Travancore Tea Estates Co. Ltd. and others

Vs

State of Kerala and Others

Civil Appeals Nos. 437-438 and 1460 of 1970

(P. S. Kailasam, Syed M. Fazal Ali JJ)

03.06.1980

JUDGMENT

KAILASAM, J. –

1. These three appeals are by special leave granted by this Court against the Judgment and Order of the High Court of Kerala in Writ Appeals 451, 630 and 807 of 1969 respectively. The questions that arise for consideration in all the three appeals are the same and can be dealt with together. As the facts so far as they are necessary for decision in these appeals are similar, we will confine the judgment to the facts in Civil Appeal 437 of 1970.

2. The appellant in Civil Appeal 437 of 1970 is Travancore Tea Estates Co. Ltd. Vandiperiyar in Kerala State. Respondent 1 is the State of Kerala and respondents 2 to 4 are the authorities functioning under the Kerala Motor Vehicle Taxation Act (Kerala Act 24 of 1963) which will hereafter be referred to as the 'Act', which was brought into force on July 1, 1963. The Act provides that "a tax at the rates fixed by the government by notification in the Gazette not exceeding the maximum rates specified in the First Schedule shall be levied on all motor vehicles used or kept for use in the State". The appellant-company owned 17 motor vehicles, tractors, trailers and lorries all of which are registered in the company's name under the Motor Vehicles Act. The company alleged that the vehicles were purchased by it solely and exclusively for use in the estates and intended to be use only for agricultural purpose and were not used nor kept for use in the State as contemplated under Section 3 of the Act. The company is a tea plantation having eight estates which lie contiguous to each other and have an extent of 9422.44 acres in the aggregate. The company for the purpose of plantation are maintaining roads fit for vehicular traffic in the eight estates covering a length of 131 miles in the aggregate. On September 23, 1964 a Bedford lorry owned by the company and bearing registration No. KLK-1540 was seized by the police and taken into custody under Section 13 of the Act. According to the appellant the seizure was effected in Tengamullay Estate which is one of the eight estates owned by the company. The company wrote to the Department on December 28, 1964 stating that the vehicle was being used for agricultural purpose on private roads in the estates and the company is not liable to pay tax and asked for the release of the vehicle. On the company paying a sum of Rs. 3,150 as tax under protest for the period between July 1, 1963 to December 31, 1964, the vehicle was released. The department proceeded to prosecute the appellant in the Peermade 1st Class Magistrate's Court and the case is still pending. The appellant-company filed O.P. 199 of 1965 before the High Court of Kerala claiming that they were not liable to pay any tax on the motor vehicles. The High Court by its Judgment dated March 3, 1966 directed the regional Transport Officer, Kottayam - respondent 2 herein, to examine the question raised in the writ petition and to pass final orders. It also directed that if the petitioner was aggrieved with the order he was at liberty to approach the High Court. In the meanwhile it directed

stay of prosecution and collection of tax. The matter was taken up for consideration by respondent 2. Respondent 2 rejected the pleas of the appellant and by his Order dated April 12, 1968 held that the 13 vehicles mentioned in the Original Petition were liable to pay tax under the Act. The appellant filed a petition before the High Court for appropriate relief. The High Court disposed of the petition O.P. 2173 of 1963 along with O.P. 2081 of 1968 filed by Peermade Tea Co, who are the appellants in C.A. 438 of 1970 in this Court, by a common Order dated December 19, 1968. The learned Judge held that the language in Section 3 of the Act showed that there is a departure from the legislative policy of restricting the tax liability only to vehicles using public roads. It held that the tax is imposed by Section 3 on all the motor vehicles used or kept for use in the State irrespective of any question as to whether they are used or kept for use on public roads or not. It rejected the contention on behalf of the appellant that legislature must be taken to have intended to levy such tax only on motor vehicles using or kept for use on public roads. The learned Judge also held that the Act is not beyond the competence of the legislative powers of the State as the tax is leviable by the State in respect of all motor vehicles used or kept for use in the State quite irrespective of any question as to whether or not such vehicles are used on public roads.

