



2024:KER:30785

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 27TH DAY OF MARCH 2024 / 7TH CHAITHRA, 1946

WP (C) NO. 30097 OF 2018

PETITIONER/S:

MUHAMMED SAFEER P.
AGED 30 YEARS, S/O ABOOBACKER, KUZHIMANNA SECOND SOUTH,
MALAPPURAM, PIN 673641.

BY ADVS.
ANSU VARGHESE
K.J.JOSEPH (ERNAKULAM) (K/143/2010)
KRISHNANUNNI G.B. (K/3585/2022)
A.AMRUTHA VIDYADHARAN (K/1092/2006)

RESPONDENT/S:

- 1 REGIONAL TRANSPORT OFFICER
MALAPPURAM,
REPRESENTED BY REGIONAL TRANSPORT OFFICER-673001.
- 2 DISTRICT COLLECTOR
MALAPPURAM, CHAIRMAN DISTRICT TOURISM PROMOTION
COUNCIL, PIN-673001.
- 3 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT, MOTOR VEHICLE
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN-
695001.

BY ADV.THUSHARA JAMES, SR. GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
27.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



'C.R'

J U D G M E N T

The writ petitioner is the registered owner of a contract carriage bearing Registration No.KL-10-AC-979. The vehicle originally belonged to the District Tourism Promotion Council, Malappuram, (DTPC), of which the District Collector Malappuram was the Chairman. The petitioner purchased the vehicle at an auction conducted by the DTPC. When the petitioner approached the 1st respondent to effect the change of registration and to obtain a permit for the vehicle, the same was denied on the ground that there were arrears of road tax for the period from 01-07-2016 to 30-06-2018. Ext.P2 notice was issued to the petitioner demanding the payment of a sum of Rs.1,89,540/- as the motor vehicle tax for the period from 01-10-2016 to 31-03-2018. The petitioner submitted Ext.P3 representation to the 2nd respondent (District Collector, Malappuram) in his capacity as Chairman of the DTPC. The 2nd respondent issued Ext.P4 letter to the 1st respondent seeking orders exempting the tax payment for the period in question, indicating that the vehicle was not being used for the period in question. However, no action was taken by the 1st respondent. Faced with a situation where the petitioner could not use the vehicle, the petitioner remitted the tax for the period from 01-07-2016 to 30-06-2018 and thereafter, applied for a



refund of the tax from 01-07-2016 till the date of registration of the vehicle in the name of the petitioner. The petitioner is thereafter before this Court seeking the following reliefs:-

“(i) To issue a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction the 1st respondent to refund the road tax of Rs.192780/- (One lakh ninety two thousand seven hundred and eighty only) remitted by the 1st respondent accordance with the Ext.P2 notice within time limit framed by this Hon'ble court;

(ii) To issue a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction to declare the 2nd respondent is liable to pay the tax during the period of vehicle in kept in custody;

(iii) Allow the Writ petition with costs.”

2. Ms. Amrutha Vidyadharan, the learned counsel for the petitioner, refers to the provisions of Section 6 of the Kerala Motor Vehicle Taxation Act, 1976 (hereinafter referred to as the ‘1976 Act’) to contend that when the vehicle in question was admittedly in the custody of the DTPC headed by the District Collector, the petitioner is entitled to claim a refund of the taxes paid for the period from 01-07-2016 till the date of registration of the vehicle in the name of the petitioner. The learned counsel placed reliance on the judgment of this Court in ***Nisamudheen v. The Joint Regional Transport Officer; 2009 (3) KLT 1058***, on the judgment of a Five Bench Judge of this Court in ***Jomon M. Arackal v. Tahsildar; 2015 (1) KLT 163*** and also on the judgment of this Court in ***Damodaran v. RTO, Malappuram; 2000 (2) KLT 578*** in support of the contention that in the



circumstances noticed above, the petitioner was entitled to seek refund of the tax paid under Section 6 of the 1976 Act.

3. Smt.Thushara James, the learned senior Government Pleader, vehemently submits that the petitioner is not entitled to a refund of motor vehicle tax in the facts and circumstances of this case. She refers to the provisions of Section 6 of the 1976 Act to contend that it is clear from a reading of the provisions that a claim for a refund of tax can be made only if the tax for the period in question has been paid within time and after that when the vehicle is not intended to be put to use for a period not less than one month within the period for which the tax has been paid in advance in terms of Section 4 of the 1976 Act. It is submitted that it is clear from the provisions of Section 6 that a claim for a refund of tax can be made only subject to the conditions as may be specified in a notification to be issued by the Government. It is submitted that the Government has issued G.O. (P)No.18/2004/Tran dated 20-04-2004 (a copy of which has been placed before this Court for consideration) concerning applications for refund of motor vehicle tax under Section 6 of the 1976 Act and one of the conditions in that G.O is that the tax for the period in question had been paid within the time prescribed. It is submitted that the decision of this Court in ***Jomon M. Arackal (supra)*** is not authority for the proposition and even when the tax



