THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.25858 of 2016

ORDER :

Heard the counsel for petitioner, the learned Government Pleader for Roads and Buildings (Telangana) for 1st respondent; and the learned Government Pleader for Transport (Telangana) for respondent nos.2 to 4.

2. The petitioner has filed this Writ Petition challenging the seizure of petitioner's vehicle, a new crane, which was registered on payment of life-tax in the State of Andhra Pradesh on 18.06.2016 by the 3rd respondent, on the ground that there is no proof of payment of life-tax in the State of Telangana; and that the said vehicle was plying without registration.

3. The petitioner produced a letter dt.08.09.2016 from the Telangana State Co-operative Oil Seeds Growers' Federation Limited, Ashwaraopeta, Khammam District, stating that they engaged the above vehicle-in-question from 16.05.2016 at 12:35 P.M. till 18.06.2016 at 02.05 P.M, i.e., a period of about one month only.

4. The petitioner contends that he is not liable to pay the life-tax in the State of Telangana since the vehicle cannot be said to have been used or kept for use in the State of Telangana since the stay in Telangana State is a very short stay.

5. The counsel for petitioner relied on a decision of this Court in **Greeda Sudhasini J. v. Government of Telangana and others**[1]. A learned single Judge of this Court considered the provisions of the Motor Vehicles Act, 1988 and the Andhra Pradesh Motor Vehicles Tax Act 1963, and held in para.11 as follows :

> *"11. … … … expressions for entering the rolls of the State found in both columns 3 & 4 of the Table in sixth schedule, acquire significance. As was noticed supra, Subsection 1 of Section 47 clearly required the owner of a vehicle, which is registered in one State, if the vehicle has been kept in another State for a period exceeding 12 months, has to apply to the registering authority within whose jurisdiction the vehicle then is for the assignment of a new registration mark and shall present the certificate of original registration to that registering authority. In other words, <u>if a vehicle which is registered in one State merely enters another State and is kept there, for a period less than 12 months, there will not be any necessity for application of re-registration.</u> … … … <u>every motor vehicle registered in some other State while entering the composite State of Andhra Pradesh or the bifurcated States of Telangana and Andhra Pradesh would not automatically be required to pay for taxation as per the sixth schedule</u>. The entries in the sixth schedule would get attracted only when the owner of the vehicle prefers to enter into the rolls of the State in which the vehicle is kept or used, by way of change of address or transfer of ownership. This is so, as much as, Entry 2 has not talked of registration in some other State. It merely says "… … … if a vehicle is registered and its age from the month of registration is... … … Therefore, Entry 2 has got to be conjointly read with the provision contained in Column 3 & 4 where the expression '… … … other states that are entering into… … …' is found. Otherwise, if Entry 2 is read independently, then, if a vehicle is registered with some other registering authority within the same State would also have to suffer the taxation. <u>Clearly, the statute maker never intended a motor vehicle to suffer repeated life tax payment obligation</u>. Therefore, in my view, motor vehicles which are registered in some other State but*

[1] 2014 (5) ALD 429

entering into the State for purposes of entering of rolls of that State by way of change of address or transfer of ownership, alone are required to suffer the tax specified in sixth schedule. If a motor vehicle registered in some other State entered into the composite State of Andhra Pradesh or the bifurcated State of Telangana or Andhra Pradesh, it is not required to suffer to taxation spelt out in the sixth schedule, automatically."

6. On the other hand, the learned Government Pleader for Transport (Telangana) placed reliance on a Division Bench decision of this Court in **Raj Kumar Khatri v. Deputy Commissioner of Transport, Anantapur, Anantapur District and another**[2], and in particular, the following passage :

"11. The provisions in relation to registration or new registration in Andhra Pradesh of a motor vehicle have nothing to do with the interpretation and construction of Section 3 (1) of the Taxation Act. The charging section has to be construed strictly. If a vehicle is used or kept for use in a public place in Andhra Pradesh, notwithstanding the provisions relating to registration or new registration, the owner of the vehicle is liable to pay the tax as specified in Section 3 (2) of the Taxation Act read with the relevant schedule. Any argument that non-intimation of keeping the motor vehicle in Andhra Pradesh for a period exceeding 12 months under Section 47 (1) of the MV Act or non-intimation of the particulars of the vehicle kept within the State for a period exceeding 30 days under Rule 96 of the APMV Rules at best attract penalty and not the motor vehicle tax is unsound. Under the provisions of the Taxation Act, tax can be levied on every motor vehicle "used or kept for use" irrespective of whether a vehicle, registered in another State, has obtained new registration in the State of Andhra Pradesh as contemplated under the provisions referred to hereinabove. This legal position is well settled."

7. I have considered both the decisions.

[2] 2011 (2) ALD 745 (D.B.)

8. Though, both the decisions appear to be in conflict it is really not so. This is because even the Division Bench in the latter judgment also observed at paras.14 and 22 as under :

> *"14. Even if the vehicle is suitable for use on the roads or a public place, it would not be exigible to tax if a non-resident remained in the State for a day or two during the course of transit or stops the vehicle for rest, food or refreshment in the course of such transit. In our considered opinion, even if a businessman visits the State for the purpose of his business for few days, without any intention of staying in Andhra Pradesh, it would not fall within the ambit of Section 3 (1) nor does it come within the phrase 'used or kept for use, in a public place in the State'."*
>
> *"22. … … … Long stay at one place by itself cannot be the basis to conclude that the motor vehicle is used or kept for use."*

9. In the above referred case, the Division Bench directed an enquiry to be conducted in the matter in order to decide whether the owner of vehicle is liable to pay life-tax in two different States and remitted the matter back after setting aside the demand notice.

10. In my considered opinion, in the present case, the stay of about a month of the vehicle in question in the State of Telangana cannot be said to be such as to draw an inference that it is "used or kept for use" in the State of Telangana. Admittedly, the petitioner has not entered into the rolls of State of Telangana by way of change of address or transfer of ownership. He has not evidenced any interest to keep the vehicle permanently in that State. Since the owner of the vehicle has neither changed his address nor transferred ownership to a person registered in the State of Telangana and since the statutes in question never intended a motor vehicle to suffer life-tax obligations in both States in situations of this nature, the respondents are not entitled to demand life-tax in the State of Telangana for the vehicle in question which has already suffered life-tax in the State of Andhra Pradesh.

11. Similar view has been taken by the Karnataka High Court in **Mahesh C. Gandhi v. D.C. of Transport, Belgaum**[3] and in **State of Karnataka v. Jagadev Biradar and others**[4]. If the interpretation supported by the Government Pleader is accepted, it would interfere with the fundamental right conferred by Article 19 (1) (d) to move freely throughout the territory of India and violate Article 301 which directs that trade, commerce and intercourse throughout the territory of India shall be free. It would also be an unreasonable restriction on the above freedoms guaranteed by the Constitution of India. An interpretation which has such consequences cannot be accepted. So, unless the owner of the vehicle registered in the other State enters into the rolls of the State of Telangana by way of change of address or transfer of ownership (as indicated in VI Schedule to the Andhra Pradesh Motor Vehicle Taxation Act, 1963), he is not liable to pay life-tax in the State of Telangana.

12. Therefore, the Writ Petition is allowed with costs of Rs.5,000/- to be paid by the respondents to petitioner within a period of four (04) weeks from to-day.

---

[3] 2005 (5) KLJ 362
[4] MANU/KA/1398/2016 (D.B.)

13. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16-09-2016
Ndr/*