SUPREME COURT OF INDIA

State of Gujarat

Vs

Akhil Gujarat Pravasi V.S. Mahamandal

Civil Appeal Nos. 6462-6464 of 2001 (with WP(C) Nos. 249 and 252 of 2002)

(S. R. Babu and G. P. Mathur)

08/04/2004

JUDGMENT

ORDER

1. Civil Appeal Nos. 6462-6464 of 2001 have been preferred by State of Gujarat against the judgment and order dated 17.8.2001 of a Division Bench of the High Court, whereby Section 3A(1) and (2) of Bombay Motor Vehicles Tax Act, 1958 and also Rule 5 of Bombay Motor Vehicles Tax Rules, 1959 made vide notification dated 6.2.2001 were struck down and a writ of mandamus was issued to the State authorities not to recover any tax in pursuance thereto from the vehicles of the respondents herein (writ petitioners in the High Court) which were kept but were not being used. A further direction was issued to the respondent State to grant refund to the tax already recovered from the respondents within three months from the date of receipt of copy of the judgment after examining their case regarding non-use of the vehicles. After the decision of the High Court, the Bombay Motor Vehicles Tax Act was amended by Gujarat Act No. 9 of 2002 in order to validate the imposition and collection of tax on designated omnibuses, which was published in the Gazette on 31.3.2002. Writ Petition Nos. 249 and 252 of 2002 have been filed in this Court challenging the amendments made by the aforesaid amending Act.

2. It will be convenient to reproduce relevant provisions of the statute which was subject matter of challenge before the Gujarat High Court. The Bombay Motor Vehicles Tax Act, 1958 (hereinafter

referred to as 'the Act') was made applicable to the State of Gujarat by the High Court Adoption of Laws (State and Concurrent Subjects) Order, 1960. The Act was amended several times and lastly on 6.2.2001 by Gujarat Act No.2 of 2001. Section 2 of this Act gives the definitions and Sub-section (1) defines 'certificate of taxation' and it means a certificate, issued under Section 5, indicating therein the rate at which the tax is leviable, and the periods for which the tax has been paid, sub-section (5) defines 'registered owner' and it means the person in whose name a motor vehicle is registered under the Motor Vehicles Act, 1939 (or, as the case may be, the Motor Vehicles Act, 1988) and Sub-section (7) defines 'Taxation Authority' or 'Authority' and it means such officer or authority as the State Government may be notification in the Official Gazette, appoint to be the Taxation Authority for the whole State or for any area or areas for the purposes of the Act, and the State Government may appoint more than one officer or authority as Taxation Authority for the whole State or for any area. The controversy here relates to Sections 3 and 3A of the Act and the relevant part thereof are being reproduced below:

"Section 3(1) Subject to the other provisions of this Act, on and from the 1st day of April, 1958, there shall be levied and collected on all motor vehicles used or kept for use in the State, a tax at the rates fixed by the State Government, by notification in the Office Gazette, (but not exceeding the maximum rates specified in the (First, Second, Third, Fourth, Fifth, Sixth and Seventh Schedules):

Provided ... (Omitted as not relevant)

Provided further..... (Omitted as not relevant)

(2) Except, during any period for which the Taxation Authority has, in the prescribed manner, certified that a motor vehicle was not used or kept for use in the State, the registered owner, or any person having possession or control, of a motor vehicle of which the certificate of registration is current, shall, for the purposes of this Act, be deemed to use or keep such vehicle for use in the State.

(3) No tax shall be leviable under sub-section (1) on motor vehicles on which tax is leviable under sub-section (1) of section 3A.

Section 3A. (1) On and from the 1st day of April, 1991, there shall be levied and collected on all omnibuses which are used or kept for use in the State exclusively as contract carriages (hereinafter in this section and sub-section (1A) of Section 4 referred to as 'the designated omnibuses') as tax at the rates specified in the table below:- *

Description of Designated omnibuses Annual rate of tax

1. (a) Ordinary designated omnibuses permitted to be carried not more than twenty passengers.

