

Balan Vs. State of Kerala

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Court : Kerala

Decided On : Dec-10-2003

Reported in : I(2004)ACC749; AIR2004Ker129; 2004(1)KLT479

Judge : G. Sivarajan, J.

Acts : Kerala Motor Vehicles Taxation Act, 1976 - Sections 3, 3(5) and 4; [Motor Vehicles Act, 1988](#) - Sections 88(9); [Constitution of India](#) - Articles 14 and 19

Appeal No. : O.P. No. 8086 of 2002 etc.

Appellant : Balan

Respondent : State of Kerala

Advocate for Def. : Sojan James, Government Pleader

Advocate for Pet/Ap. : G. Hariharan, Adv.

Judgement :

G. Sivarajan, J.

1. The question that arises for consideration in all these cases is regarding the rate of motor vehicles tax to be applied to contract carriages having All India tourist permit operating regular interstate service under the provisions of the Kerala Motor Vehicles Taxation Act (for short 'the Act'). According to the petitioners, they are

liable to pay tax only at the rate as provided under Section 3(1) read with entry 7 of the Schedule to the Act. The petitioners also relied on circulars issued by the Transport Commissioner in support of their stand. According to the respondents the petitioners have to pay tax for each entry of the vehicle in the State as provided under Section 3(5) proviso.

2. The very question came up for consideration before this Court earlier in a batch of Writ Petitions O.P. No. 8528/2002 and connected cases. In that case the question arise as to whether the petitioners are entitled to pay tax for each month or minimum for a quarter as demanded by the respondents. This Court passed an interim order dated 27.3.2002 in the said Writ Petitions directing the petitioners to pay tax for a quarter. Based on the above, petitioners were remitting tax per quarter in advance from March, 2002 onwards. Subsequently, 3 out of the said Writ Petitions O.P. Nos. 8528, 8535 & 8555 of 2002 were disposed of by a common judgment dated 18.12.2002. The Single Bench after considering the provisions of Sections 3 and 4 of the Act and also the provisions of Section 88(9) of the [Motor Vehicles Act, 1988](#) held that it is a matter of option to the petitioners either to pay tax for each entry depending on the period of stay during that entry or to pay quarterly tax as provided under the Act. The first Writ Petition O.P. No. 8086/2002 was also one among the said Writ Petitions and therefore the decision in O.P. No. 8528/2002 will govern the said case also.

3. The case of the petitioners in the other cases also would normally be governed by the said judgment. However, the Transport Commissioner, Thiruvananthapuram has issued a circular dated 12.11.1993 (Ext. P3 in O.P. 8086/2002). The said circular refers to an earlier circular dated 9.12.1991 clarifying that the facility provided under G.O.(P) 81/91 PW&T; dated 23.11.1993 for payment of short time tax for 7 days/30 days in respect of public service vehicles registered and normally kept in any other State and authorised to ply in Kerala State under the authority of a special permit issued under Sub-section (8) of Section 88 of the Act is applicable to tourist vehicles covered by permits issued under Section 88(9) of the said Act. By the present circular the said facility available to tourist vehicles of other States for the payment of short term tax was withdrawn. The circular provided that one month/two months/quarterly tax may be

levied from such vehicles considering their months of entry in the State. The earlier circular was modified to that extent. The petitioners relied on this circular and pressed for direction to the respondents to receive from the petitioners for their vehicles on remitting payment of tax for one month/two months/one quarter tax following Ext. P3 circular. The petitioner have also sought for direction restraining the respondents from demanding tax for each entry into the State if tax for a quarter is paid for the respective vehicles. Thus in short the petitioners want to pay the tax in respect of their contract carriages, which are registered outside the State for use inside the State either monthly, by-monthly or per quarter. They have also sought for a direction restraining the respondents from demanding tax for each entry into the State if tax for a quarter is paid for the respective vehicles.

4. Respondents, on the other hand, relied on the provisions of Section 3(5) proviso to the Act and contend that the petitioners have to pay tax in respect of the contract carriages having all India tourist permit for each entry. Thus it is necessary to consider the relevant provisions of the Act and the Rules to test the correctness of the rival contentions. Before proceeding to consider the said contentions it is desirable to state the bare facts which are required for such adjudication. For convenience, I will state the facts of Writ Petition W.P.(C) No. 35200 of 2003.

