SUPREME COURT OF INDIA

State of Orissa

Vs.

Bijaya C. Tripathy

C.A.No.3599 of 1998

(S. N. Variava and H. K. Sema JJ.)

26.02.2004

ORDER

1. This Appeal is against the Judgment of the High Court dated 8th October, 1996. By this Judgment it has been held that the vehicle owned by the Respondent was not liable to pay road tax under the *Orissa Motor Vehicles Taxation Act of 1975* because it did not have, during the relevant period, a stage carriage permit. The High Court has held that under Section 66 of the *Motor Vehicles Act, 1988* no owner of a motor vehicle can use or permit the use of the vehicle as a transport vehicle in any public place unless it has the necessary permit. The High Court has held that under Schedule 1 of the Orissa Motor Vehicles Taxation Act, tax has to be paid in respect of stage carriage vehicles on the basis of the distance they are permitted to run. The High Court has held that in the absence of any permit it is not possible to calculate the quantum of tax payable.

2. In order to consider the correctness of this Judgment it becomes necessary to look at the relevant provisions of the Orissa Motor Vehicles Taxation Act. Section 2(b) defines a motor vehicle as any vehicle which is mechanically propelled and adapted for use upon roads whether the power of propulsion is transmitted from an external or internal source. It is an admitted position that the Respondent's vehicle is a motor vehicle within the meaning of this definition.

3. Section 3 reads as follows:-

> "3. Levy of tax - (1) Subject to the other provisions of this Act there shall be levied on every motor vehicle used or kept for use within the State a tax at the rate specified in Schedule-1;
>
> (2) The State Government may by notification, from time to time, increase the rate of tax specified in Schedule-1;
>
> Provided that such increase shall not exceed fifty per cent of the rate specified in Schedule-1.

(3) All references made in this Act to (Schedule-1) shall be construed as references to (Schedule-1) as for the time being amended in exercise of the powers conferred by this section.

Explanation - An owner who keeps a transport vehicle for which the certificate of fitness and the certificate of registration are valid, or an owner who keeps any other motor vehicle, of which the certificate of registration is valid, shall, for the purpose of this Act, be presumed to keep such vehicle for use :

Provided that if the Taxing Officer finds a motor vehicle having been used on any day during the period for which the registration certificate of a vehicle has been suspended or cancelled under the relevant provisions of the Motor Vehicles Act such vehicle shall be deemed to have been kept for use for the whole period without payment of tax."

4. Thus, it has to be seen that tax is levied on every motor vehicle which is "used or kept for use". The explanation makes it very clear that if a transport vehicle has a valid certificate of fitness and a valid certificate of registration then it will be presumed that the vehicle is kept for use. This presumption arises in respect of all motor vehicles, whether they are light motor vehicles or transport vehicles and would also include vehicles which do not have a stage carriage permit.

5. Section 4 provides that the tax is to be paid in advance by the registered owner or person having possession or control of the vehicle.

6. Section 10 which is also relevant reads as follows:-

"10. Prior intimation of temporary discontinuance of use of a vehicle –

(1) Whenever any motor vehicle is intended not to be used for any period, the registered owner or person having possession or control thereof shall on or before the date of expiry of the term for which tax has been paid, deliver to the Taxing Officer, an undertaking duly signed and varified in the prescribed form and manner specifying the period aforesaid and the place where the motor vehicle is to be kept along with such other particulars as may be prescribed and the registration certificate, fitness certificate, permit and tax token, then current and shall from time to time by delivering, further undertakings give prior intimation to the concerned Taxing Officer of the extension, if any, of the said period and the changes, if any, of the place where the motor vehicle shall be kept:

Provided that no such undertaking shall relate to a period exceeding one year at a time.

(2) If at any time during the period covered by an undertaking as aforesaid the motor vehicle is found being used or is kept at a place in contravention of any such undertaking, such vehicle shall, for the purposes of this Act be deemed to have been used throughout the said period without payment of tax.

(3) In the absence of any undertaking delivered under sub-section (1) every motor vehicle liable to tax under this Act shall be deemed to have been used or kept for use within the State."

