

Union of India and others

Vs

Chowgule and Co. Pvt. Ltd.

Civil Appeals Nos. 2980-83 of 1981

(M. M. Punchhi, B. P. Jeevan Reddy JJ)

29.04.1992

JUDGEMENT

PUNCHHI, J.

1. These four appeals by special leave are against the common judgment and order dated 3-4-1978 of the Judicial Commissioner of Goa, Daman & Diu in Special Civil Applications (Writ Petitions) Nos. 2/ 69, 12/ 69, 47 / 70 and 48 / 70 : (reported in 1978 Tax LR 2242). The Union of India and its officers are the common appellants herein.

2. Shortly put, the four writ petitioners before the Judicial Commissioner, the respondents herein, were carrying on mining operations in certain areas in the Union Territory of Goa, Daman and Diu. Thereat they had been using various types of mining machinery including dumpers and shovels. The Motor Vehicles Act, 1939 (hereafter referred to as 'the Act') was made applicable in the Union Territory w.e.f. 1-1-1965 and simultaneously the Motor Vehicles Taxation Act, 1965 (hereafter referred to as the 'Taxation Act') was also enforced on that date. The respondents claimed that being under a mistaken belief that their dumpers and shovels were 'motor vehicles' and hence liable to tax under the Taxation Act, they initially got those registered under the Act and paid tax thereon under the Taxation Act. Later when they realised that they had paid tax under a mistaken belief, they stopped paying tax, whereupon the appellants-officers herein issued orders and notices requiring the respondents to pay the taxes. Challenging the concerned orders and notices the respondents moved the Court of the Judicial Commissioner requiring the said orders and notices to be struck down as violative of their fundamental rights guaranteed by Art. 31(i.) of the Constitution, for the petitioners were to be deprived of their property without authority of law, and also being violative of the provisions of Art. 265 and Entry 57 of List 11 of the Constitution. On facts it was pleaded that dumpers and shovels were not actually used on roads and were neither suitable for use on roads. Rather they were being used on closed premises of the respondents. On that premises, it was claimed that dumpers and shovels were outside the Taxation Act. The appellants herein opposed the petition and claimed that dumpers and shovels were adapted and suitable for use on roads and hence liable to be taxed under the Taxation Act. The learned Judicial Commissioner, on the interpretation of the provisions of the Taxation Act, as well as taking stock of the fact situation, came to the view that when dumpers and shovels were being used solely on the premises of the owner, they have therefore to be excluded from the purview of the Taxation Act since public roads were not being used by those vehicles. Support for the view was taken from *Bolani Ores Ltd. v. State of Orissa* (1975) 2 SCR 138: (AIR 1975 SC 17). It is to challenge that view that the Union of India and its officers are before us.

3. It may, at the outset, be necessary to differentiate inter se dumpers and shovels. Dumpers

denominated as Euclid Dumpers by Writ Petitioners-respondents in three Writ Petitions Nos. 2/69, 12/69 and 48/ 70, stand well understood and described in Bolani Ores case (AIR 1975 SC 17) and in M/s. Central Coal Fields Ltd. v. State of Orissa decided by this Court today on 29-4-1992 : (reported in AIR 1992 SC 1371). To quote from the later case (Para 2):

"Dumpers and Rockers, are known to carry bulk goods, building materials, mining products, agricultural and forestry products, earth, stones, bricks, concrete, mortar etc., their structure being of simple design and easy to handle. Tripping is performed by releasing the locking device retaining tipping body. The Dumper requires no more than a few seconds for the emptying of its tipping body and gives no trouble to the driver when being operated on uphill or downhill roads, with its load unbalanced or when the load refuses to slide out easily."

This Court in the aforesaid two cases has held dumpers to be motor vehicles adapted or suitable for use on roads and hence attracting tax under the relevant Taxation Act of Orissa. So far as shovels are concerned they are used only by writ petitioners-respondents in Writ Petition No. 47 / 70. These did not fall to be defined or described in Bolani Ores case. However, in paragraphs 2 and 3 of the Report in Bolani Ores case (AIR 1975 SC 17), it is evident that shovels stood excluded from being described as motor vehicles for the purposes of registration and equally for taxation at the High Court level, for it was found that shovels had a sort of crawler mechanism and were not adapted for regular use on the roads. But here, instantly, in Writ Petition No. 47/70, the concerned respondents had barely pleaded that shovels were used for removing earth from faces and for dumping the same in the rejection yard. It has further been pleaded that the said shovels are not intended to be used, nor are capable of being used, nor were they, in fact, being used, on roads by the Writ Petitioners for any general use. Still further it was pleaded that shovels were vehicles of a special type adapted for use only within the enclosed premises and not fit for use on roads. These facts were denied by the contesting Government officers. Reliance for the purpose was made on the definition of 'motor vehicle' used in Section 2(18) of the Act to prove their point of view. The learned Judicial Commissioner drawing no distinction between dumpers and shovels proceeded to grant common relief to all the writ petitioners primarily on the basis that these vehicles were employed for use in the owner's premises.

4. When the Act and the Taxation Act simultaneously came into operation on 1-1-1965 in the Union Territory, 'motor vehicle' for purposes of both the Acts was as defined in Section 2(18) of the former Act which is as follows:

"2(18). "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."

