

A 10/19/17 -149- 4650 ✓
B1-43/TC/2003.

Head Office,
Motor Vehicles Department,
Thiruvananthapuram,
Dated: 21.4.2003.

Circular No.21/2003

Ref:- Circular 20/2002 issued from this office dated 19.8.2002.

A Circular No.20 dated 19.8.2002 was issued earlier from this office based on the judgement in OP No.8858 of 2002 (Haridas V District Collector) clarifying that there is no need to file form G for claiming tax exemption for those vehicles which is in the custody of Police for non-payment of tax and that for that period no tax is payable.

Against this judgement the Regional Transport Officer, Kollam had filed a writ appeal before the Hon'ble High Court. The Hon'ble High Court vide judgement in CMP No.360/2002 in WA No.1429/2002 dated 25.11.2002 stayed the operation of the judgement, in OP No.8858/02. As such the direction contained in the OP No.8858/02 was kept pending till the disposal of the WA No.1429/02.

Now the WA No.1429/02 dated 10.12.2002 has been allowed setting aside the judgement. It is held that tax exemption is available only in respect of vehicles which are taken into custody by police or other authorities for offences other than non-payment of tax. Therefore if the vehicle is detained for non-payment of tax, the vehicle is not eligible for exemption from payment of tax. The Hon'ble Court has relied on the decision of the Division bench of the Hon'ble High Court in WA 82/86 also.

In view of the above judgement the, Circular 20/2002 is hereby cancelled.

- 150 -

All the subordinate officers are directed to note the legal position laid down by the Hon'ble High Court and act accordingly. A copy of the judgement is enclosed herewith for information.

The receipt of the circular may be acknowledged.


Transport Commissioner.

To

All Dy. Transport Commissioners.

All Regional Transport Officers & Joint Regional Transport Officers.

Copy to: CA to TC/Addl. TC, Secretary, STA, Sr. DTC (Tax), AO, LO, FO,
Senior Supdt.

s.a.21.4.03

G.SIVARAJAN & P.R. RAMAN, JJ.
W.A.NO.1429 OF 2002
JUDGEMENT

Sivarajan.C.

The respondents in O.P.No.8858/2002 are the appellants. The 1st respondent in this writ appeal has filed a writ petition seeking to quash Exts. P1 and P2 demand notices. He is the registered owner of a stage carriage bearing Registration No. KRC.9340. The said vehicle was seized by the 4th appellant for non-payment tax due in respect of the said vehicle.

2. The learned Single Judge has taken the view that when the vehicle was in the custody of police or for that matter any other Government Agency, there is no need to file Form 'G' for claiming exemption and that since the ingredient in the main charging Section 3 (1) is not satisfied, because the vehicle kept in the police custody was not kept for use or intended to be used during that period, there is no tax liability. The learned Single Judge accordingly held that there is no liability to pay the motor vehicle tax for the period from 1.4.2000 to 31.3.2002. The learned Single Judge, Accordingly directed the respondents (appellants herein) to release the vehicle to the petitioner (1st respondent herein) on the petitioner clearing the arrears of tax and additional tax in respect of the period other than the period mentioned above.

3. The learned Government Pleader appearing for the appellants submits that the judgement of the learned Single Judge is clearly against the judgement of the Division Bench dated 4th January, 1990 in W.A.No.82/86 and subsequent decisions.

4. We also heard the learned counsel for the respondents.

5. We find that a Division Bench of this Court in W.A.No.82/86 considered the very same question which is raised in this appeal regarding the liability to tax under the Motor vehicles Taxation Act for the period during which the vehicle was in the police custody for arrears of Motor Vehicles Tax. This is what the Division Bench has held:-

"So far as the period subsequent to seizure is concerned, the appellant contends that he he not liable to pay the tax. But sub-section (3) of section 3 expressly provides that the registered owner of or any person having possession or control of a motor vehicle shall, for the purpose 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. Having regard to the fiction created by sub-section (3) of Section 3, notwithstanding the seizure of the vehicle by the authorities, the appellant is deemed to have used or kept the vehicle for use in the State, attracting the tax liability under section 3 of the Act. The appellant could have taken recourse to sub-section (1) of section 5 of the Act by giving appropriate notice in accordance with the said statutory provision regarding non-use of the vehicle with effect from the date of the seizure by the authorities. Section 6 of the Act also enables the appellant to claim refund after payment of tax by establishing that the vehicle was not used for the particular period. The appellant not having taken action in accordance with sub-section (1) of section 5 is liable to pay tax. He can only claim refund in accordance section 6 after the tax is paid on his establishing that the vehicle was not used for the particular period during which it was seized for non-payment of tax. There is power under section 22 of the Act to give exemption from payment of tax. A notification has been issued by the State Government to that effect under section 22 dated 29.9.1975. It enumerates the class of vehicles which are exempted from payment of tax. Item 27 reads:-

"Motor vehicles already in the custody of the police or other authorities for offences other than non-payment of tax, for the period such vehicles are in custody."

Exemption is therefore available only in respect of vehicles which are taken into custody by police or other authorities for offences other than non-payment of tax. In other words, if the vehicle is taken into custody for non-payment of tax, the vehicle does not have the benefit of exemption from payment of tax. This further supports our finding that the appellant is liable to pay tax having regard to the provisions of sub-section (3) of section 3 notwithstanding the seizure of the vehicle for non-payment of tax. It is however open to the appellant to claim refund by invoking section 6 of the Act."

6. We also found that a learned Single Judge in the decision in Mani V. R.T.O., Thiruvananthapuram (1992 (2) KLt 615) has taken a similar view. We find that another learned Single Judge in the judgment dated 1st March, 1990 in O.P.No.1997/90 has followed the Division Bench decision in W.A.No.82/86 and rejected a similar claim. Since the issue raised in this writ appeal is squarely covered by the judgement of the Division Bench in W.A.No.82/86, we find that the judgement of the learned Single Judge impugned in this appeal cannot be sustained. We accordingly set aside the judgement of the learned Single Judge and dispose of the writ appeal subject

-153-

to the observations contained in the judgement in W.A.No.82/86 and extracted herein above. We also make it clear that nothing in this judgement shall stand in the way of the appellant claiming refund in accordance with the relevant provisions of the Act, after payment of tax..

The appeal stands disposed of as above.

Sd/-
G.SIVARAJAN, JUDGE.

Sd/-
P.R.RAMAN, JUDGE.

19th December, 2002.

CMP No. /2002 IN WA No.1429/2002

DISMISSED

Sd/-
G.SIVARAJAN, JUDGE.

Sd/-
P.R. RAMAN, JUDGE.

19th December, 2002.

/True Copy/

s.a.29.4.03