5. The petitioner is an approved tourist operator recognized by the Government of India and is owner of tourist vehicles. The vehicles of the petitioner were registered recently and permit to operate as a tourist vehicle was issued by the Karnataka State Transport Authority. The petitioner has also remitted tax for the quarter ending 31.12.2003. It is the case of the petitioner that the Motor Vehicles Inspector as well as the Transport Commissioner had directed to collect tax for each entry into the State and that the checkpost authorities are harassing the petitioner whose vehicles are registered in other States. It is also stated that because of the compulsion the petitioner is remitting tax for each entry in the Check post. It is also stated that when the vehicles of the petitioner reached Walayar the Motor Vehicles Inspector attached to the Motor Vehicles Check Post at Walayar refused to accept motor vehicles tax in advance for one quarter as stipulated in Ext. P3 circular and had collected a sum of Rs. 5,000/- as tax for a

single entry which would mean that the petitioner will have to pay tax for each entry within the State of Kerala approximately tax or 45 entries at the rate of Rs. 5,000/- per entry whereas the quarter rate of tax payable is only Rs. 56,000/- for a vehicle.

6. Section 88 of the [Motor Vehicles Act, 1988](#) provides that except as may be otherwise prescribed, a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned. Section 88(9) which is relevant for the purpose of this case reads thus:

'88(9). Notwithstanding anything contained in Sub-section (1) but subject to any rules that may be made by the Central Government under Sub-section (14), any State Transport Authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for the whole of India, or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application and the provisions of Sections 73, 74, 80, 81, 82, 83, 84, 85, 86, Clause (d) of Sub-section (1) of Section 87 and Section 89 shall, as far as may be, apply in relation to such permits'.

7. The aforesaid provisions enable the State Transport Authority to grant permits in respect of the tourist vehicles valid for the whole of India or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified in such permit in which case certain provisions of the Act mentioned in the sub-section shall, as far as may be, apply in relation to such permits. In view of this violation the petitioners who are granted tourist permit in respect of their vehicles by the Karnataka State Transport Authority are entitled to be operated in the State of Kerala. Section 88(8) of the Motor Vehicles Act enables the State Transport Authority to grant permits to be effective for a limited period which shall not in any case exceed 4 months to authorise the use of a transport vehicle temporarily for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or for the purposes of a seasonal business, or to meet a particular temporary need, or pending

decision on an application for the renewal of a permit and may attach to any such permit such condition as it may think fit. The said provision, even though it is stated will apply as far as may be to permit granted under Section 88(9), has no application since there is no need for any temporary permit for any special occasion or otherwise when there is a permit already issued under Section 88(9). Hence in the present case there is no scope for application of Section 87 of the said Act.

8. Now I will come to the provisions of the Act regarding the motor vehicles tax to be paid in respect of a vehicle having a permit under Section 88(9) of the Motor Vehicles Act. Section 3 of the Act is the charging provision. Under Section 3 a tax shall be levied on every motor vehicle used or kept for use in the State, at the rate specified for such vehicle in the schedule. Sub-section (2) of Section 3 provides that the Government may from time to time, by notification in the Gazette, increase the rate of tax specified in the schedule. However, in the proviso, it is stated that such increase shall not in the aggregate exceed 50% of such rate. Under Sub-section (3) the registered owner of, or any person having possession or control of a motor vehicle shall, for the purposes of this 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 of the Act. Sub-section (4) provides that notwithstanding anything contained in Sub-section (1) the Government may, from time to time, by notification in the Gazette, direct that a temporary licence for a period not exceeding seven days or thirty days at a time may be issued in respect of any class of motor vehicles specified in the Schedule on payment of the tax specified in such notification. In such cases the provisions of Sub-section (5) of Section 3 will apply. It reads as following:

(5) The tax payable for a temporary licence in respect of a motor vehicle shall be-

(a) where a temporary licence is for a period not exceeding seven days, at the rate of one-tenth of the quarterly tax on that motor vehicle; and

(b) where the temporary licence is for a period exceeding seven days but not exceeding thirty days, at the rate of one-third of the quarterly tax on that motor vehicle.