3. Aggrieved by the decision of the Single Judge the appellant took the matter up on Letters Patent Appeal. The main contention raised on behalf of the appellant was that the learned Single Judge was in error in holding that all motor vehicles used or kept for use in the State quite irrespective of any question as to whether or not they are used on public roads, is erroneous insofar as it related to motor vehicles used or kept exclusively for use in private estate and not used or kept for use on the public roads of the State. The Letters Patent Bench affirmed the decision of the Single Judge and rejected the appeal. The constitutional validity of the Act was not questioned before the Bench. Holding that the legislative Entry 57 of the State List only required that the vehicles should be suitable for use on roads and the charging section only provided that the vehicle should be used or kept for use in the State the required conditions were satisfied and there would be no justification for reading into the statute words that are not there, and restricting the levy only on vehicles using public roads. While not contesting the correctness of the observation of the Bench of the Kerala High Court that the levy cannot be restricted to vehicles using the public roads, it was submitted that the words in Section 3, clause(1), of the Act "shall be levied on all motor vehicles used or kept for use in the State" should be confined to vehicles used or kept for use on the public roads of the State, and not to vehicles that are intended to be confined within the premises of the estate. In other words the controversy between the parties before the RTO, the Single Judge of the High Court and the Bench of the High Court can be stated by extracting the question at issue as framed by the RTO :

I understand that the roads used by these vehicles (even those within the estates) come under the definition of "Public Roads and Public Place" since at present I have not afforded opportunity to the company to refute the basis on which that fact is to be found. I make it clear that I am not relying on that matter as a basis for this order and I reserve my right to investigate that the matter if needed be later. I assume for argument sake (without conceding) that the estate roads are private roads. Even in that case, I am of the View that the company's vehicles are liable to pay tax. It is not in dispute that the vehicles are used are kept for use within the State (the company roads are within the Kerala State). It is also not disputed that the vehicles are registered and their registration certificates are current and they are usable motor vehicles. The tax levied under the K.M.V.T. Act is a tax on the possession of usable motor vehicle and it is realised for the purpose of State Revenue. Such being the nature of the levy according to me, I feel that irrespective of the question whether the road on which the vehicle is intended to be used is private or public, the tax is attracted.

4. The questioned that falls for decision is whether on the assumption that the motor vehicles are

used or kept for use within the estate, and not intended to be used on public roads of the State, the tax is leviable ? In order to appreciate the question raised, it is necessary to refer to the relevant entry in the Constitution, the provisions of the Act and the Motor Vehicles Act and the decision relating to the question rendered by this Court. Entry 57 in List II of the Constitution relates to taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars, subject to the provisions of Entry 35 of List III. This entry enables the State Government to levy a tax on all vehicles whether mechanically propelled or not, suitable for use on roads. There is no dispute that the vehicles are mechanically propelled and suitable for use on roads.

5. Section 3 of the impugned Act [Kerala Motor Vehicles Taxation Act (Kerala Act 24 of 1963)] provides that a tax "shall be levied on all motor vehicles used or kept for use in the State". The levy is within the competence of the State legislature as Entry 57 in List II authorises levy on vehicles suitable for use on roads. It has been laid down by this Court in Bolani Ores Ltd. v. Orissa ((1975) 2 SCR 138, 155 : (1974) 2 SCC 777, 794 : 1075 Tax LR 1208), that under Entry 57 of List II, the power of taxation cannot exceed compensatory nature which must have some nexus with the vehicles using the roads i.e. public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Act, they cannot be taxed.

