SUPREME COURT OF UNITED STATES

Aero Mayflower Transit Co.

Vs.

Board of Railroad Com'rs of State of Montana

No. 39.

Argued Oct. 15, 1947.

Decided Dec. 8, 1947.

Appeal from the Supreme Court of the State of Montana.

Mr. Edmond G. Toomey, of Helena, Mont., for appellant.

Mr. Clarence Hanley, of Helena, Mont., for appellees.

Mr. Justice RUTLEDGE delivered the opinion of the Court.

Again we are asked to decide whether state taxes as applied to an interstate motor carrier run afoul of the commerce clause, Art. I, § 8, of the Federal Constitution.

Two distinct Montana levies are questioned. Both are imposed by that state's Motor Carriers Act, Rev.Codes Mont.(1935) §§ 3847.1—3847.28. One is a flat tax of $10 for each vehicle operated by a motor carrier over the state's highways, payable on issuance of a certificate or permit, which must be secured before operations begin, and annually thereafter. § 3847.16(a).1 The other is a quarterly fee of one-half of one per cent of the motor carrier's 'gross operating revenue,' but with a minimum annual fee of $15 per vehicle for class C carriers, in which group appellant falls. § 3847.27.2 Each tax is declared expressly to be laid 'in consideration of the use of the highways of this state' and to be 'in addition to all other licenses, fees and taxes imposed upon motor vehicles in this state.'

Prior to July 1, 1941, the fees collected pursuant to §§ 3847.16(a) and 3847.27 were paid into the state treasury and credited to 'the motor carrier fund.'3 After that date, by virtue of Mont.Laws, 1941, c. 14, § 2, they were allocated to the state's general fund.

Appellant is a Kentucky corporation, with its principal offices in Indianapolis, Indiana. Its business is exclusively interstate. It consists in transporting household goods and office furniture from points in one state to destinations in another. Appellant does no intrastate business in Montana. The volume of its interstate business there is continuous and substantial, not merely casual or occasional.4 It holds a certificate of convenience and necessity issued by the Interstate Commerce Commission, pursuant to which its business in Montana and elsewhere is conducted.

In 1935 appellant received a class C permit to operate over Montana highways, as required by state law.5 Until 1937, apparently, it complied with Montana requirements, including the payment of registration and license plate fees for its vehicles operating in Montana and of the 5¢ per gallon tax on gasoline purchased there.6 However, in 1937 and thereafter appellant refused to pay the flat $10 fee imposed by § 3847.16(a) and the $15 minimum 'gross revenue' tax laid by § 3847.27. In consequence, after hearing on order to show cause, the appellee board7 in 1939 revoked the 1935 permit and brought this suit in a state court to enjoin appellant from further operations in Montana.

Upon appellant's cross-complaint, the trial court issued an order restraining the board from enforcing the 'gross revenue' tax laid by § 3847.27. But at the same time it enjoined appellant from operating in Montana until it paid the fees imposed by § 3847.16(a). On appeal the state supreme court held both taxes applicable to interstate as well as intrastate motor carriers and construed the term 'gross operating revenue' in § 3847.27 to mean 'gross revenue derived from operations in Montana.'8 It then sustained both taxes as against appellant's constitutional objections, state and federal. Accordingly, it reversed the trial court's judgment insofar as the 'gross revenue' tax had been held invalid, but affirmed the decision relating to the flat $10 tax. Mont., 172 P.2d 452, 460.

We put aside at the start appellant's suggestion that the Supreme Court of Montana has misconstrued the state statutes and therefore that we should consider them, for purposes of our limited function, according to appellant's view of their literal import. The rule is too well settled to permit of question that this Court not only accepts but is bound by the construction given to state statutes by the state courts.9 Accordingly, we accept the state court's rulings, insofar as they are material, that the two sections apply alike to interstate and intrastate commerce and that 'gross operating revenue' as employed in § 3847.27 comprehends only such revenue derived from appellant's operations within Montana, not outside that state.

Moreover, since Montana has not demanded or sought to enforce payment by appellant of more than the flat $15 minimum fee for class C carriers under § 3847.27,11 we limit our consideration of the so-called 'gross revenue' tax to that fee. This too is in accordance with the state supreme court's declaration: 'Even if it be admitted that the manner of arriving at a sound basis upon which the tax on gross revenue (should be calculated) is not provided by the statute, a c ntention to which we do not agree, no difficulty would arise in putting into effect the minimum fee of $15.00 required for each company vehicle operated within the state.'12 Although the state court did not concede that the statute comprehended no workable or sound basis for calculating the tax above the minimum, we take this statement as a clear declaration that it would sustain the minimum charge even if for some reason the amount of the tax above the minimum would have to fall.

With the issues thus narrowed, we have, in effect, two flat taxes, one for $10, the other for $15, payable annually upon each vehicle operated on Montana highways in the course of appellant's business, with each tax expressly declared to be in addition to all others and to be imposed 'in consideration of the use of the highways of this state.'

Neither exaction discriminates against interstate commerce. Each applies alike to local and interstate operations. Neither undertakes to tax traffic or movements taking place outside Montana or the gross returns from such movements or to use such returns as a measure of the amount of the tax. Both levies apply exclusively to operations wholly within the state or the proceeds of such operations, although those operations are interstate in character.