Under Section 4 of the Act the tax levied under Sub-section (1) of Section 3 shall be paid in advance within such period and in such manner as may be prescribed by the registered owner or person having possession or control of the motor vehicle, for a quarter or year, at his choice, upon a quarterly or annual licence to be taken out by him. However, the proviso states that in the case of fleet owner, the Government may direct that the tax shall be paid in monthly instalments before such date, in such manner and subject to such conditions, as may be specified in the direction. Thus every registered owner or person in possession of a motor vehicle which is used or kept for use in the State is liable to pay tax as provided under the Schedule. The vehicles belonging to the petitioners are all contract carriages having tourist permit under Section 88(9) of the Motor Vehicles Act issued by outside the State authorities. According to the petitioners their vehicles being regularly used and operated interstate between Kerala and outside State. In the circumstances, the petitioners case would fall under Section 3(1) read with the Schedule. The only difference is that the said vehicles are not registered with the motor vehicles authorities in the State.

9. Here, it must be noted that since the vehicles are registered under Section 88(9) of the Motor Vehicles Act in the Karnataka State under which the petitioners are entitled to operate the vehicles in the State which are specified in their respective permits no permit under Section 87 of the said Act is required in respect of these vehicles. Therefore the provisions of Sub-section (4) of Section 3 of the Act which provides for temporary licence to be granted by the Government for a period not exceeding 7 days or 30 days at a time has no application. Sub-section (5) of Section 3 which deals with a situation covered by Sub-section (4) therefore has no application to the petitioners' case. However, the proviso to Sub-section (5) specifically says that in the case of vehicles covered with permit under Sub-section (9) of Section 88 of the [Motor Vehicles Act, 1988](#) and registered in any State other than the State of Kerala and entering the State of Kerala and staying therein, then, the tax payable for such vehicle shall be (a) if such stay does not exceed seven days one tenth of the quarterly tax; and (b) if such stay exceeds seven days but does not exceed 30 days one third of the quarterly tax. By virtue of the proviso to Sub-section (5) of Section 3 though it occurs in the context of temporary licence under Sub-section (3) and the tax payable in respect of the motor vehicles covered

by Sub-section (4) under Sub-section (5) since the proviso specifically meets the situation in respect of a permit granted under Sub-section (9) of Section 88 of the [Motor Vehicles Act, 1988](#) the said provision will have to be applied in respect of the matters covered by the said proviso. According to me in the present cases the said proviso has no application for the reason that on the admitted facts the said vehicles are being operated regularly on alternate days in a quarter and the proviso deals with a situation of stay not exceeding 7 days and not exceeding 30 days only.

10. According to me, since the proviso to Sub-section (5) of Section 3 has no application to the present case necessarily the provisions of Section 3(1) of the Act would apply in which case the tax has to be paid as provided in the schedule to the Act. Here, it must be noted that under Section 4 tax is payable for a quarter or year, at his choice by the registered owner or the person having possession or control of the vehicle upon a quarterly or annual licence to be taken out by him. The Schedule to the Act also, it must be noted that column (3) thereof provides for the rate of quarterly tax. Entry 7 of the Schedule deals with motor vehicles plying for hire and use for transport of passengers and in respect of which permits have been issued under the Motor Vehicles Act. Since the rate of tax is not in issue no further discussion with reference to item 7 is required. Rule 4 of the Rules provides for mode of payment of the tax and Rule 5 deals with the period within which tax shall be paid. In the category of vehicle item 4 deals with transport vehicles of other State permit to ply in the State. Under column 2 thereof the tax has to be paid before the commencement of the quarter or the date of issue of the permit if permit is issued within the quarter as the case may be.

11. On a conspectus of the provisions of Sections 3 and 4, read with Schedule to the Act and Rule 5 of the Rules I am of the view that so far as the vehicles of the petitioners which are regularly operated on the basis of a permit issued by the outside State authorities under Section 88(9) of the Motor Vehicles Act without any limitation of time, the petitioners are liable to pay tax on quarterly or yearly basis at the option of the petitioners at the rate provided under the Schedule. Of course, if the vehicles which are granted permit under Section 88(9) of the Motor Vehicles Act enter the State and stay in the State for a period not exceeding 7 days or enter

the State and stay here for more than 7 days but not exceeding 30 days certainly the provisions of the proviso to Sub-section (5) of Section 3 would apply for which the operators have to specifically mention the fact before the authority before whom the tax is paid in advance as contemplated under Rule 5 of the Rules. Of course in a case covered by the proviso to Sub-section (5) of Section 3 the operators have got an option either to pay the tax as provided under the proviso and or to pay tax as provided under Section 3(1) read with the Schedule, ie., quarterly tax. This will depend on the facts and circumstances of each case.