(Rs. 2,700) per passenger permitted to be carried.

(b) Ordinary designated omnibuses permitted to be carried more than twenty passengers.

(Rs. 4,050) per passenger permitted to be carried.

2. (a) Luxury or tourist designated omnibuses permitted to be carried not more than twenty passengers.

(Rs. 4,050) per passenger permitted to be carried.

(b) Luxury or tourist designated omnibuses permitted to be carried more than twenty passengers.

(Rs. 6,000) per passengers permitted to be carried).

Provided that in the case of the designated omnibuses used solely for the purpose of transporting students of educational institutions in the State in connection with any of the activities of such educational institutions a tax shall be levied and collected under sub-section (1) of Section 3, and not under this sub-section.

(2)(a) The tax leviable under sub-section (1) shall be paid in advance by every registered owner or any person having possession or control of the designated omnibuses either annually at the annual rate specified in Table appearing in sub-section (1) or in monthly instalments of one-twelfth of the annual rate.

(b) The annual payment of tax or the payment of monthly instalment of tax shall be made within such period and in such manner as may be prescribed.

(3)..... (Omitted as not relevant)

(4)..... (Omitted as not relevant)

(5) (a) Where the registered owner or any person having possession or control of a designated omnibus who has paid tax under this section proves to the satisfaction of the Taxation Authority that the designated omnibus in respect of which the tax has been paid has not been used or kept for use for a continuous period of not less than one month, he shall be entitled to the refund of an amount equal to one-twelfth of the annual rate of tax paid in respect of such omnibus for each complete month of the period for which the tax has been paid so however that, except as otherwise provided

in clause (b) the total amount of a refund in a year shall not exceed –

(i) six hundred seventy five rupees per passenger permitted to be carried, in the case of an ordinary designated omnibus permitted to be carried not more than twenty passengers.

(ii) one thousand twelve rupees per passenger permitted to be carried, in the case of an ordinary designated omnibus permitted to be carried more than twenty passengers.

(iii) one thousand one hundred twenty-five rupees per passenger permitted to be carried, in the case of a luxury or tourist designated omnibus permitted to be carried not more than twenty passengers. ***

(iv) one thousand five hundred rupees per passenger permitted to be carried, in the case of a luxury or tourist designated omnibus permitted to be carried more than twenty passengers.

Provided that for the purpose of determining the amount of refund under this clause, only such of the period in which a designated omnibus has not been used or kept for use shall be taken into account as comprises of complete months.

(b) Where a registered owner or a person having possession or control of a designated omnibus, who has paid tax under this section proves to the satisfaction of the State Government or such officer not below the rank of the Director of Transport, Gujarat State, as may, by notification in the Official Gazette, be authorised in this behalf by the State Government that the designated omnibus in respect of which tax has been paid, has not been used or kept for use for a continuous period of not less than one month but exceeding three months in a year, he shall be entitled to the refund of an amount equal to one-twelfth of the annual rate of the tax paid in respect of such omnibus for each complete month of the period of which the tax has been paid:

Provided that for the purpose of determining the amount of refund under this clause only such of the period in which a designated omnibus has not been used or kept for use shall be taken into account as comprises of complete months.

(6) .... (Omitted as not relevant)

Section 4(1) provides that the tax leviable under Section 3 in respect of a motor vehicle specified in the First Schedule shall be paid in advance by every registered owner, or any person having possession or control, of such motor vehicles to which sub-section (IAA) does not apply. *

3. The Bombay Motor Vehicles Rules, 1959 (hereinafter referred to as 'the Rules') were amended by Bombay Motor Vehicles Tax (Gujarat Amendment) Rules, 2001 vide notification dated 6.2.2001

and after amendment Rule 5 reads as under:

