

(2016) 08 KAR CK 0050

KARNATAKA HIGH COURT (KALABURAGI BENCH)

Case No: Writ Petition No. 83491 of 2009.

Andhra Pradesh Tourist
Development Corporation,
Hyderabad - Petitioner @HASH
Assistant Regional Transport
Officer, Bidar and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 17, 2016

Acts Referred:

- Karnataka Motor Vehicles Taxation Act, 1957 - Section 16(1)
- Motor Vehicles Act, 1988 - Section 88(8), Section 88(9)

Citation: (2016) AIR(Karnataka) 182 : (2017) 1 AirKarR 392

Hon'ble Judges: Dr. Vineet Kothari, J.

Bench: Single Bench

Advocate: Mr. Amresh S. Roja and S.V. Krishnaswamy, Advocate, for the Petitioner; Mr. Syed Habeeb, AGA, for the Respondent 1 and 2

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Dr. Vineet Kothari, J. - The Andhra Pradesh Tourist Development Corporation (APTDC, for short) has approached this Court by way of the present writ petition aggrieved by the orders passed by the respondent taxation authorities of the Transport Department of the State of Karnataka and for quashing of the order passed by the 2nd respondent Deputy Commissioner for Transports dismissing its appeal No. 29/2007 vide order dated 15.10.2009 and the impugned assessment orders passed by the Assistant Commissioner and refusing to grant the exemption from payment of tax under the provisions of the Karnataka Motor Vehicles Taxation Act, 1957 despite exemption Notification dated 22.3.1994.

2. The petitioner APTDC claimed such exemption from payment of tax available to it on the basis of the Exemption Notification dated FTD 189 TMT 93 dated 22.3.1994 issued by the Government of Karnataka, in respect of buses plied by them on All India Tourist Permits inter alia, in the State of Karnataka also. The impugned orders passed by the learned Deputy Commissioner for Transports, Gulbarga has assigned the following reasons in the order dated 15.10.2009 for refusing such an exemption to the petitioner Corporation. The impugned order is quoted below for ready reference.

22. The issue that came up for consideration in the appeal No. 3/GLBG/Tax/2003-04 dated 19.8.2003 was that whether the passengers carried in the buses involved in the above said appeal are individually fare paid passengers travelling for their own purpose are whether carrying of such passengers constitute to be a vehicle termed as a Stage Carriage or whether the tax claimed by the respondent was in order. After examining the records of the respondent relating to the case it has been held that merely because individual passengers are carried in the vehicles it cannot be taxed. It may be pointed out that the appellant had produced a notification No. FTD 326 TMT 89 dated 15/19.12.1990 in the above said appeal before my predecessor in the office then which was not in force and which was superseded by Notification No. HTD 189 TMT 93 dated 22.3.1994 at the time of disposal of the appeal on 19.8.2003 and obtained the order. Hence this decision has no application to the facts of the case on hand since all the vehicles involved in the present appeals are vehicles which are covered by permits granted under Section 88(9) of the Act read with Rules 83-85 of the Rules for which no specific exemption from payment of tax has been granted by the State of Karnataka by issue of notification under Section 16(1) of Taxation Act.

23. In the light of my above discussions, I hold that there is no merit in any of the contentions urged by the appellant and there is no reason to interfere with the impugned orders of respondent and respondent was justified in demanding the tax. Hence, I proceed to pass the following:

ORDER

The appeals stand dismissed.

3. Learned counsel for the petitioner Mr. S.V. Krishnaswamy has submitted that the tax exemption Notification dated 22.3.1994 which applies to the present assessee Corporation for the period in question for which payment of tax has been demanded viz., 2006-07, does not contain any such restriction about the type of permit held by the petitioner Corporation and on the other hand, on the basis of a reciprocal arrangement, the State of Karnataka in exercise of its power under Section 16(1) of the Karnataka Motor Vehicles Taxation Act, 1957, has exempted the ITDC, State Road Transport Corporation and Tourism Development Corporations like the petitioner, from payment of tax under the Karnataka Motor Vehicles

Taxation Act of 1957. He urged that the proviso of that Notification dated 22.3.1994, admittedly, does not cover the case of the present petitioner as petitioner APTDC has not plied the buses in question on special permits under Section 88(8) of the Motor Vehicles Act. 1988. He, therefore, submitted that on a misreading of the clear provisions of the Notification dated 22.3.1994, the respondent Deputy Commissioner has failed to apply the exemption Notification to the petitioner and has refused to extend the benefit of exemption from tax to the petitioner Corporation on the buses plied by it within the State of Karnataka on all India Tourist Permits even though such buses were plied within the State of Karnataka with due authorisation issued in the prescribed Form 47 of the Central Motor Vehicles Rules. He, therefore, submitted that the impugned orders raising a demand of tax against the petitioner, passed by the Assistant Regional Transport Officer and the appellate order passed by the Deputy Commissioner Annexures C1 to C26 and Annexure D respectively deserve to be quashed by this Court.

4. On the other hand, Mr. Syed Habib, learned Addl. Government Advocate appearing for the respondent State and the Transport Department submitted that the permits obtained by the petitioner were under Section 88(9) of the Act and the Authorisations issued to the petitioner Corporation by the State Transport Authority of the State of Andhra Pradesh, Hyderabad, an illustrative Form 47 of which is produced by the respondent as Annexure R3, clearly stipulated that such permits are being issued subject to the payment of tax by the permit holder to the respective States of Andhra Pradesh, Karnataka and Tamil Nadu and therefore, the levy of tax in question was valid. He also submitted that the Notification dated 22.3.1994 contains the proviso which deals with permits under Section 88(8) of the Act viz., Special Permits and therefore, the petitioner Corporation was not entitled to exemption as claimed by it. He also drew the attention of the Court towards Annexure R1 Notification dated 20.12.1976 which was superseded by Annexure R2 dated 31.3.1981 which, as discussed below, are of no relevance to the controversy involved in the present case.