12. The stand taken by the department as already noted is that tax has to be paid for each entry of the vehicle in the State. A reading of the provisions of the Act and the Rules does not warrant such an interpretation. That apart it is against the very scheme of the Act discernible from the charging section, Section 3. The liability to tax under the Act, it must be noted, is not based on the entry of the motor vehicles inside the State but it is based on the use of the vehicle or keeping the vehicle for use in the State. The normal rule is to pay tax for the quarter or for the year at the option. What is provided under Section 3(5) is only an exception to the above rule for the benefit of the operators, who have no intention to use the vehicle for one quarter in full or for a major part of a quarter. If the view taken by the department is accepted as pointed out by the petitioners themselves the petitioners have to pay tax for a quarter (for 45 days since the petitioners are operating the vehicles in the State only for 45 days in the quarter, ie., on alternate days) Rs. 2,25,000/- against the quarterly tax payable at Rs. 56,000/-.

13. As already noted the proviso to Section 3(5) only provides a benefit to vehicles covered by permits under Sub-section (9) of Section 88 and not to saddle them with huge liability. If the view taken by the department is accepted it will be discriminatory and will offend the provisions of Articles 14 and 19 of the [Constitution of India](#).

14. As already noted a Single Bench of this Court in the judgment dated 18.12.2002 in O.P. No. 8528 of 2002 and connected cases had considered a similar situation where the parties contended that they are liable to pay tax only at the rate provided under the proviso to Sub-section (5) of Section 3 of the Act and

the department contended that the operators have to pay tax as provided under Sub-section (1) of Section 3 read with the Schedule. The learned Judge in that case considered the matter and observed thus:

'If the petitioners have permit for regular operation and the petitioners rather visit the State several times during the period they have permit, the petitioners are liable to pay tax as provided under Section 4(1) of the Act which is quarterly or annual tax as the case may be. The notification referred to by the petitioners is of course a reiteration of Section 3(5) of the Motor Vehicles Taxation Act and there is nothing new about it. If the petitioners have obtained permit for temporary use of the vehicle, then of course the tax payable shall be under Clauses (a) and (b) of Section 3(5), whereas if the petitioners have obtained interstate tourist permit under Section 88(9) of the [Motor Vehicles Act, 1988](#), then of course the tax will be payable in accordance with Clauses (a) and (b) of proviso to Section 3(5) of the Act which provides for levy of tax for each entry pending on the period of stay. It is, therefore, a matter of option to the petitioners either to pay tax for each entry depending on the period of stay during that entry or to pay quarterly tax as provided under the Act. As already pointed out, the scheme of levy of tax on vehicles covered by permits issued under proviso to Section 3(5) does not amount to an offer to pay tax for a period of seven days or thirty days as the case may be, irrespective of the number of visits during that period'.

15. Though the petitioners have relied on the circular (Ext. P3) in O.P. No. 8086/2002 it is unnecessary to consider the matter independently in view of the fact that the said circular is consistent with the view which I have already taken in the matter. For all these reasons the petitioners in all these cases are entitled to remit tax on quarterly basis as provided in Sections 3 and 4 read with the Schedule since they are regularly operating service of their vehicles in the State on the basis of permits issued by the Karnataka State authorities under Section 88(9) of the [Motor Vehicles Act, 1988](#). Here, it is made clear that the petitioners are entitled to have the option either to pay tax as provided under the proviso to Sub-section (5) of Section 3 of the Act or to pay tax quarterly as provided under Section 4 of the Act. However that will depend on the facts and circumstances of each case.

16. In O.P. No. 8086/2002 the petitioner wanted to pay tax as provided under the proviso to Sub-section (5) of Section 3. As already noted, this will have to be decided on the basis of the facts of the case, viz., whether the said vehicles are being operated only for a period less than 7 days or for a period exceeding 7 days but not more than 30 days. If the petitioner is insisting that the respondents must receive tax under the proviso to Sub-section (5) of Section 3 and not on quarterly basis then the petitioner has to declare the stay during each visit and based on that tax will be collected by the department.

These Writ Petitions are disposed of as above.

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