*"(1) A registered owner or any person who has possession or control of a motor vehicle in respect of which tax is paid in advance, not intending to use or keep for use such vehicle in the State and desiring to claim refund of tax on that account shall before the commencement of the period for which the refund of tax is to be claimed; make a declaration in form NT for any specified period not exceeding beyond the period for which the tax is paid in advance to the Taxation Authority in whose jurisdiction such vehicle is to be kept under non-use along with the certificate of taxation as well as certificate of fitness in case of transport vehicles and a free of rupees ten. **

Provided that where a vehicle is rendered incapable of being used or kept for use on account of an accident, mechanical defect or any other sufficient cause, which make it impossible to give an advance declaration as aforesaid then such declaration shall be given within a period of seven days from the date of occurrence of such accident, mechanical defect or such other cause, either in person or by registered post acknowledgement due;

(2) If the Taxation Authority is satisfied that the motor vehicle, in respect of which a declaration in Form 'NT' has been made, has not been used, or kept for use for the whole or part of the period mentioned in the declaration and if shall certify that the motor vehicle has not been used or kept for use for the whole or part of such period as the case may be by making an endorsement in the certificate of taxation to that effect.

Provided that nothing contained in this sub-rule shall effect the right of the Taxation Authority to recover the tax and penalty due for the period of non-use so certified, if at any time, it is found that the vehicle was actually used or kept for use in the State during such period.

*(3) The declaration in Form 'NT' given under the proviso to sub-rule (1) shall be accompanied by the certificate of Taxation and documentary evidence if any, or any other proof evidencing such non-use of the vehicle and the period thereof. Where the appropriate Taxation Authority, on considering the evidence adduced, if any, and on making such inquiries as it deems fit, refuses to admit the declaration of non-use or to certify the period of non-use, it shall record in writing its reasons therefor and communicate to the applicant." **

4. A perusal of the Act would show that Section 3 is the general charging Section which provides for levy of tax on all motor vehicles used or kept for use in the State and the rate of tax for different categories of vehicles is given in the schedule appended to the Act. However, Section 3A is a special provision with regard to the 'designated omnibuses' and prescribes the annual rate of tax for ordinary, luxury or tourist designated omnibuses having regard to their passenger carrying capacity which are used or kept for use in the State. The challenge here in to Section 3A and, therefore, we will confine to the said provision. Sub-section (2)(a) of Section 3A enjoins that the tax shall be paid in advance by every registered owner or any person having possession or control of the designated omnibuses either annually on in monthly instalments. Sub-section (5)(a) of Section 4A provides for refund of the tax already paid in advance where the registered owner or any person having

possession or control of a designated omnibus satisfies the Taxation Authority that the vehicle had not been used or kept for use for a continuous period of not less than one month. Sub-section (5)(b) contains a similar provision of refund where the vehicle has not been used or kept for use for continuous period of not less than one month but exceeding three months in a year. But here the power of refund has been conferred upon the State Government or such officer not below the rank of the Director of Transport, as may, be notification in the official gazette, be authorised in this behalf by the State Government. Rule 5 shows that for claiming refund of the advance tax already paid a declaration in Form NT has to be made to the Taxation Authority before the commencement of the period for which the refund of tax is to be claimed in case it is intended not to use or keep any such vehicle in the State. However, where the vehicle becomes incapable of being used or kept for use on account of any accident, mechanical defect or any other sufficient cause, which makes it impossible to give advance declaration, then such declaration has to be given within a period of seven days from the date of occurrence of such accident or mechanical defect or other cause.

