

**Dabade Vs. Secretary-ksta**

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**Court :** Karnataka

**Decided On :** Sep-03-1985

**Judge :** K.A. Swami, J.

**Acts :** [Karnataka Motor Vehicles Taxation Act, 1957](#) - Sections 3(3), 12, 12A and 12B; Motor Vehicles Taxation(Amendment) Act, 1976

**Appeal No. :** W.P. No. 22077 of 1982

**Appellant :** Dabade

**Respondent :** Secretary-ksta

**Advocate for Def. :** Abdul Khadar, HCGP

**Advocate for Pet/Ap. :** B.R.S Gupta, Adv.

**Disposition :** Petition dismissed

**Judgement :**  
ORDER

**K. A. Swami, J.**

1. The petitioner is the registered owner of the vehicle bearing Registration No. MTL 5245 the permit of which was countersigned by the Karnataka State Transport Authority under CSB. No. 2405. The vehicle was checked on 25-11-

1981 near Kagwad Police Station at 5.10 p.m. and the Authorities found that tax had not been paid from 1-10 1980. The Checking Report was prepared in the presence of the driver of the vehicle who signed on the Report. On coming to know of it, the petitioner paid the tax due from 1-10-1980 to 31-12-1981 on 5-12-1981 and filed an application before the respondent on 8-2-1982 stating that he has paid the tax for the quarter ending 31 -3-1982 and for the previous period the tax had been collected at Belgaum. He therefore, requested for levying smaller penalty. Pursuant to that, the respondent levied a nominal penalty of Rs. 6,075/-- and intimated the same to the petitioner by the Endorsement dated 6-3-1982 bearing No. TAX 2/STA/MTL 5245/CSB. 2405. The said endorsement reads thus:

'With reference to the above, I am to inform you that the Secretary KSTA in Karnataka, Bangalore has levied Nominal Penalty of Rs. 6075-00 for the period from 1-10-80 to 31-12-1981 in respect of M.V. No. MTL 5245 C/s No. 2405. Therefore, you are hereby directed to pay the same within seven days from the date of receipt of this endorsement, failing which action will be taken as per the K.M.V.T. Act, 1957 and Rules.'

The validity of this endorsement is challenged in this Writ Petition under Article 226 of the Constitution.

2. Sri. Gupta, learned Counsel for the petitioner, has advanced the following two contentions :

i) The public carrier vehicle in question is registered with the Government of Maharashtra and is covered by the Inter-State Agreement between the States of Maharashtra and Karnataka dated 24-9-1979 published in the Karnataka Gazette dated 28-9-1979 under Notification No. HD 184 TMI 76 dated 26-9-1979 and as such the tax is payable only according to the terms and conditions of the Inter-State Agreement and not according to the provisions contained in the [Karnataka Motor Vehicles Taxation Act, 1957](#), and the Karnataka Motor Vehicles Taxation Rules (hereinafter referred to as the Act and the Rules) and that under the Agreement there is no provision for levy of penalty therefore, the levy of penalty is without the authority of law.

ii) That the penalty cannot be levied unless conviction is recorded by the competent Court as per Section 12 of the Act.

3. In support of the second contention, learned Counsel for the petitioner has placed reliance on two decisions of this Court in *Chamundi Construction Company v. State of Mysore and Ors.*, 1961 Mys. L.J. 544 and in *V. Narayana Reddy v. Commissioner for Transport In Mysore and Anr.*, 1971 (2) Mys. LJ 319.

Contention No. (1) :

4. It is not in dispute that the permit relating to the vehicle is question is covered by the aforesaid Inter-State Agreement. Therefore, in order to appreciate the contention advanced on behalf of the petitioner, it is necessary to advert to the relevant portion of the agreement on which reliance is placed by learned Counsel for the petitioner, i. e, Para. VI Clause 2(3)(b). The said portion reads as follows :

'2(3) All public carriers and private carriers, plying on substantive permits countersigned by the Transport Authority of the reciprocating State in terms of Paragraphs IV and V above respectively :

(a).... ....