is not paid within the due date, an application for refund can be maintained under Section 6 of the 1976 Act. It is submitted that the decision in ***Nisamudheen(supra)*** also does not come to the aid of the petitioner as that decision proceeds on an interpretation of Section 11 (2) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act) and on the creation of a statutory first charge in terms of the said provision. It is submitted that the decision of this Court in ***Damodaran(supra)*** proceeds on the terms of SRO 874/75 which has been replaced by G.O.(P)NO.18/2004/Tran after taking note of the law laid down by this Court in ***Damodaran (supra)***.

4. Having heard the learned counsel for the petitioner and the learned senior Government Pleader, I am of the view that the petitioner is not entitled to any relief in the writ petition. Section 6 of the 1976 Act reads thus:-

“6. Refund of tax,- (1) Where the tax for any motor vehicle has been paid for any period specified in Section 4 and the vehicle has not been used or kept for use during the whole of that period or a continuous part thereof, not being less than one month, a refund of the tax at such rates as may, from time to time be notified by the Government, shall be payable subject to such conditions as may be specified in such notification.

(2) Notwithstanding anything contained in this Act, a registered owner who has paid tax for a year or more shall be entitled to refund of tax at such rates as may be prescribed on cancellation of the registration of the vehicle or removal of the vehicle to any place outside the State on account of transfer of ownership or change of address.



Provided that no Green Tax paid shall be refunded under this section.”

A reading of Section 6 of the 1976 Act indicates beyond doubt that the provision for refund will apply only when the motor vehicle tax has been paid in advance for the period specified and the vehicle is not intended to be used during the whole of that period or a continuous part thereof not being less than one month. In the facts of the present case, the demand for a refund is for the period from 01-07-2016 to the date on which the registration of the vehicle was transferred in the name of the petitioner. It is clear from a reading of the writ petition that the tax for the period above was paid after the date on which it was liable to be paid. In such circumstances, on a plain reading of Section 6 of the 1976 Act, an application for a refund cannot be made.

5. Further, a reading of Section 6 of the 1976 Act indicates that the right to a refund of Motor Vehicle tax paid is subject to the conditions of a notification to be issued by the Government. A reading of G.O.(P) No.18/2004/Tran dated 20-04-2004 (which was issued in replacement of the notification bearing SRO No.874/75) indicates that it is a notification issued under sub-section (1) of Section 6 of the 1976 Act. The notification sets out the conditions upon which an application for a refund can be made. Condition No. 3 of G.O.(P)No.18/2004/Tran dated 20-04-2004 reads thus:-



“The tax due for the period is paid in this state within the time prescribed”

On the admitted facts of this case, it cannot be said that the tax in respect of which the refund is claimed had been paid within the time prescribed. The decision of this Court in ***Nisamudheen(supra)*** does not come to the aid of the petitioner as that was a case in which the decision was rendered on the specific terms of Section 11 (2) of the EPF Act and on a finding that the dues to the Provident Fund Organisation was a first charge and in circumstances where the vehicle has been sold for recovery of amounts due to the Provident Fund Organisation, there cannot be any further demand for payment of Motor Vehicle tax for a period prior to the date of purchase of the vehicle by the auction purchaser.

6. The decision of the Five Bench Judge of this Court in ***Jomon M. Arackal (supra)*** also does not come to the aid of the petitioner. That decision holds thus:-

“9. In the light of the above discussion, it can be seen that there is, in fact, no conflict between the views taken by the Full Bench in Abdurahiman's case (Supra) and the referring Full Bench in Jomon's case (Supra), inasmuch as while the former bench was concerned with cases where the detention of the vehicle in police custody was for non-payment of tax under the Act, the latter bench was concerned with a case where the detention of the vehicle in police custody was for an offence other than nonpayment of tax under the Act. We do not, however, agree with the observations of the Full Bench in Jomon's case (Supra), that would suggest that even in a case where the vehicle is in police custody for non-payment of tax due under the Act, the person claiming exemption need not follow the procedure of filing Form G as it would be impossible of performance. We are of the view that the provisions granting exemption in a taxing statute have to be strictly construed and, if a person is not able to comply with the



statutory conditions for claiming exemption from tax, it is a clear indication of the fact that the statute never intended to grant an exemption in such cases. We, therefore, answer the reference in the following manner;