Moreover, it is not material to the validity of either tax that the state also imposes and collects the vehicle registration and license fee and the gallonage tax on gasoline purchased in Montana. The validity of those taxes neither is questioned nor well could be. Hendrick v. Maryland, [1915] USSC 5; 235 U.S. 610, 35 S.Ct. 140, 59 L.Ed. 385; Aero Transit Co. v. Georgia Commission, [1935] USSC 85; 295 U.S. 285, 55 S.Ct. 709, 79 L.Ed. 1439; Sonneborn Bros. v. Cureton, [1923] USSC 172; 262 U.S. 506, 43 S.Ct. 643, 67 L.Ed. 1095; Edelman v. Boeing Air Transport, [1933] USSC 87; 289 U.S. 249, 53 S.Ct. 591, 77 L.Ed. 1155. Nor does their exaction have any significant relationship to the imposition of the taxes now in question. Dixie Ohio Co. v. Commission, [1939] USSC 27; 306 U.S. 72, 78[1939] USSC 27; , 59 S.Ct. 435, 438[1939] USSC 27; , 83 L.Ed. 495; Interstate Busses Corporation v. Blodgett, [1928] USSC 32; 276 U.S. 245, 251[1928] USSC 32; , 48 S.Ct. 230, 231[1928] USSC 32; , 72 L.Ed. 551. They are imposed for distinct purposes and the proceeds, as appellant concedes, are devoted to different uses, namely, the policing of motor traffic and the maintenance of the state's highways.

Concededly the proceeds of the two taxes presently involved are not allocated to those objects.14 Rather they now go into the state's general fund subject to appropriation for general state purposes.15 Indeed this fact, in appellant's view, is the vice of the statute. But in that view appellant of the exactions. It is far too late to question that a state, consistently with the commerce clause, may lay upon motor vehicles engaged exclusively in interstate commerce, or upon those who own and so operate them, a fair and reasonable, nondiscriminatory tax as compensation for the use of its highways. Hendrick v. Maryland, supra; Clark v. Poor, [1927] USSC 135; 274 U.S. 554, 47 S.Ct. 702, 71 L.Ed. 1199; Aero Transit Co. v. Georgia Commission, supra; Morf v. Bingaman, [1936] USSC 100; 298 U.S. 407, 56 S.Ct. 756, 80 L.Ed. 1245; Dixie Ohio Co. v. Commission, supra; Clark v. Paul Gray, Inc., [1939] USSC 73; 306 U.S. 583, 59 S.Ct. 744, 83 L.Ed. 1001; cf. South Carolina Highway Department v. Barnwell Bros., [1938] USSC 47; 303 U.S. 177, 58 S.Ct. 510, 82 L.Ed. 734. Moreover 'common carriers for hire, who make the highways their place of business, may properly be charged an extra tax for such use.' Clark v. Poor, supra, 274 U.S. at page 557, 47 S.Ct. at page 703[1927] USSC 135; , 71 L.Ed. 1199.

The present taxes on their face are exacted 'in consideration of the use of the highways of this state,' that is, they are laid for the privilege of using those highways. And the aggregate amount of the two taxes taken together is less than the amount of similar taxes this Court has heretofore sustained. Cf.

Dixie Ohio Co. v. Commission, supra; Aero Transit Co. v. Georgia Commission, supra. The state builds the highways and owns them.16 Motor carriers for hire, and particularly truckers of heavy goods, like appellant, make especially arduous use of roadways, entailing wear and tear much beyond that resulting from general indiscriminate public use. Morf v. Bingaman, supra, 298 U.S. at page 411, 56 S.Ct. at page 758[1936] USSC 100; , 80 L.Ed. 1245. Although the state may not discriminate against or exclude such interstate traffic generally in the use of its highways, this does not mean that the state is required to furnish those facilities to it free of charge or indeed on equal terms with other traffic not inflicting similar destructive effects. Cf. Clark v. Poor, supra; Morf v. Bingaman, supra, 298 U.S. at page 411, 56 S.Ct. at page 758[1936] USSC 100; , 80 L.Ed. 1245. Interstate traffic equally with intrastate may be required to pay a fair share of the cost and maintenance reasonably related to the use made of the highways.

