Maharaja Tourist Service

Vs

State of Gujarat

Writ Petn. (Civil) No. 505 of 1990 (with W.P.s. Nos. 224, 187, 86, 41 and 28 etc. etc. of 1989 and S.L.Ps. (C) Nos. 650-51, 558 and 1080 of 1989, etc.)

(CJI Ranganath Misra, Kuldip Singh JJ)

26.04.1991

JUDGEMENT

RANGANATH MISRA, C. J.:-

1.These are applications under Art. 32 of the Constitution on behalf of petitioners who hold All India Tourist Permits granted under S. 63(7) of the Motor Vehicles Act, 1939 corresponding to S. 88(9) of the Motor Vehicles Act, 1988. The respondent-States in these writ petitions are Haryana, Punjab, Gujarat, Rajasthan and Madhya Pradesh. There is a common Act the Punjab Motor Vehicles Taxation Act, 1924 - which is applicable to the States of Punjab and Haryana. In each of the other States there is a similar separate legislation. Under the taxing power in the several Acts provision has been made for taxation as also for levy of additional tax. It is the contention of the petitioners that the demand of additional tax is neither compensatory nor regulatory and, therefore, the levy is violative of Art. 19(1)(g) read with Art. 301 of the Constitution. In regard to the, States of Punjab and Haryana a special contention has been raised to the effect that R. 8(v) of the Punjab Motor Vehicles Taxation Rules, 1925 provides total exemption from liability of tax if the vehicle is brought into Punjab and kept for use within the State for a period not exceeding 30 days in a year and it is the contention of the petitioners that since the vehicles registered outside the States of Punjab and Haryana are not kept within the State for more than 30 days a year, the demand of tax in the face of R. 8(v) is contrary to law.

2. In the State of Gujarat, the Bombay Motor Vehicles Tax Act, 1958 has been amended. S. "A of the Amending Act provides that:

> "3A(1) On and from the first day of April, 1982 there shall be levied and collected, on all omnibuses which are exclusively used or kept for use in the State as contract carriages (hereinafter in this section referred to as the omnibus) a tax (hereinafter referred to as "the additional tax") in addition to the tax levied under S. 3, at the rates fixed by the State Government by notification in the official Gazette but not exceeding the maximum rates specified in the table below:-
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> Description of an omnibus Maximum rate of additional tax.
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> A. Ordinary omnibuses (i) Monthly rate of Rs. 240 per passenger permitted to be carried
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> (ii) Weekly rate of Rs. 80 per passenger permitted to be carried.

(iii) Daily rate of Rs. 16 per passenger permitted to be carried.

B. Luxury or tourist omnibuses permitted to be carried	(1) Monthly rate of Rs. 360 per passenger

(ii) Weekly rate of Rs. 120/- per passenger permitted to be carried.

(iii) Daily rate of Rs.24/- per passenger permitted to be carried....."

3. The validity of levy of this type came up for consideration before this Court in the case of the Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan (1963) 1 SCR 491 : (AIR 1962 SC 1406). Four learned Judges who constituted the majority held that the provisions of Rajasthan Motor Vehicles Taxation Act, 1951 did not violate the provisions of Art. 301 of the Constitution and the taxes imposed under the Act were compensatory or regulatory in nature which did not hinder the freedom of trade, commerce and intercourse assured by that Article. At page 536 (of SCR) : (at p. 1425 of AIR) of the Report the following test was indicated:

> "It seems to us that a working test for deciding whether a tax is compensatory or not is to inquire whether the trades people are having the use of certain facilities for the better conduct of their business and paying not patently much more than what is required for providing the facilities. It would be impossible to judge the compensatory nature of a tax by a meticulous test, and in the nature of things that cannot be done."

4. The same question came up for consideration before a Two-Judge Bench in International Tourist Corporation v. State of Haryana (1981) 2 SCC 318 : (AIR 1981 SC 774). This Court followed the decision referred to above of the larger group and observed (at pp. 779-80 of AIR):

> "There cannot be the slightest doubt that the State of Haryana incurs considerable expenditure for the maintenance of roads and providing facilities for the transport of goods and passengers within the State of Haryana. The maintenance of highways other than the National Highways is exclusively the responsibility of the State Government. While the maintenance of National Highways is the responsibility of the Union Government, under S. 5 of the National Highways Act, that very provision empowers the Central Government to direct that any function in relation to the development and maintenance of a National Highway shall also be exercisable by the concerned State Government. Section 6 further empowers the Central Government to give directions to the State Government as to the carrying out of the provisions of the Act and S. 8 authorises the Central Government to enter into an agreement with the State Government in relation to the development and maintenance of the whole or part of a National Highway situated within the State including a provision for the sharing of expenditure. Therefore, the State Government is not altogether devoid of responsibility in the matter of development and maintenance of a National Highway, though the primary responsibility is that of the Union Government. It is under a statutory obligation to obey the directions given by the Central Government with respect to the development and maintenance of National Highways and may enter into an agreement to share the expenditure. That part of the Highway which is within a municipal area is excluded from the definition of a National Highway and, therefore, the responsibility for the development and maintenance of that part of the

