Regional Transport Officer-Cum-Taxing Authority, Rourkela and Others

Vs

Steel Authority of India Ltd

Civil Appeal No. 8286 of 1995

(M. M. Punchhi, Sujata V. Manohar JJ)

09.11.1995

ORDER

1. The Steel Authority of India, the sole respondent herein, employs a fleet of buses meant to carry its employees from its township to its factory at Rourkela. This has been so for over three decades. For some inexplicable reasons, the Steel Authority of India Ltd. was all along being made to pay tax under Item 3 of the Schedule to the Orissa Motor Vehicles Taxation Act, 1975 on buses kept by it on the footing of being goods carriers. As is the case of both sides, Item 3 was hardly applicable and yet tax was kept asked and paid. With effect from 19-12-1990, the appellant herein, i.e., State of Orissa and its officers, put to change the head of taxation and required the respondent to pay higher tax under Item 4 of the Schedule, whereunder rates of tax are prescribed for motor vehicles playing for hire and used for conveyance of passengers, including motor cabs. Challenging such a step, the respondent-Steel Authority of India, moved the High Court of Orissa in a writ petition under Article 226 of the Constitution.

2. Right at the outset, the High Court in dealing with the controversy fell into a factual error in assuming that the change effected was from Item 6 to Item 4 of the Schedule. Item 6, however, is a residuary item and covers up the cases of motor vehicles other than those liable to tax under the earlier provisions of the Schedule. Since the case of the respondent-Steel Authority of India Ltd. is that the vehicles kept by it are for use of its employees for the purpose stated above, without obligating them to pay hire charges, it was a facility extended to the employees, and thus per se, would not attract exigibility under Item 4 but may fall under Item 6, subject to the right of the respondent to claim relief under Sections 10 and 15 of the aforesaid Act. The High Court, in these circumstances, pronounced on certain legal aspects of the matter on the supposition that the respondent-Steel Authority of India Ltd. had to prove its facts to claim that it was not liable to pay tax at all on the vehicles in question and thereby effected a remand of a sort. That aspect apparently was in the area where relief could be sought under Sections 10 and/or 15 of the Act. As we have been able to examine the judgment, the question whether the Steel Authority of India Ltd., the respondent herein, was liable to pay tax under Item 6 or Item 4 of the Schedule was not gone into.

3. Having heard learned counsel for the parties in detail, we do not feel inclined to pronounce upon the correctness or otherwise, of the judgment of the High Court, when it is conceded by learned counsel for the Steel Authority of India Ltd. that an inquiry may be held on the footing that the tax is exigible from the Authority for keeping its fleet of vehicles. And further, the change effected straightway from rates under Item 3 to Item 4 uncalled for without there being a categorical finding by the tax authorities that those vehicles were being run for hire. The appellant on the other hand, has demonstrably not been able to justify before us how straightaway that jump in the rate could be made without the necessary fact establishment. So we go through a limited area of consensus to say

that till reliefs (if due) can successfully be sought by the Steel Authority of India Ltd. under Sections 10 and/or 15 of the Act, it is exigible to tax and the corrective measure presently can be for changing the rates of tax under Item 3 to Item 6, reserving the right to the appellant-State to come to a different conclusion after a fact-finding inquiry, in which of course, the respondent would be associated. The State cannot be permitted to act arbitrarily in choosing the Item of taxation and leave it to the subject to disprove liability. It is the State which has to examine the facts and then apply the charging Item on the plain language of the provision obviating any unjust imposition. Till such stage is arrived at, there is no occasion for the appellant-State to demand tax over and above which in any event is due to it under Item 6. Nonetheless, we make it clear, that this opinion of ours is only embedded in that area of consensus and shall not be taken to be a pronouncement on the applicability of Item 6, in the facts and circumstances of the case.

4. The appeal stands disposed of accordingly. No costs.