the State. The Apex Court in State of Orissa v. Bijaya C. Tripathy, : (2004)7SCC139 , held that failure to give prior intimation and undertaking would lead to the presumption that the vehicle had been used or kept for use within the State.

5. The question that is posed for consideration in this case is whether the procedure laid down in Rule 10 read with Section 5 of the Act is to be scrupulously followed so as to claim exemption from tax. We may extract Section 5 as well as Rule 10 for easy reference.

Section 5

5. Exemption from tax.-- (1) In the case of a motor vehicle which is not intended to be used or kept for use during the first month or the first and second months of a quarter, or the whole of a quarter or year, as the case may be, the registered owner or the person having possession or control of such vehicle shall give previous intimation in writing to the Regional Transport Officer from whom the endorsement of tax has been obtained, that such vehicle would not be used for such period and thereupon, the registered owner or such other person shall not be deemed to have used or kept for use the vehicle for such period, and no tax shall be payable in respect of such vehicle for such period.

(2) Nothing in Sub-section (1) shall exempt a person from liability to pay tax in respect of a motor vehicle, if, on verification, it is found that the motor vehicle has been used during such period or any portion thereof.

(3) Notwithstanding anything contained in Sub-section (1), in an appeal under Section 23 or a revision under Section 24, the burden of proving that a motor vehicle has not been used during any period shall be on the registered owner or the person having possession or control of the motor vehicle, as the case may be.

Section 10

10. Exemption from tax (Section 5(1)).-- The previous intimation referred to in Sub-section (1) of Section 5 shall be made to the Regional Transport Officer concerned in Form G or in writing with the particulars required therein so as to reach him

within one week from the date of commencement of the period for which exemption from payment of tax in respect of the vehicle is claimed due to non-use.

(2) On receipt of the intimation, the Regional Transport Officer concerned shall certify, after such verification as may be deemed necessary, the non-use of the vehicle for the period for which tax is not payable, by making necessary endorsement in the certificate of registration of the vehicle.

The Apex Court in Salestax Commissioner v. Modi Sugar Mills, : [1961]2SCR189 , held: 'In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must took squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency'. Law is well settled that exemption clause has to be strictly interpreted. Provision providing an exemption may be construed strictly against the person who makes the claim for exemption. Reference may be made in this connection to the celebrated decision of the U.S. Supreme Court in Bank of Commerce v. State of Tennessee, 161 US 134, which reads as follows:

Taxes being made the sole means by which sovereignties can maintain their existence, any claim on the part of any one to be exempt from the full payment of his share of taxes on any portion of his property must, on that account, be clearly defined and founded upon plain language.In the light of the above mentioned legal principles we will examine whether strict interpretation of Rule 5 is warranted for claiming exemption from tax in the case of motor vehicles not intended to be used. The presumption that every vehicle which is having certificate of registration shall be deemed to have been used or kept for use in the State can be rebutted only if it is shown that it was not used for such period to the satisfaction of the Regional Transport Officer by following the procedure laid down in Section 5 read with Rule 10. Section 5 stipulates that registered owner or the person having possession or control of such vehicle shall give previous intimation in writing to the Regional Transport Officer from whom the endorsement of tax has been obtained, that such vehicle would not be used for such period and no tax shall be payable in respect of

such vehicle for the said period. Rule 10 stipulates that previous intimation referred to in Sub-section (1) of Section 5 shall be made to the Regional Transport Officer concerned in Form G or in writing with the particulars required therein so as to reach him within one week from the date of commencement of the period for which exemption from payment of tax in respect of the vehicle is claimed due to non-use. Though the Act stipulates previous intimation in order to entitle a person to get exemption rules have relaxed the rigor of exemption so as to give intimation within the period in respect of which exemption is claimed. Any person who gives intimation within one week from the date of commencement of the period for which exemption from payment of tax in respect of the vehicle is claimed will be entitled to exemption notwithstanding the insistence of prior intimation.

6. Rule 10 stipulates that prior intimation would reach the Regional Transport Officer within one week from the date of commencement of the period. Rule 10 as such has no rigour of Section 5 which has given one week's time to those persons who claim exemption to submit previous intimation. Sub-rule (2) of Rule 10 states that on receipt of the intimation, the Regional Transport Officer concerned shall certify, after such verification as may be deemed necessary, the non use of the vehicle for the period for which tax is not payable by making necessary endorsement in the certificate of registration of the vehicle. Regional Transport Officer is therefore entitled to make verification about the non user of the vehicle for the period for which exemption is claimed. Further, Note to Rule 10 also stipulates previous intimation shall be sent by registered post acknowledgment due or presented to the office of the Regional Transport Officer in person in the event of which acknowledgement of receipt shall be obtained.

7. We are of the view, reading of Section 5 along with Rule 10 would make it clear that prior intimation within one week from the date of commencement of the period for which exemption is claimed should be sent if exemption is claimed, which, in our view, is a mandatory requirement. Unless the requirement is complied with within the time limit specified it is not possible for the Regional Transport Officer to make any verification as to whether claim for exemption from tax is genuine or not. Mode of sending notice is also stipulated in the Note stating that previous intimation shall be sent by registered post acknowledgement due. This is to ensure

that such intimation has been received in the office of the Regional Transport Officer. Another mode of service is submission of the intimation in person in the event of which person has to receive an acknowledgment for its receipt. All these safeguards are intended to see that previous intimation be given within the stipulated time of one week from the date of commencement of the period for which exemption is claimed. Since person is claiming exemption from tax provisions have to be strictly complied with. In such circumstances, we are in argument with the reasoning of the Division Bench in Vairavan's case, supra, 2001 (2) KLT 564, that strict adherence to the provisions is necessary for claiming exemption from payment of tax.

8. Petitioner in this case is the registered owner of goods vehicle bearing registration number KL/12/6088. It is stated that the vehicle had met with an accident on 5.6.1997. Petitioner did not give any intimation in the prescribed form regarding non user of the vehicle subsequent to the date of the accident. Petitioner had made an application for exemption from payment of tax from 5.6.1997 to 16.7.1998 only on 6.7.1998. The same was rejected by the Regional Transport Officer on 15.9.1998 stating that exemption cannot be granted since no prior intimation in Form G was furnished. Petitioner filed appeal against the order passed by the RTO which was rejected by the Deputy Transport Commissioner which was confirmed in revision by the Government.

9. Learned Single Judge took the view that the procedure laid down under Section 5(1) read with Rule 10 is a mandatory requirement and failure to submit Form G as prescribed in the Rules would disentitle the petitioner from claiming exemption from tax. We are in agreement with the reasoning of the learned Single Judge. Therefore, the Writ Appeal lacks merits and the same would stand dismissed and the reference is answered accordingly.

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