(b) shall, in respect of vehicles registered in Maharashtra and plying into Karnataka, be liable to pay motor vehicles tax to Karnataka at the rate of rupees fifteen per metric tonne or part thereof, per mouth of the pay load, that is, the registered laden weight less the U.L.W.'

On the basis of the aforesaid provision in the Agreement it is contended that tax is payable as per the terms of the Agreement and there is no provision in the Agreement for levying penalty in case of non-payment of tax, therefore, the penalty is without the authority of law.

5. In addition to relying upon the aforesaid provision in the Agreement, learned Counsel for the petitioner has also placed reliance on Sub section (3) of the Section 3 of the Act which provides that in the case of motor vehicles in respect of which any reciprocal arrangement relating to taxation has been entered into

between the Government of Karnataka and any other State Government, the levy of tax shall, notwithstanding anything contained in this Act, be in accordance with the terms and conditions of such reciprocal arrangement. Proviso to the said sub section on further provides that the tax leviable under any such arrangement shall not exceed the tax leviable under the Schedule and that the terms and conditions of every such reciprocal arrangement shall be published in the Official Gazette, and a copy thereof shall be laid before the State Legislative Assembly.

6. On the basis of the aforesaid Sub-section (3) of Section 3 of the Act and the terms and conditions contained in the aforesaid Agreement which are referred to above, it is submitted that the provisions relating to penalty as contained in Section 12 and 12B of the Act and Rule 29 of the Rules are not applicable. It appears to me, that it is not possible to accept such a contention. What the Agreement provides is only the rate of tax payable. It does not provide for the mode of recovery of the tax and the penalty leviable for non-payment of tax. The Agreement fixes the maximum amount of tax leviable on the Vehicles registered in the State of Maharashtra and plying in the State of Karnataka under the aforesaid Agreement. Sub-section (3) of Section 3 of the Act also provides for the tax payable in respect of such Vehicles as per the provisions and the terms of the Agreement. It is also not possible to hold that the tax payable is levied under the Agreement. No tax can be levied under an agreement entered into by State Governments Tax is leviable under the law made by the legislature. Therefore, it is not possible to hold that it is the Agreement that levies tax and not the Act in question. The Act in question levies tax ; but (he rate of tax in respect of the vehicles covered by the Agreement in question is allowed to be fixed under the Agreement Therefore, levy of tax is by the Act in question and not by the Agreement, Therefore, Sections 12 and 12B of the Act are attracted because Section 12 of the Act deals with penalty for non-payment of tax leviable under the Act and Section 12B of the Act deals with composition of offences committed or reasonably suspected of having been committed in respect of non-payment of tax. in the instant case, it is not in dispute that the tax for the period from 1-10-1980 to 31 12-1981 according to the rate fixed under the Agreement in question was not paid until 5-12-1981. The tax was paid on 5-12-1981 pursuant to the Checking Report made on 25-11-1981. It has been treated as voluntary payment, on detection, because pursuant to the Checking

Report no notice as required under Rule 29 of the Rules had been issued and the petitioner had come forward with an application requesting that nominal penalty may be levied. The said application dated 8-2-1982 reads thus :

'I am to state that the tax for the QE 31-3-1982 has been paid by me and for the previous tax has been collected in Belgaum the Endorsement has been submitted. So I request you kindly to levy the smaller penalty.'

7. Section 12B of the Act specifically provides that the prescribed officer may accept, in the prescribed manner, from any person who has committed or is reasonably suspected of having committed an offence punishable under Sub-sections (1) and (3) of Section 12 such sum of money as may be prescribed, by way of composition of the offence which such person has committed or is reasonably suspected of having committed and on the payment of such sum of money to the presented officer, such person, if in custody, shall be set at liberty and no further proceedings shall be taken against such person with reference to the same act. Thus the effect of composition of offences under Section 12B of the Act is that the person who has committed an offence by non-payment of tax would not be liable to criminal prosecution and, even if a prosecution is pending, it will have to be dropped ; because, the Section says that the person in custody shall be set at liberty and no farther proceedings shall be taken against him with reference to the same act.