5. The writ petitions were filed in the High Court on the ground, inter alia, that Section 3A of the Act is violative of Articles 14, 19(1)(g), 21 and 300A of the Constitution as designated omnibuses which are in fact contract carriages are discriminated against from other vehicles like stage carriages, ordinary vehicles and goods vehicles and a very high rate of tax was imposed upon them without there being any reasonable classification and thus the impugned provision was wholly arbitrary and discriminatory. It was submitted that 'if the vehicle is 'not used' or 'kept for use' or 'passengers are not carried to the full capacity' no tax could be levied and consequently the provisions of Section 3A had been enacted without any legislative competence having regard to the fact that the Act had been made with reference to Entry 56 and 57 of List II of Seventh Schedule of the Constitution. In this connection it was also submitted that the provision was bad inasmuch as the amount of annual rate of tax was fixed not as per the capacity of the vehicle or the distance actually covered or number of days of actual use but on a fixed rate basis. Whether the vehicle covered only one kilometer or thousand kilometers, the same amount of tax had to be paid. Another submission made was that tax had to be paid for the whole month even though the actual use of the vehicle may have been for a much shorter period. Lastly, it was submitted that the provision for depositing tax in advance and thereafter claiming a refund was wholly illusory and in fact that authorities had not made any such refund even though applications in that regard were pending for a long period. The High Court has held that the impugned tax was a composite tax and not on passengers alone; the demand of advance tax on passengers for one month was beyond the legislative competence as Entries 56 and 57 of List II of Seventh Schedule of the Constitution do not authorise levy of advance tax; similarly the demand of advance tax on vehicles which are not put on road or which are kept away from use was also beyond the legislative competence and the provision for payment of advance tax and Rule 5 were without any authority of law. The High Court further held that the mere fact that there was a provision for refund of the advance tax paid, could not save the enactment as the levy of advance tax itself was without any authority of law. On these findings, the writ petitions were allowed and Section 3A (1) and (2) of the Act and Rule 5 of the Rules as inserted vide notification dated 6.2.2001 and also a subsequent circular dated 8.2.2001 were struck down.

6. Learned counsel for the writ petitioners (here as well as before the High Court - operators of vehicles) have submitted that the tax is essentially a tax on passengers since rate of tax is fixed having regard to the number of passengers permitted to be carried and on a plain reading of the State it is clear that the enactment has been made with reference to Entry 56 List II of Seventh Schedule of the Constitution whereunder tax can be levied on passengers actually carried. But under

this Entry, no tax can be levied unless a passenger actually travels in the vehicle and since the tax is levied on the basis of seating capacity, it is beyond the legislative competence of the State legislative. It is submitted that the plea of the State before the High Court was that it is composite tax i.e. a tax on passengers and a tax on motor vehicles which is also evident from the speech given by the Hon'ble Minister in the legislature and also from the counter affidavit filed before the High Court. Therefore, in such a case, the requirement of both the Entries 56 and 57 have to be satisfied. The impugned tax does not satisfy the requirements of Entry 57 because even if the vehicle is not intended to be used or kept for use, the entire tax has to be paid. Learned counsel has further submitted that the provision for refund of the tax is wholly illusory as the refund is allowed only if the vehicle is not used for the entire period of one month and the use of the vehicle even for a single day creates a liability for payment of tax for the whole month. Learned counsel has also assailed the provision of Rule 5 which lays down the criteria for determining as to whether a vehicle has not been used or has not been kept for use.

7. Countering the submission made by learned counsel for the writ petitioners, Shri Kirit N. Raval, learned Solicitor General appearing for the State of Gujarat, has submitted that the owner of designated omnibus has to first apply for a certificate of registration under the provisions of Motor Vehicles Act and such a certificate gives rise to a presumption that the vehicle in question is meant for use on roads in the State. The taxable event occurs when the vehicle in question is ready for use and the liability to pay tax immediately arises when the vehicle becomes usable. Once the certificate of registration has been given and the taxable event occurs, it is perfectly open to levy advance tax on motor vehicles and the High Court was in error in holding that advance tax cannot be levied. This is irrespective of the fact whether the tax in question is levied under Entry 56 or 57. Learned counsel has further submitted that if income tax can be levied on income and there are provisions in the Income Tax Act for levy of advance tax even when the income in question has not been earned, with a machinery for refund, there is no reason why even under Entry 56 or 57, the tax cannot be levied when the presumption of the vehicle being made for use of passengers arises and taxable event has taken place. Learned Solicitor General has also submitted that the contention that the contract carriages have been levied a higher tax ignores the accepted position that contract carriages are a class by themselves and a higher tax on such category of vehicles has been specifically held to be permissible. The mere fact that the tax falls heavily on one category is wholly irrelevant and the possibility of better classification for imposition of tax in question is no ground for striking down the levy.