6. If the words 'used or kept for use in the State' are constructed as used or kept for use on the public roads of the State, the Act would be in conformity with the powers conferred on the State legislature under Entry 57 of List II. If the vehicles are suitable for use on public roads they are liable to be taxed. In order to levy a tax on vehicles used or kept for use on public roads of the State and at the same time to avoid evasion of tax the legislature has prescribed the procedure. Sub-section (2) of Section 3 provides that the registered owner or any person having possession of or control of a motor vehicle of which a certificate of registration is current shall for the purpose of this Act be deemed to use or keep such vehicles for use in the State except during any period for which the Regional Transport Authority has certified in the prescribed manner that the motor vehicle has not been used or kept for use. Under this sub-section there is a presumption that a motor vehicle for which the certificate of registration is current shall be deemed to be used or kept for use in the State. This provision safeguards the revenue of the State by relieving it from the burden of proving that the vehicle was used or kept for use on the public roads of the State. At the same time interest of the bona fide owner is safeguarded by enabling him to claim and obtain a certificate of non-user from the prescribed authority. In order to enable the owner of the vehicle or the person who is in possession or in control of the motor vehicle of which the certificate of registration is current to claim exemption from tax he should get a certificate in the prescribed manner from the Regional Transport Officer.

7. Section 5 of the Act provides for exemption from payment of tax under certain circumstances. It enables the registered owner or the person having possession or control of such vehicle to give previous intimation in writing to the RTO that the vehicle would not be used for such period and at the same time surrender certificate of registration and permit of the vehicle. Section 6 enables the registered owner or a person in possession or control of such a vehicle to get refund of tax if conditions specified in Section 6 are satisfied. Thus in order to enable the registered owner or person in possession or control of a vehicle to get exemption of tax, advance intimation to the RTO along with the surrender of certificate of registration is necessary. The provision of Section 3, sub-section (2) as well as Section 5 and Section 6 are meant to prevent evasion of tax and to provide for exemption from tax in proper cases. Though the purpose of the Act is to tax vehicles that are used or kept for use on the public roads of the State, the State is entitled for the purpose of safeguarding the revenues of the State and to prevent evasion of the tax to enact a provision like provision as in

Section 3 raising a presumption that the vehicle is used or kept for use in the State without any further proof unless exemption is claimed under Section 3(2), Section 5 and Section 6. It may be observed that reading Sections 3, 5 and 6 it is clear that a levy of tax is contemplated only on the vehicles that are used or kept for the use on the public roads of the State.

8. While we agree with the contentions of the learned counsel for the appellant that the tax is only exigible on vehicles used or kept for use on public roads, we must observe that in order to claim exemption from payment of tax requirements of Section 3(2) or Section 5 and 6 should be satisfied. Surrender of the registration certificate contemplated under Section 5 is for making sure that the motor vehicle is not being put to any use and does not have the effect of annulling the certificate of registration. If the requirement contemplated under the Act is not satisfied the registered owner or person in possession or control of the vehicle would not be entitled to claim any exemption from payment of tax.

9. It remains for consideration as to what is the appropriate order that should be passed on the facts and circumstances of this case. As a general proposition of law as exemption from payment of tax had not been claimed and obtained as required under this Act, the appellant would be liable to pay tax but as already pointed out and set out clearly in the order of the RTO the question that was raised and disputed was whether on the assumption that the vehicles were kept for use in the estates alone and not for use on the public roads of the State, tax is leviable. The authorities proceeded on the basis that even assuming that the vehicles were not intended to be used on the public roads, they are liable tax. In this view, the appellant did not apply for exemption or notify non-user as required under the provisions of the Act. But on the facts circumstances of the case it is clear that the appellant claimed for exemption from tax on the ground that it was not being used on the public roads. In the circumstances of the case we have to take it that though, in terms, requirements of Sections 3 and 5 have not been compiled with, in effect the requirements have been satisfied as the dispute proceeded throughout on that basis. But as has been specifically stated by the RTO, the question whether estate roads is reserved for further investigation and decision. Equally the RTO will be at liberty to act under Section 5(2) of the Act and decline exemption from the liability to pay for the relevant period if on verification it is found that the vehicle has been used during that period on the public road.