(i) In cases where the vehicle is held in the custody of the police or other authorities for non-payment of tax due under the Act, a claim for exemption from payment of tax for the period during which the vehicle is in such custody can be made only in terms of Section 5 of the Act, read with Rule 10 of the Rules. In such cases, the claim for exemption will have to be preferred through the filing of an application in Form G, as mandated under Rule 10 of the Rules;

(ii) In cases where the vehicle is held in the custody of the police or other authorities for offences other than nonpayment of tax due under the Act, a claim for exemption from payment of tax for the period during which the vehicle is in such custody can be made in terms of Section 22 of the Act, read with Clause 27 of SRO 878/1975. In such cases, there will be no need to file an application in Form G, as mandated under Rule 10 of the Rules;

(iii) In either event, it will be open to an assessee under the Act to pay the tax demanded and seek a refund of the same, in terms of Section 6 of the Act read with Rule 15 of the Rules, by establishing that the vehicle in question was not used in the State on account of it being, in the custody of the police or other authorities.”

The decision has not considered the question as to whether the payment of tax within time (on or before the due date) was *sine qua non* to maintain an application for refund under Section 6 of the 1976 Act. That decision did not consider the terms of the notification issued as G.O.(P)No.18/2004/Tran dated 20-04-2004 and also does not hold that even when the tax is not paid within the due date, an application for refund under Section 6 can be maintained.



7. The decision of this court in **Damodaran (supra)** in fact holds that an application under Section 6 of the Act can be maintained only in respect of tax paid in advance. It was held:-

"2. This court has consistently held that with regard to the application for exemption under S.5, 'G' Form should be filed in advance so that verification can be done by the authorities. But with regard to the refund of the tax under S.6 position is different. The entire tax paid is not refundable. Only part of the tax is liable to be refunded as provided under the rules, when the party had paid the tax in advance. S.6 reads as follows:

"6. Refund of tax:- (1) Where the tax for any motor vehicle has been paid for any quarter or year and the vehicle has not been used or kept for use during the whole of that quarter or year or a continuous part thereof not being less than one month, a refund of the tax at such rates as may, from time to time, be notified by the Government, shall be payable subject to such conditions as may be specified in such notification.

(2) Notwithstanding anything contained in this Act, a registered owner who has paid tax for a year or more shall be entitled to refund of tax at such rates as may be prescribed on cancellation of the registration of the vehicle or removal of the vehicle to any place outside the State on account of transfer of ownership or change of address."

It specifically says that refund application should be filed only if the vehicle is at least not in use for one month as specified in the notification. Therefore, only after minimum one month of non use the party can file refund application and then it is for the authorities to consider whether plea of the non use made by the petitioner is correct or not. But S.R.O. No. 874/75 makes it compulsory that refund application should be filed within one week from the date of commencement of the period for which the refund is claimed. That is impossible as petitioner can file an application only after the period of one month as per the provisions of the section. S.R.O. cannot say that it should be filed within one week from the date of commencement of the period as it is an impossible condition. Of course, since advance intimation is not there verification may become difficult. But it is for the party who claim to convince the authorities that vehicle was not used during the period in question. Burden is on him to convince the authorities that the vehicle was not used. In the above



circumstances, provision in S.R.O. No. 874/75 that refund application should be filed within one week from the commencement of the period for which the refund of tax is claimed is set aside as it is contrary to S.6, as under S.6 refund application can be filed only after the non use of the vehicle at least for more than one month.”

The finding in ***Damodaran (supra)***, therefore, fortifies my view that an application for a refund of Motor Vehicle Tax under Section 6 of the 1976 Act read with the provisions of G.O.(P)No.18/2004/Tran dated 20-04-2004 can only be maintained where the tax in question has been paid in advance and within the due date. As already noticed, in the facts of the present case tax for the period in question was not paid in advance and was in fact paid much after the period for which the refund was sought.

No other point has been raised. The writ petition fails and it is accordingly dismissed.

Sd/-
GOPINATH P.
JUDGE



APPENDIX OF WP(C) 30097/2018

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF PRIOR CERTIFICATE OF REGISTRATION IN FAVOUR OF 2ND RESPONDENT.
- EXHIBIT P2 THE TRUE COPY OF DEMAND NOTICE ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED ON 25.4.2018.
- EXHIBIT P3 TRUE COPY OF THE REPRESENTATION MADE WITH THE 2ND RESPONDENT OFFICE DATED ON 20.3.2018.
- EXHIBIT P4 THE TRUE COPY OF LETTER ISSUED BY THE 2ND RESPONDENT DATED ON 27.3.2018.
- EXHIBIT P5 TRUE COPY OF CERTIFICATE OF REGISTRATION IN FAVOUR OF PETITIONER.