

02-25771/TC/84.

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Circular No. 12/90

Office of the Transport Commissioner,
Thiruvananthapuram, dt. 23.11.1990.

10:- M.Vs. - Grant of Tax exemption for the 2nd and 3rd month of the Quarter - instruction issued.

The Hon'ble High Court of Kerala, in the Judgement in C.P.No. 9865 of 1983, observed that the Regional Transport Officer Kozhikode has not followed the decision of the Full Bench of the Court in 1982 KLT.166, which he was bound to. In the said judgement the Court have held that the Regional Transport Officer had erred in refusing exemption to the Petitioner for the 2nd and 3rd months of the quarter.

The attention of all the Deputy Transport Commissioners, Regional Transport Officers and Sub Regional Transport Officers are invited to the direction contained in the above Judgement for their guidance.

A copy of the judgement is enclosed for reference..

Sd/-
Transport Commissioner.

Approved for Issue.

[Signature]
Senior Superintendent.

To All DTCS, RTOS, JT.RTOS, MTS.
23.11.90

V.S.MALIMATH, C.J. & V.BHASKARAN NAMBIAR J.
O.P.No.9865 of 1933-K

Dated this, Friday the 8th of April, 1988.

JUDGMENT

BHASKARAN NAMBIAR J.

This Original petition was referred along with O.P No.7594 of 1982 by a learned single Judge of this Court. O.P.No.7594 of 1982 is disposed of today by a separate judgement. We have reiterated the view taken by us in Velayudhan Iadar v. State of Kerala (1986 K.L.T.633). In the light of the decision of the Supreme Court in Travancore Tea Co. Ltd. v. State of Kerala (1980 K.L.T.568) and the Full Bench decision of this court in K.R.K.V. Motor and Timbers (P) Ltd. v. Regional Transport Officer (1982 K.L.T.166) and the decision in 1986 K.L.T.633 and the judgment now delivered in O.P.No.7594 of 1982, the contention of the petitioner that he is not liable to pay tax notwithstanding the fact that he has not obtained exemption under section 5 of the Act, cannot be accepted. The petitioner filed an application for exemption from payment of tax for the quarters ending 30.9.1983 and 31.12.1983. The application for exemption for the quarter ending 31.12.1983 was not within the time stipulated under Rule 10 and section 5 of the Act and therefore the 1st respondent was right in disallowing that claim.

2. Regarding claim for exemption for the quarter ending 30.9.1983, the application for exemption was made within time.

3. The Regional Transport Officer accepted the case of the petitioner that the vehicle was not used during August and September, 1983 but was used only in the month of July, 1983. Even then, exemption was not granted for August and September, 1983, on the ground that the vehicle was used for the first month of the quarter.

4. This Court has held in the Full Bench decision in 1982 K.L.T.166 that the RTO has no authority to refuse exemption under such circumstances. Following the same judgment, it is held that the RTO was wrong in refusing exemption to the petitioner for the second and third month of the quarter, namely, August and September, 1983. The order, Ext.P3, is therefore set aside to the extent it held that the petitioner is liable to pay tax for the quarter ended 30.9.1983. We hold that the petitioner was not liable to pay the vehicle tax for August and September, 1983 and if any, tax has been paid for those months, the same will be refunded to the petitioner. It will be open to the petitioner to make an application for refund under section 6 of the Act if he has already paid tax in respect of the quarter ending 30.12.1983 and if such an application is filed, the 1st respondent will consider the same on the merits and dispose it of according to law, after ascertaining whether the petitioner had used or kept for use his vehicle for the three months in that quarter. The Original Petition is allowed to this extent and disposed of accordingly with the above observations. As the RTO has not followed the decision of the Full Bench of this Court in 1982 K.L.T.166, which he was bound to follow, he shall pay the cost to the petitioner, the Advocate's fee being fixed at Rs.150/-.

Please give one copy.

Sd/- V.S.Malimath, Chief Justice.

Sd/- V.Bhaskaran Nambiar, Judge.

True Copy/