10. Before concluding, we would refer to a contention raised by the learned counsel based on the decision of this Court in Bolani Ores Ltd. v. Orissa ((1975) 2 SCR 138, 155 : (1974) 2 SCC 777, 794 : 1075 Tax LR 1208). The plea of the learned counsel is that the word "motor vehicle" should be understood as defined by Section 2(18) of the Motor Vehicles Act, 1939 and exclude from taxation motor vehicles "used solely upon the premises of the owner". As the vehicles with which we are concerned were claimed to have been kept for use solely in the premises of the company, it was contended that the vehicles are not exigible to tax. This Court in the decision cited was dealing with the Orissa Motor Vehicle Taxation Act, 1930. Section 2(c) of the Orissa Taxation Act adopted the definition of Motor Vehicles Act as found in Motor Vehicles Act 1914. The Motor Vehicles Act, 1914 was replaced and replaced by the Motor Vehicles Act, 1939. The definition of 'motor vehicle' in Section 2(18) of the Motor Vehicles Act, 1939 excluded motor vehicles used solely upon the premises of the owner. The Orissa Motor Vehicle Taxation Act was amended and Orissa Amendment Act, 1943 re-enacted the provisions of the Taxation Act.'Motor Vehicles' was defined under Section 2(18) of the Motor Vehicles Act, 1939 excluding vehicles used solely upon the premises of the owner. Subsequently the definition of 'motor vehicle' under Section 2(18) of the Motor Vehicles Act was amended by Act 100 of 1956 which confined the exemption from taxation to "motor vehicles of a special type adopted for use only in a factory or in any other enclosed

premises". The exemption from tax can only be claimed after amendment to Section 2(18) by Act 100 of 1956, if the vehicle was of special types adopted for use only in a factory or in any other enclosed premises and the exemption that was available before the amendment by Act 100 of 1956 to motor vehicles used solely upon the premises of the owner was taken away. This Court held : (SCC p. 794, para 29)

If the subsequent Orissa Motor Vehicles Taxation (Amendment) Act, 1943, incorporating the definition of 'motor vehicle' referred to the definition of 'motor vehicle' under the Act as then existing, the effect of this legislative method would, in our view, amount to an incorporation by reference of the provisions of Section 2(18) of the Act in Section 2(c) of the Taxation Act. Any subsequent amendment in the Act or a total repeal of the Act under a fresh legislation on that topic would not affect the definition of 'motor vehicle' in Section 2(c) of the Taxation Act.

As a result this Court held that the definition of 'motor vehicle' given in Section 2(18) of the Motor Vehicles Act, 1939 before the amendment by Act 100 of 1956 was applicable. Relying on this decision, the learned counsel submitted that the test that is to be applied to determine whether motor vehicle is liable to tax or not is whether it comes under the exemption provided by under Section 2(18) of the Motor Vehicles Act, 1939 before the amendment. We are unable to accept the contention mainly on the ground that the Kerala Motor Vehicles Taxation Act, 1963 (Act 24 of 1963) came into force on March 18, 1963. Section 2(l) of the Taxation Act provides that words and expression used but not defined in the Motor Vehicles Act, 1939 (Central Act 4 of 1939) shall have the meaning respectively assigned to them in that Act. On the date when the Kerala Motor Vehicles Taxation Act was enacted, Motor Vehicles Act, 1939, was amended by Act 100 of 1956 and the amended definition on the date when the Taxation Act came into force exempted only motor vehicles which are of a special type adopted for use only in a factory or in any other enclosed premises. This amended definition will have to be read into the Taxation Act which was enacted subsequent to the date of the amendment of the definition of 'motor vehicle' by Act 100 of 1956. In this view we feel that the decision in Bolani case ((1975) 2 SCR 138, 155 : (1974) 2 SCC 777, 794 : 1075 Tax LR 1208) will not be of any assistance to the learned counsel for the appellants.

11. The appeals are allowed to the extent indicated above. But in the circumstances there will be no order as to costs.

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