> Highway is certainly on the State Government and the Municipal Committee concerned. Since the development and maintenance of that part of the Highway which is within a municipal area is equally important for the smooth flow of passengers and goods along the National Highway it has to be said that in developing and maintaining the Highway which is within a municipal area, the State Government is surely facilitating the flow of passengers and goods along the National Highway. Apart from this, other facilities provided by the State Government along all Highways including National Highways, such as lighting, traffic control, amenities for passengers, halting places for buses and trucks are available for use by everyone including those travelling along the National Highways. It cannot, therefore, be said that the State Government confers no benefits and renders no service in connection with traffic moving along National Highways and is, therefore, not entitled to levy a compensatory and regulatory tax on passengers and goods carried on National Highways. We are satisfied that there is sufficient nexus between the tax and passengers and goods carried on National Highway to justify the imposition."

5. This view has been approved in B. A. Jayaram v. Union of India (1984) 1 SCC 168: (AIR 1983 SC 1005). That case also relates to permit holders under S. 63(7) of the Motor Vehicles Act, 1939, and challenge of the present type was negatived in that case. Law is settled that to uphold levy of a tax of this type, what is necessary is existence of a nexus between the subject and the object of the levy and it is not necessary to show that the whole or a substantial part of the tax collected is utilised. We are, therefore, satisfied that the demand of tax is not open to challenge and the plea raised against the levy, whether of tax or additional tax, is not justified. Under the taxing provision a statutory outer limit has been provided and the actual amount is left to be determined by the State Government by notification. Obviously, discretion is left with the State Government to demand at a rate which in a given situation would be justified. Once it is held that the tax is either compensatory or regulatory that forms the guideline for the State Government to keep in view to determine the rate at which within the upper limit fixed by law the demand has to be made.

6. The second contention which has been raised is applicable to the States of Punjab and Haryana and that depends upon the scope of R. 8(v) of the Punjab Motor Vehicles Taxation Rules, 1925. We note that the provision prescribes that a motor vehicle temporarily brought into Punjab and kept, for use therein for a period not exceeding 30 days is entitled to total exemption and that is not in dispute before us. Nor is it in dispute that the rule applies to Haryana. The words 'kept' for use came up for consideration in the case of International Tourist Corporation (AIR 1981 SC 374) (supra) where this Court held that once a vehicle is used within the State the taxable event occurred and it must be taken for use. In State of Mysore v. M/ s. T. V. Sundaram lyengar & Sons (P) Ltd. (1980) 1 SCC 66: (AIR 1980 SC 148) the meaning of 'kept' was examined at length and this Court held that a vehicle in transit through the State of Mysore, or even making a necessary halt for a short interval, during transit, cannot be said to be a vehicle 'kept' for use on roads in the State of Mysore. The word 'kept' has not been defined in the Act. It must, therefore, be interpreted in its ordinary popular sense consistent with the context. The ordinary dictionary meaning of the word 'keep' is 'to retain', 'to maintain' or 'cause to stay or remain in a place' or 'to detain' or 'to stay or continue in a specified condition, position etc.'. It is something different from a mere transit or a course of journey through the State. It is something more than a mere stoppage or halt for rest, food or refreshment, etc. in the course of transit through the territory of the State. That being the position R. 8(v) which uses the term 'kept for use' may not cover a case of bare transit and in terms of the Rule exemption is available for vehicles kept up to 30 days in a year. In that view of the matter tourist vehicles

registered outside the States of Punjab and Haryana when brought into these two States for regular use and not by way of transit and when used for more than 30 days in a year would attract taxability otherwise the exemption provision in R. 8(v) would be available. We have settled the legal position and we leave it to the individual taxing authorities as also the operators of tourist vehicles to work out their respective rights.

7. We would, therefore, like to clarify that the first aspect being a challenge against the taxing provision whether by way of tax or additional tax is rejected and the question of exigibility of tax in the States of Punjab and Haryana with reference to R. 8(v) of the Punjab Motor Vehicles Taxation Rules, 1925 is left to be determined in individual cases as and when raised. There would be no order as to costs.

Order accordingly.

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