PROCEEDINGS OF THE TRANSPORT COMMISSIONER, TRIVANDRUM

Present: Shri.G.Gopalakrishna Pillai IAS

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Sub:- M.Vs.Dept. - C/C KLH.4423 - appeal dismissed R.P. filed - orders issued -

Read:- 1. R.P. dt. 7.3.89 filed by Smt.K.R.Uma, 345, Marar Road, Trichur-1.
2. Order No.C-1693/88/CZ-I dt. 15.1.89 of the Dy. Transport Commissioner, Central Zone I, Trichur.

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Order No.B2-9197/TC/89 dt. 20-1-1990

The Revision Petitioner's case is that she had sold the vehicle KLH.4423 to Sri.Sulaiman of Chittoor, Andhrapradesh on 25.8.88, that the vehicle was lying idle in Coimbatore from June 1988, that on 30.9.88, she had applied her N O C surrendering the contract Carriage Permit in respect of the vehicle for cancellation, which according to her became effective on the same date and acceptance by the Department is only a formality, and that therefore, there was no permit for the vehicle from 1.10.88. It is also the Revision Petitioner's case that the C.F. of the vehicle had expired on 30.9.88 and hence the vehicle was unable to be operated for want of C.F. It is a further point urged by the Revision Petitioner that the Department has no case that the vehicle was operated from 1.10.1988. The Revision Petitioner has also contensions that she could not file 'G' Form in time because of the delay in passing orders in her application for N.O.C. and that no proper enquiry was conducted before imposing tax. On the above grounds, the Revision Petitioner contends that she is not liable to pay tax in respect of the vehicle for the Q.E. 31.12.88 and if at all tax is leviable, it is not at contract carriage rate, but only at the rate applicable to Motor Car.

The main plea taken by the Taxation Officer as well as the Deputy Transport Commissioner in the appeal, is that the permit was valid till 1.10.88 since on that date only the application for N.O.C. enclosing the permit for surrender, was received in the R.T.Office, Trichur and, therefore, the vehicle tax being levied in advance, tax is payable in respect of vehicle for the QE.31.12.88 at contract carriage rate. Other objections raised by the respondents are that the Revision Petitioner has not given intimation of non-use in time in order to become eligible for exemption from payment of tax under section 5(1) of the KMVT Act and that she has not also applied for endorsement of tax at the rate for Motor Car.

The decision (1989 (1) KLT.902) relied on by the Deputy Transport Commissioner in the appellate order has no relavance or bearing in this case in that the actual issue in thetwo cases are different. The specific questions in this case are whether vehicle tax is leviable

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in respect of a contract carriage, the permit of which has been surrendered on the sale of the vehicle to a person in another state and which is alleged to have been removed out the state consequent on such sale and if leviable, at what rate, whether at contract carriage rate or at the rate applicable to motor car, as suggested by the Revision Petitioner. On the other hand the passage quoted in the appellate order from the Devision Bench decision of the Kerala High Court is the observation made by the court while considering the admissibility of exemption from payment of tax under section 5 (1) of the KMVT Act where no advance intimation of non-use was given in respect of the period for which exemption was calimed and the permissibility of conducting an independent enquiry by the authority concerned to find out whether the vehicle has been used or not during such period. No question of any surrender of permit or transfer of the vehicle out of the State was involved in that case.

The Revision Petitioner's contention is that the vehicle was lying idle in Coimbatore from June, 1988 and that the vehicle was not in Kerala State during the period in question; It is also claimed that the respondents have no jurisdiction to impose tax on the vehicle. Apart from the mere statement that the vehicle has been removed to Coimbatore, no evidence has been adduced by the Revision Petitioner to prove that the vehicle was actually removed out of the State. The Revision Petitioner is even unable to specify the place where the vehicle was actually kept. There is no merit in the contention of the Revision Petitioner that the respondents have no case that the vehicle was operated from 1.10.88 and that the tax was imposed without proper enquiry. Under section 24 of the KMVT Act, in an appeal under section 23 or a revision under section 24, the burden of proving that the vehicle has not been used in the state for any period rests on the registered owner. In the circumstances the contention of the Revision Petitioner that the vehicle was outside the State from June, 1988, without adequate proof to that effect, cannot be accepted. On the other hand the facts and circumstances of the case would go to show that the vehicle was in Kerala State itself during the period in question despite its sale, thereby attracting vehicle tax in Kerala.

The fact that the vehicle cannot be validly used for want of a fitness certificate does not make it any less payable. a vehicle not does it make the tax any less payable. So the contention of the revision petitioner that no tax is due in respect of the vehicle on the expiry of the fitness certificate cannot also be upheld.

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The next question for determination is the rate applicable to the vehicle during the period in question, whether it is at contract carriage rate or the rate applicable to motor Car, as represented by the Revision Petitioner. The rates of tax for different categories of Motor Vehicles are as given in the schedule to the Act. It is clause 4(1) which specifies the tax for Contract Carriages. The heading to clause 4 is "Motor Vehicles plying for hire and used for transport of passengers and in respect of which permits have been issued under the M.V.Act ..... In order to get payment of tax attracted at the rate specified in clause 4, three conditions must satisfy namely (1) the vehicle must be one plying for hire, (2) must be used for transport of passengers and (3) in respect of which a permit must have been issed. Again, the title of sub clause (i) of clause 4 itself is vehicle permitted to ply as contract carriages. So in order to attract tax at contract carriage rate for a vehicle under the KMVT Act 1976, a permit must have been issued to the vehicle. This requirement is not satisfied in the present case. In the present case, even according to the respondents the permit was surrendered and cancelled on 1.10.88. The objection appears to be only that as the permit was surrendered and cancelled only on 1.10.88, tax is payable for the 31.12.88 at Contract Carriage rate, as tax is payable in advance. Under Rule 215 of the KMV Rules, 1961, the holder of a permit may at any time surrender the permit and thereupon the permit shall be deemed to have been cancelled with effect from the date of such surrender. The cancellation of the permit on 30.9.1988 or 1.10.88 makes no difference with respect to the liability to pay tax for the 31.12.88, for the cancellation takes effect from the very date on which the tax becomes due. The vehicle must therefore, be deemed to have been without a permit on and from 1.10.88, not attracting tax at contract carriage rate.

Therefore the rate applicable to the vehicle has to be that specified in item 6 A of the schedule ie. at Car rate.

I have carefully considered the matter and order that as the permit was surrendered on 1.10.88, there is no tax liability for payment of tax under contract carriage rate for the period from 1.10.88 to 31.12.88. The rate of tax chargable will be under clause 6A of the scheduled to the KMVT Act 1976 for the above period.

Sd/-
Transport Commissioner.

To

Petitioner
Smt.K.R.Uma, 345, Marar Road, Trichur-I.

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