7. Thus under Section 10 if a person is not intending to use a motor vehicle for any period then intimation has to be given along with an undertaking and the documents mentioned therein have to be handed over to the Taxation Officer. Sub-clause (3) makes it very clear that in the absence of any undertaking under sub-section (1) it shall be presumed that the motor vehicle has been used or kept for use within the State.

8. Section 11 provides for refund of tax in certain cases. One circumstance under which refund can be claimed is if intimation under Section 10, of non-use, has been given.

9. The relevant portion of the Schedule, to which the reference has been made by the High Court, starts with the words "Motor vehicles plying for hire and used for conveyance of (persons or passengers) including motor cabs". Sub-clause (A) deals with stage Carriage permits. But the High Court has omitted to notice sub-clause (B). Sub-clause (B) deals with vehicles other than Stage Carriages. Under sub-clause B (b) tax is to paid by a motor vehicle without a permit depending upon the seating capacity of that vehicle.

10. The High Court also appears to have been misread Section 66 of the Motor Vehicles Act. All that Section 66 of the Motor Vehicles Act provides is that the owner of a motor vehicle cannot use the vehicle as a transport vehicle in any public place without a permit. Section 66 therefore, merely prevents use of the vehicle as a transport vehicle without a permit. It does not prohibit driving of such a vehicle on a public road. The vehicle can be driven on a public road so long as it is not used as a transport vehicle. To take an extreme example the owner of such a vehicle may use that vehicle for taking his family out for a picnic. Section 66 will not bar such a use. It is thus clear that even in the absence of a permit the vehicle remains a transport vehicle which is capable of being used on a road so long as the vehicle has a valid certificate of fitness and a valid registration certificate. In such cases it has to be presumed that such a vehicle has been "kept for use" irrespective of whether or not it was actually used on the road.

11. On behalf of the Respondent, reliance was placed upon the case of *Bolani Ores Ltd. v. State of Orissa reported in*[1]. In this case this Court was considering whether dumpers, rockers and such type of vehicles, which are never used on a public road, were liable to pay tax. In this context this Court held that it is not the purpose of the Taxation Act to levy tax on vehicles which do not use the roads or in any way form part of flow of traffic on the roads which are required to be regulated. In the context of dumpers, rockers etc. this Court held that as these vehicles were never used on public roads they were not liable to pay tax. This

case can be of no assistance to the Respondent inasmuch as it is clear that the Respondent's vehicle is a motor vehicle within the meaning of the Act and is capable of being used on the road.

12. Reliance was also placed upon the case of *State of Gujarat and others v. Kaushikbhai K. Patel and another reported in*[2] wherein the question was whether refund could be claimed in respect of an omnibus which had not been used for a period exceeding three months. This Court held that as the vehicle has not been used on the road, tax had to be refunded. In this case intimation of non-use was given. The claim for refund was on the basis of provisions similar to Sections 10 and 11 of the Orissa Motor Vehicles Taxation Act. In this context it was held that tax had to be refunded as the vehicle was not used.

13. In this case it is admitted that the Respondent had never given intimation under Section 10. He had not paid the tax. Thus the question of refund does not arise. As he had not given intimation it is to be presumed that his vehicle had been used or kept for use within the State.

14. It was submitted that intimation could not be given under Section 10 as, along with the undertaking, the permit also had to be surrendered. It was submitted that as the Respondent did not have a permit he could not surrender a non-existing document and could not thus avail of the provision of Section 10. We see no substance in this submission. If Respondent did not have a permit all he had to do was to so state in the intimation. His so stating there would have been sufficient and he would have been required to surrender only the other documents mentioned in Section 10.

15. The view, which we are taking is supported by the decisions of this Court in the case of *State of Karnataka v. K. Gopalakrishna Shenoy and another reported in*[3] as well as in the case of *Deputy Transport Commissioner, Belgaum and another v. Ramdas Govind Kantu and another reported in*[4].

16. In this view of the matter the impugned Judgment cannot be sustained and it is hereby set aside. The Petition filed by the Respondent stands dismissed. Accordingly, the Appeal stands allowed. There will be no order as to costs.

Appeal allowed.

[1]*(1974) 2 SCC 777*
[2]*(2000) 5 SCC 615*
[3]*(1987) 3 SCC 655*
[4]*1992 Supp.2 SCC 441*