5. Having heard the learned counsel for the parties and upon perusal of the record, this Court is of the clear opinion that the present writ petition filed by the petitioner APTDC, a Government of Andhra Pradesh Enterprise, deserves to be allowed and the impugned orders passed by the Assistant Regional Transport Officer and the Deputy Commissioner of Transports, deserve to be quashed.

6. The Notification dated 22.3.1994 is quoted in extenso herein below for ready reference:

Government of Karnataka

No. HTD 189 TMT 93

Karnataka Govt. Secretariat

M S Building

Bangalore, dated 22.3.1994

Notification

In exercise of the powers conferred by sub-section (1) of Section 16 read with sub-section (3) of Section 3 of the KMFVT Act 1957 (Karnataka Act 35 of 1957) and in supersession of Notification No. HD 38 TMT 57, dated 15th May, 1958, HD 38 TST 57 dated 25th November, 1959, HD 72 TMT 61 dated 22.11.1962, HD 38 TMT 71 dated 2.11.1971 and HD 118 TMT 79 dated 25.7.1981 and FTD 326 TMT 890 dated 15.12.1990, the Government of Karnataka hereby exempts on reciprocal basis, the tax payable under the said Act in respect of motor vehicles belonging to the Indian Tourism Development Corporation or a State Road Transport Corporation or Tourist Development Corporation of Union Territory of Pondicherry or any other State except the State of Kerala and other than the State of Karnataka and the Taxes registered in Union Territory of Pondicherry or in any other State except the State of Kerala and other than the State of Karnataka with immediate effect.

Provided that such exemption shall not be available in respect of Motor Vehicles covered by Special Permits granted under sub-Section (8) of Section 88 of Motor Vehicles Act, 1988 by the Transport Authority of Union Territory of Pondicherry or any other State except the State of Kerala and other than the State of Karnataka to pick up and set down passenger in the State of Karnataka.

By order and in the name of the

Governor of Karnataka

Sd/-

(T.B. Renukaprasad)

Under Secretary to Govt.(Transport), (I/U)

Home and Transport Department

A bare perusal of the said Notification makes it clear that it has been issued in exercise of powers conferred under Section 16(1) of the Karnataka Motor Vehicles Act, 1957 which empowers the State of Karnataka to exempt prospectively or retrospectively the tax payable in respect of any class of motor vehicles or motor vehicles not in use on roads. The power to exempt tax of the State of Karnataka is not in dispute before this Court. A bare reading of the said Notification clearly shows that the Tourist Development Corporation of any State except the State of Karnataka and State of Kerala, which the present petitioner is not, is exempt from payment of tax on a reciprocal basis. Admittedly, the Proviso in this Notification which excludes the case of motor vehicles covered by Special Permits granted under Section 88(8) of the Central Motor Vehicles Taxation Act, 1988 does not cover the case of the

petitioner Corporation. This Court does not find any other restrictive condition in the main body of the Notification dated 22.3.1994 which justifies the denial of exemption from payment of tax to the petitioner Corporation. The learned Addl. Government Advocate appearing for the respondents could not point out any single reason, including the so called reasons assigned by the Deputy Commissioner in the impugned order, which could persuade this Court to hold against the petitioner that the said Notification dated 22.3.1994 does not apply to it.

7. The Notification Annexure R1 dated 20.12.1976 and Annexure R2 dated 31.3.1981 are of no relevance in the present case, as they neither pertain to the period in question viz., 2006-07, nor they deal with the case of All India Permit buses plied by the Tourism Corporations or the State Road Transport Corporations of other States within the State of Karnataka. These old Notifications which stood superseded by the Notification dated 22.3.1994 which covers the case of the petitioner unequivocally are of no relevance in the present case and therefore, the contention raised in this regard on behalf of the State, is liable to be rejected and the same is accordingly rejected.

8. In the opinion of this Court, learned Deputy Commissioner has entirely failed to appreciate the clear language, tenor and terms of the Notification dated 22.3.1994 even though he has referred to the same in the afore quoted para 22 of his order dated 15.10.2009 but then he has fallen in error in referring to Section 88(8) Special Permits only, which is not the case in hand. The Special Permits issued under Section 88(8) and not under Section 88(9) which were held by the petitioner APTDC of the Motor Vehicles Act, 1988 fall outside the ambit and scope of exemption Notification dated 22.3.1994 and no other category or type of permits are either specified or excluded from the ambit and scope of the Notification dated 22.3.1994 issued by the Government of Karnataka exempting the tax.

9. Therefore, this Court does not find any reason to hold that the exemption Notification dated 22.3.1994 was not applicable to the facts of the present case in the case of the petitioner assessee the APTDC and the denial of exemption to the petitioner assessee appears to be wholly unjustified and illegal.

10. The writ petition therefore, deserves to be allowed. The same is accordingly, allowed and the impugned orders passed by Respondent 1 Assistant Regional Transport Officer dated 23.4.2007 Annexures C1 to C26 and the Appellate Order passed by the Deputy Commissioner for Transports dated 15.10.2009 Annexure D, are quashed and set aside. No order as to costs.