

Automotive Manufacturers (P) Ltd. etc.

Vs

Government of Andhra Pradesh and Others, etc.

Civil Appeals Nos. 2180 to 2182 of 1968

(CJI S.M. Sikri, J.M. Shelat, G.K. Mitter, I.D. Dua JJ)

25.11.1971

JUDGMENT

MITTER, J. -

1. These appeals are directed against the imposition of taxes under the Andhra Pradesh Motor Vehicles Taxation Act (V of 1963). The appellant in the first two appeals is the Automotive Manufacturers (P) Ltd., a dealer, among other automobile equipment, of motor chassis, motor vehicles, etc. received by it from manufactures outside the State of Andhra Pradesh. The first appeal arises out of a writ petition against the levy in respect of motor chassis delivered to it by Ashok Leyland Ltd. of Madras. These chassis are said to be driven by transport contractors of the manufacturers themselves under the temporary certificates of registration under the Motor Vehicles Act and delivered to the appellant at Secunderabad. The second appeal by the same appellant arises out of writ petition challenging the levy on jeeps, jeep truck chassis, jeep station wagons of the manufacture of Mahindra and Mahindra Ltd. of Bombay, besides pick-up vans, scooters etc. from Bajaj Auto Ltd. of Poona. The scooters are carried to Secunderabad in lorries. The appellants in Civil Appeal No. 2182 of 1968, are Ashok Leyland Ltd., Madras who transport motor chassis by road from their factory at Ennore to dealers in various parts of India, State Transport Undertakings etc. According to their with petition, these chassis have to traverse long distances in the State of Andhra Pradesh every month destined for delivery not only in the said State but also beyond the same. These chassis are driven from Ennore to their respective destinations in the several State under temporary certificates of registration obtained from the Madras State on payment of requisite tax in that behalf, such certificates of registration under Section 28 of the Motor Vehicles Act being effective throughout India.

2. The appellants' case is that the levy is illegal and unconstitutional. The grounds urged in the writ petitions filed in the High Court inter alia are as follows :

(1) Section 3 of the Act only authorities a levy of tax on a motor vehicle "used or kept for use in a public place in the State". There can be no user or keeping for use of the chassis of a motor vehicle as a motor vehicle unless a body is attached to it. In the case of vehicles other than chassis such user or keeping for use in a public place can only take plea when they are put to the required user or kept for use by the customers for whom the vehicles are transported in the manner contemplated by the Motor Vehicles Act.

(2) Section 9 of the Act exempts from payment of tax chassis of a motor vehicle "driven to another place in order that a body may be attached to it". As the chassis are invariably driven to their respective destinations in order that bodies may be attached to them, they come directly under the

notification of exemption issued by the State Government.

(3) As the chassis or the vehicles are covered by temporary certificates of registration taken out by the manufactures entitling transpiration throughout the territory of India, the impugned levy operates as an impediment to the free trade and commerce of the petitioners in violation of Article 301 of the Constitution.

3. The High Court turned down all the contentions. Hence the appeals.

4. Before this Court Mr. Chagla for the appellants limited his first and second contentions to the cases of chassis only. His first contention was that Section 3 of the Act was not applicable to the appellants.

5. Sub-section (1) of that section runs as follows :

"The Government may, by notification from time to time, direct that a tax shall be levied on every motor vehicle used or kept for use, in a public place in the State."

Under sub-section (2) of Section 3 the notification issued under sub-section (1) is to specify the class of motor vehicles on which, the rates for the periods at which and the date from which the tax shall be levied.

6. A motor vehicle has not been defined in this Act but under Section 2(j) of the Act it is to have the same meaning as is assigned to it in the Motor Vehicles Act. Under Section 2(18) of the last mentioned Act, "a 'motor vehicle' means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises".