5. This definition of motor vehicle is in the form as amended by the Motor Vehicles (Amendment) Act, 1956 (Act 100 of 1956). Bolani Ores case (AIR 1975 SC 17) was based on the pre-amended Section 2(18) and the import it had on the relevant provisions of the concerned Taxation Act of Orissa. The exercise of interpretation and the principle of incorporation, took out dumpers from the purview of taxation because of their sole user upon the premises of the owner; but otherwise they were held registrable under the Act. This position was altered by the amendment aforementioned and thenceforth dumpers were not only registrable under the Act but taxable as well under the

concerned Taxation Act of Orissa. Now here the learned Judicial Commissioner has applied the ratio of Bolani Ores case as emerging and valid for the preamendment period. In that period, undeniably a 'motor vehicle', though registrable, ceased to be taxable if it was "used solely upon the premises of the owner". That period is not involved here. In the Central Coal Fields case (AIR 1992 SC 1371) it has been viewed that tax is attracted on the motor vehicle adapted for user of the road, not only for actually using it but for keeping it for use over it, unless it is a vehicle of a special type adapted for use only in a factory or in any other enclosed premises. The respondents claim that their premises are enclosed may not be disputed, but the question still remains whether their vehicles are of a special type adapted for use only in a factory or in any other enclosed premises. No type, much less special, stands pleaded by the respondents-writ petitioners. The obligation under Section 4 of the Taxation Act in hand subsists, in the absence of such pleading. Tax is to be paid thereunder for "keeping for use a motor vehicle", be one the owner thereof or not. It is the keeping of the motor vehicle for use which attracts taxation. Keeping the motor vehicle for use in the context is for use on public roads of the State. This Court in Central Coal Fields Ltd. case (AIR 1992 SC 1371) observed in the context as follows (Para 8):

"The very nature of these vehicles makes it clear that they are not manufactured or adapted for use only in factories or enclosed premises. The mere fact that the Dumpers or Rockers as suggested are heavy and cannot move on the roads without damaging them is not to say that they are not suitable for use on roads. The word 'adapted' in the provision was read as 'suitable' in Bolani Ores case (AIR 1975 SC 17) by interpretation on the strength of the language in Entry 57, List II of the Constitution. Thus on that basis it was idle to contend on behalf of the appellants that Dumpers and Rockers were neither adaptable nor suitable for use on public roads. Thus on the fact situation, we have no hesitation in holding that the High Court was right in concluding that Dumpers and Rockers are vehicles adapted or suitable for use on roads and being motor vehicles per se, as held in Bolani Ores case, were liable to taxation on the footing of their use or kept for use on public roads; the network of which, the State spreads, maintains it and keeps available for use of motor vehicles and hence entitled to a regulatory and compensatory tax. (Exemptions claimable apart)".

6. The view of the learned Judicial Commissioner that when dumpers were being used solely on the premises of the owner, and must therefore be excluded from taxation militates against the views expressed in the aforesaid two cases of this Court. The mere fact that dumpers were used solely on the premises of the owner, or that they were in closed premises, or permission of the Authorities was needed to move them from one place to another, or that they are not intended to be used or are incapable of being used for general purposes, or that they have an unladen and laden capacity depending on their weight and size, is of no consequence for dumpers are vehicles used for transport of goods and thus liable to pay a compensatory tax for the availability of roads for them to run upon commission.

7. Thus for the aforesaid reasons, we allow appeals Nos. 2980, 2981 & 2983 of 1981 and set aside the judgment and orders of the Judicial Commissioner, Goa, Daman and Diu in Writ Petitions Nos. 2/ 69, 12/ 69 and 48/70 (reported in 1978 Tax LR 2242) holding the impugned orders and notices issued by the appellants-officers to the respondent writ petitioners as valid and enforceable in accordance with law.

8. So far as the case of shovels is concerned, there is no definite material on the pleadings of the

parties to conclude that besides their weight and size, what is their overhang and what is the nature of its wheels, by means of which it would transport goods or passengers so as to attract liability of taxation. We are mindful of the fact that in Bolani Ores Ltd. case shovels therein were noticed to be crawler types of machines. This implies that they were not machines running on pneumatic wheels or rubber tyres. They were taken in that case to be not adapted for use on roads and hence not registrable. On both particulars i.e. whether the shovels of the writ petitioner are adaptable for use on roads and hence registrable and whether they are meant to transport goods or passengers and hence taxable, the pleadings are insufficient for us to pronounce upon. When the view of the learned Judicial Commissioner in treating dumpers and shovels at par, has been upset in so far as dumpers are concerned, it is prudent that his view about shovels also is upset and the matter in Writ Petition No. 47/ 70 [Civil Appeal No. 2982 of 1981] remitted back for reconsideration by the Panaji Bench of the High Court of Bombay. The High Court may in that event permit the parties to amend their pleadings and bring forth material to establish what exactly is the nature and function of a shovel and whether it is registrable under the Motor Vehicles Act and if so whether it is taxable under the Taxation Act. Civil Appeal No. 2982 of 1981 is thus allowed and the matter remitted back to the Panji Bench of the High Court for redecision in the light of this decision and in accordance with law.

9. The appellants shall have their costs in all the four appeals. Appeals allowed.

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