8. It is contended that Rule 29 of the Rules is not attracted, because no notice is issued as per Sub-rule (1) of Rule 29. No. doubt, no notice has been issued ; but, in the instant case, the respondent has filed a memo of calculation stating that the case tails under Rule 29 (B)(ii) of the Rules. The said memo reads thus :

'1. The petitioner is due tax in respect of Motor Vehicles bearing Registration No. MTL 5245 for the period from 1-10-1980 to 31-12-1981 amounting to Rs. 2,250/-. This amount was paid by the petitioner on 5 -12-1981. The petitioner, on an earlier occasion, had failed to pay tax within time for the period from 1-1-1980 to 30-6-1980 and that offence was compounded after the payment of tax on 5-1-1982. A smaller penalty of Rs. 148-50 was levied upon the petitioner and that amount was paid by the petitioner on 5-1-1982. The tax for the period from 1-10-1980 to 31-32-

1981 and the petitioner requested for levying of smaller penalty as required under Rule 29-B of the Karnataka Motor Vehicles Taxation Rules (hereinafter referred to as the 'Rules') vide his letter dated 8-2-1982. Accordingly, the Respondent has levied a smaller penalty of Rs. 6,075/- which is 30 per cent of Rs. 20,250/- as provided under Rule 29-B of the Rules. The circulation of the normal penalty is arrived at as shown below:

Penalty is levied at the rate of Rs. 450/- per month and for 45 months of default, the total amount due comes to Rs. 20,250/-. The smaller penalty levied on that amount works out to Rs. 6,075/-.

2. The penalty in respect of quarter ending 12/81 the tax ought to have, been paid on or before 15-10-1981 and there is delay of 3 months in payment of tax in respect of that period. The tax quarter ending 9/81 ought to have been paid on or before 15-6-1981 and there is a delay of 6 months in payment of the same. Accordingly, quarter ending 6/81, 3/81 and 30-12-1980, there is a delay of 9, 12 and 15 months respectively. Thus, the total months of default comes to 45 months and the normal penalty works out to Rs. 20,250/.

3. It is submitted that there is no irregularity in the calculation of the tax liability as the same has been calculated as provided under the provisions of Rule 29 A(c) and Rule 29 B(ii) of the Rules. The calculation is in order and as such, the Writ Petition, as brought out, is liable to be dismissed. Apart from this, the order is appealable under Rule 31 of the Rules.'

Thus, it is submitted by the respondent that the petitioner did not pay tax for the period from 1-1-1980 to 30-6-1980 in time and that offence was compounded on payment of tax and penalty. As it is already pointed out, the petitioner has voluntarily paid the tax after the due date and has prayed for imposition of a nominal penalty and it is on that basis the penalty in question has been levied. The tax due is for the period from 1-10-1980 to 31-12-1981. This period is divided into 5 quarters, viz., 1-10-1980 to 31-12-1980, 1-1-1981 to 31-3-1981, 1-4-1981 to 30-6-1981, 1-7-1981 to 30-9-1981 and 1-10-1981 to 31-12-1981. In respect of the first quarter, there is a delay of 15 months and in respect of the second quarter, the delay is of 12 months. Similarly, in respect of the third, fourth and fifth quarters, the