This does not mean, as appellant seems to assume, that the proceeds of all taxes levied for the privilege of using the highways must be allocated directly and exclusively to maintaining them. Clark v. Poor, supra, 274 U.S. at page 557, 47 S.Ct. at page 703[1927] USSC 135; , 71 L.Ed. 1199; Morf v. Bingaman, supra, 298 U.S. at page 412, 56 S.Ct. at page 758[1936] USSC 100; , 80 L.Ed. 1245. That is true, although this Court has held invalid, as forbidden by the commerce clause, certain state taxes on interstate motor carriers because laid 'not as compensation for the use of the highways, but for the privilege of doing the interstate bus business.' Interstate Transit, Inc., v. Lindsey, [1931] USSC 90; 283 U.S. 183, 186[1931] USSC 90; , 51 S.Ct. 380, 381[1931] USSC 90; , 75 L.Ed. 953; cf. McCarroll v. Dixie Lines, [1940] USSC 45; 309 U.S. 176, 179[1940] USSC 45; , 60 S.Ct. 504, 506[1940] USSC 45; , 84 L.Ed. 683. Those cases did not hold that all state exactions for the privilege of using the state's highways are valid only if their proceeds are required to go directly and exclusively for highway maintenance, policing and administration. Both before and after the Interstate Transit decision this Court has sustained state taxes expressly laid on the privilege of using the highways, as applied to interstate motor carriers, declaring in each instance that it is immaterial whether the proceeds are allocated to highway uses or others. Clark v. Poor, supra, 274 U.S. at page 557, 47 S.Ct. at page 703[1927] USSC 135; , 71 L.Ed. 1199; Morf v. Bingaman, supra, 298 U.S. at page 412, 56 S.Ct. at page 758, 80 L.Ed. 1245.

Appellant therefore confuses a tax 'assessed for a proper purpose and * * * not objectionable in amount,' Clark v. Poor, supra, 274 U.S. at page 557, 47 S.Ct. at page 703[1927] USSC 135; , 71 L.Ed. 1199, that is, a tax affirmatively laid for the privilege of using the state's highways, with a tax not imposed on that privilege but upon some other such as the privilege of doing the interstate business. Though necessarily related, in view of the nature of interstate motor traffic, the two privileges are not identical, and it is useless to confuse them or to confound a tax for the privilege of using the highways with one the proceeds of which are necessarily devoted to maintaining them. Whether the proceeds of a tax are used or required to be used for highway maintenance 'may be of significance,' as the Court has said, 'when the point is otherwise in doubt, to show that the fee is in fact laid for that purpose and is thus a charge for the privilege of using the highways. Interstate Transit, Inc. v. Lindsey, supra. But where the manner of the levy, like that prescribed by the present statute, definitely identifies it as a fee charged for the grant of the privilege, it is immaterial whether the state places the fees collected in the pocket out of which it pays highway maintenance charges or in some other.' Morf v. Bingaman, supra, 298 U.S. at page 412, 56 S.Ct. at page 758[1936] USSC

100; , 80 L.Ed. 1245.

The exactions in the present case fall clearly within the rule of Morf v. Bingaman and its predecessors in authority, and therefore, like that case, outside the decisions in the Interstate Transit and like cases. Both taxes are levied 'in consideration of the use of the highways of this state,' that is, as compensation for their use, and bear only on the privilege of using them, not on the privilege of doing the interstate business. Moreover, the flat $10 fee laid by § 3847.16(a) is further identified as one on the privilege of use by the fact that 'unlike the general tax in Interstate Transit, Inc., v. Lindsey, [1931] USSC 90; 283 U.S. 183, 51 S.Ct. 380, 75 L.Ed. 953, the levy of which was unrelated to the use of the highways, grant of the privilege of their use is by the present statute made conditional upon payment of the fee.' Morf v. Bingaman, supra, 298 U.S. at page 410, 56 S.Ct. at page 757[1936] USSC 100; , 80 L.Ed. 1245.

The minimum so-called 'gross revenue' fee, on the other hand, is technically conditioned on the receipt of such revenue from the operations within Montana. But the flat minimum of $15 annually, which is all we have before us in the shape the case has taken for the purposes of decision here, has none of the alleged vices characteristic of gross income taxes heretofore held to vitiate such taxes laid by the states on interstate commerce. And appellant has advanced no tenable basis in rebuttal of the legislative declaration that this tax too is exacted in consideration of the use of the state's highways, i.e., for the privilege of using them, not for that of doing the interstate business. Here, as in Morf v. Bingaman, [1936] USSC 100; 298 U.S. 407, 411[1936] USSC 100; , 56 S.Ct. 756, 758[1936] USSC 100; , 80 L.Ed. 1245, 'there is ample support for a legislative determination that the peculiar character of this traffic involves a special type of use of the highways,' with enhanced wear, tear and hazards laying heavier burdens on the state for maintenance and policing than other types of traffic create. It is to compensate for these burdens that the taxes are imposed and appellant has not sustained its burden. Clark v. Paul Gray, Inc., supra, 306 U.S. at page 599, 59 S.Ct. at page 753[1939] USSC 73; , 83 L.Ed. 1001, and authorities cited, of showing that the levies have no reasonable relation to that end.

It is of no consequence that the state has seen fit to lay two exactions, substantially identical, rather than combine them into one, or that appellant pays other taxes which in fact are devoted to highway maintenance. For the state does not exceed its constitutional powers by imposing more than one form of tax. Interstate Busses Corporation v. Blodgett, supra; Dixie Ohio Co. v. Commission, supra. And, as we have said, the aggregate amount of both taxes combined is less than that of taxes heretofore sustained. In view of these facts there is not even semblance of substance to appellant's contention that the taxes are excessive.

Neither is there merit in its other arguments, which we have considered, including those urging due process and equal protection grounds for invalidating the levies.

The judgment of the Supreme Court of Montana is affirmed.

Affirmed.