7. The argument of learned counsel was that a chassis as such could neither be used nor kept for use in a public place before a body was fitted to it and so long as the said step was not taken, the question of levy of tax under the Act would not arise. We were referred to the different meanings of the word "use" in the Oxford Dictionary some of which are as follows :

"To make use of as a means or instrument; To employ for a profitable end;"

In our view, it is not necessary for a chassis to have a body attached to it before it can be used within the meaning of the Act inasmuch as it can be used by the man who drives it and such use of it on public roads would be enough to attract the levy. Ordinarily chassis have bodies attached to them for commercially profitable use but even without a body a chassis can be used and is actually used when it is taken over public roads.

8. The second submission was that the appellants qualified for exemption under the Government notification under Section 9 of the Act. Section 9 inter alia provides :

"(1) The Government may, by notification -

(a) grant an exemption, make a reduction in the rate or order other modification not involving an enhancement in the rate, of tax payable -

(i) by any person or class of persons; or

(ii) in respect of any motor vehicle or class of motor vehicles or motor vehicles running in any particular area;

x x x x.###

The notification issued ran as follows :

"In exercise of the powers conferred by sub-section (1) of Section 9 of the Andhra Pradesh Motor Vehicles Taxation Act, 1963 (Andhra Pradesh Act 5 of 1963), the Governor of Andhra Pradesh hereby grants exemption of the tax payable in respect of motor vehicles specified in column (1) of the Table below subject to the conditions, if any, specified in column (2) thereof."

Item (4) of the Table reads :

"Any chassis of a motor vehicle"

the condition for exemption being :

"When driven to any place in order that a body may be attached to it."

It was argued that as the use of a chassis would be meaningless unless a body is attached to it and all chassis, as a matter of fact, have to have bodies attached to them, the driving of the chassis on the road without a body would qualify for exemption under the above notification. We find ourselves unable to accept this view. Item (4) in the table of the above notification limits the exemption from the tax to the journey of the chassis for the express purpose of a body being attached to it. The Automotive Manufactures being dealers can and do probably deal with or dispose of the chassis as such. There is no allegation in any of the two writ petitions filed by these appellants that the chassis were coming from Madras or Bombay for the purpose of having bodies attached to them at the workshop of the appellant. In so far as Ashok Leyland Ltd. is concerned, it is their positive case that the chassis were being driven through the State of Andhra Pradesh either for delivery there or in other States of India. They are certainly being driven along the roads of Andhra Pradesh of disposal at the journey's end and it would be for the purchaser at the destination to have a body fixed to the chassis according to his own need and on the specification given by him. Merely because bodies were going to be attached by the ultimate purchasers, it cannot be said that the running of the chassis on the roads of Andhra Pradesh would attract exemption under Item (4) of the notification.

9. The last point urged by counsel was that inasmuch as registration of a vehicle in any State under Section 28 of the Motor Vehicles Act is to be effective throughout India any tax by a State on motor vehicles be they merely chassis or otherwise would run counter to Article 301 of the Constitution according to which trade, commerce and intercourse throughout the territory of India is to be free subject to the other provisions of Part XIII. Under Article 304(b) however it is open to the Legislature of a State to impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest. This again is subject to the proviso that no Bill or amendment for the purpose of the said clause (b) is to be introduced in the State Legislature without the previous sanction of the President. Learned counsel wanted to urge that the impost was not saved by Article 304(b) inter alia, on the ground that there was no previous sanction of the President in respect of the Bill as envisaged by Article 304(b). We did not allow

counsel to press this point inasmuch as it had not been urged in the writ petition and we hereby make it clear that we are not examining the merits of the contention urged by counsel in this regard and it will be open to his clients, if so advised, to urged it in any future proceedings they may choose to take.

10. These appeals were originally heard by a Bench of five Judges including S. C. Roy, J., who expired a few days back. The above judgment was concurred in by our late colleague. We however gave a further hearing to the parties at which nothing was addressed to us to make us change our opinion already formed.

11. In the result, the appeals fail and are dismissed with costs. One set of costs including hearing fee.

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