delay is of nine months, six months and three months, respectively. Thus, the total delay is of 45 months. Under Rule 29 of the Rules, the penalty is leviable for each month's delay on the basis of the tax payable per year. It is submitted that the tax payable in respect of the vehicle in question is Rs. 450/- per quarter which comes to Rs. 1,800/- per year. Under Rule 29(1)(A) of the Rules, the normal penalty by way of composition for the offence is determined in accordance with the provisions contained in Clauses (a) to (c) thereof. The amount of penalty, if the offence falls under Clause (a) of Sub-section (1) of Section 12 of the Act, shall be for each month or part of the month for which the tax was due and has not been paid. A sum equivalent to 1/16th of the amount of tax payable for a period of one year if the offence is reported voluntarily by or on behalf of the accused, and in case if the offence is not reported voluntarily by or on behalf of the accused 1/8th of the tax payable by the accused for a period of one year. In the instant case, the offence of non-payment of tax falls under Clause (a) of Sub-section (1) of Section 12 of the Act. Clause (c) of Rule 29(1)(A) of the Rules, further provides that the sum payable by way of penalty shall be double the amount prescribed in Clause (a) or (b), if the accused has been previously convicted under Sub-section (1) of Section 12 of the Act, or has previously paid under Section 12(B) of the Act, the penalty by way of composition for a similar offence. In the instant case, as pointed out above, the tax payable for the vehicle in question per year comes to Rs. 1,800/-. The normal penalty, in the instant case, as per Clause (c) of Rule 29(1)(A) of the Rules, shall be double the amount prescribed in Clause (a) or (b) of Rule 29(1)(A) of the Rules, as in the instant case, the petitioner had previously compounded the similar offence by paying the small penalty of Rs. 148-50p for default in payment of the tax in time for the period from 1-1-1980 to 30-6-1980. The normal penalty comes to Rs. 20,250/-, because the tax payable per quarter is Rs. 450/- and there is a delay of 45 months in paying the tax as and when it became due. Therefore Rs. 450x45 comes to Rs. 20,250/-. The instant case is governed by Rule 29(1)(B)(ii) and not by Rule 29(1)(A) of the Rules, in view of the fact that the tax was paid voluntarily though after detection without waiting for service of notice in writing as per Rule 29(1) of the Rules. Non-payment of tax was detected on 25th November, 1981 during the course of checking the vehicle. On 8-2-1982 the petitioner, on paying the tax made an application with a request to impose a

nominal penalty for compounding the offence. This application has been accepted by the respondent and the nominal penalty has been imposed. The nominal penalty, in The instant case, has to be calculated according to Rule 29(1)(B)(ii) of the Rules, which provides that where the offence is reported voluntarily for the second time by or on behalf of the accused, 25 per cent of the normal penalty; but where the offence is detected for the second time, 30 per cent of the normal penalty can be imposed. The petitioner, as pointed out above, on the earlier occasion, for the period from 1-1-1980 to 30th June, 1980 committed a default in payment of tax which he compounded on 5-1-1982 by paying a small penalty of Rs. 148-50p. Thus, it was for the second time the tax has been paid voluntarily after it was noticed without awaiting for the issue of notice. Therefore, the normal penalty of Rs. 6,075/- being 30 per cent of the normal penalty, has been levied as per Rule 29 (1) (B) (ii) of the Rules. Thus, the imposition of Rs. 6,075/- by way of nominal penalty is correct and does not call for interference. Accordingly, contention No. 1 is negatived.

9 Contention No. (ii) : The contention is that unless conviction is recorded by a Court, penalty is not leviable. Having regard to the Karnataka Act No. 38 of 1976 by which Sections 12A and 12B have been inserted, it cannot be accepted. The aforesaid two decisions - Chamundi Construction Company, and V. Narayana Reddy's Case<sup>2</sup>-relied Upon by learned Counsel for the petitioner are rendered when Sections 12A and 12B were not on the Statute book. They were inserted to cover the situation that was brought about by reason of the aforesaid two decisions enabling the prescribed officer to impose the penalty in the prescribed manner on a person who has committed or is reasonably suspected of having committed an offence punishable under Sub-sections (1) and (3) of Section 12 of the Act and permit compounding of the offence, if the person who has committed or is reasonably suspected of having committed the offence agrees to compound the offence. In the instant case, as it is already pointed out, the petitioner himself has filed an application voluntarily to compound the offence for non-payment of tax in the time by levying a nominal penalty. It is pursuant to that request, the penalty in question has been levied. Accordingly, Contention No. (ii) is rejected.



10. In view of the legal contentions raised regarding the very competence of the respondent to levy the penalty, I have considered the case on merits. Therefore, it is not necessary to consider the contention of Sri Abdul Khader, Learned High Court Government Pleader, that the order in question is appealable under Rule 31 of the Rules

11. For the reasons stated above, this petition fails and the same is dismissed.

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