8. The relevant entries with reference to which the impugned enactment has been made are Entries 56 and 57 of List II of Seventh Schedule of the Constitution which read as under:

Entry 56 - Taxes on goods and passengers carried by road or on inland waterways.

Entry 57 - Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III.

*Entry 35 of Lists III - Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied. **

9. Before examining the contentions raised at the Bar it is necessary to bear in mind certain fundamental principles which are too well settled. The necessity for the same arises on account of the fact that they have been lost sight of in the contentions raised on behalf of the operators of designated omnibuses both here and also in the High Court.

10. In interpreting the scope of various entries in the legislatives lists in Seventh Schedule, widest possible amplitude must be given to the words used and each general word must be held to extend to ancillary or subsidiary matters which can fairly be said to be comprehended in it. The entries should, thus be given a broad and comprehensive interpretation. In order to see whether a particular legislative provision falls within the jurisdiction of the legislature which has passed, it the Court must consider what constitutes in pith and substance the true subject matter of the legislation and whether such subject matter is covered by the topics enumerated in the legislative list pertaining to that legislature.

11. The enactment under question is a taxing statute. The indicia of tax was explained by a bench of seven judges in Commission, Hindu Religious Endowments, Madras Vs. Shri Laxmindra Thirtha Swaminar of Shri Shirur Mutt 1954 AIR(SC) 284 which has since been consistently followed and it is as under. A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment 'for services rendered'. This definition brings out the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. The essence of taxation is compulsion that is to say it is imposed under statutory power without the tax-payers consent and the payment is enforced by law. The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual there is no element of 'quid pro quo' between the tax payer and the public authority. Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the tax-payer depends generally upon his capacity to pay.

12. A fee is generally defined to be a charge for a special service rendered to individuals by some governmental agency. But the traditional view that there must be actual quid pro quo has undergone a sea change with the passage of time. Co-relationship between the levy and the services rendered/expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a 'reasonable relationship' between the levy of the fee and the services rendered. It is increasingly realized that the element of quid pro quo in the strict sense is not a sine qua non for a fee. (See Sreenivas General Traders vs. State of A.P. , Municipal Corporation of Delhi vs. Moh. Yasin and B.S.E. Brokers' Forum vs. Securities and Exchange Board of India 71)

13. Entry 56 authorities a tax, the incidence of which is on goods and passengers carried by road or on inland waterways. Even though the amount of the tax may be measured by the fears or by the distance travelled, the Entry does not specify who should be the assessee and, therefore, it is open to enact a law to recover the tax from the owners or operators of the vehicles. The tax imposed under this Entry is of regulatory and compensatory character. The tax under Entry 57 is leviable by the

State legislature on all vehicles 'suitable for use on roads' which are kept in the State. The tax is compensatory in nature and, therefore, must have some nexus with the vehicles using the public roads of the State. The words 'suitable for use' signify the kind of vehicles meaning thereby that the vehicles should be such type which are normally capable of running on the road. The entry does not indicate in any manner that tax would be leviable only for the period when the vehicle is actually using the road and not otherwise and, therefore, it has no co-relation with the actual period of use. Naturally the State has to maintain the roads and to keep them in proper condition for all those who own vehicles suitable for use on roads. This is irrespective of the fact whether they use it or not or use it occasionally or for short duration only. It being a tax and not a fee (as understood in the conservative sense) the actual use of the public roads of the State cannot be insisted upon for incurring the liability.

14. The main ground of challenge of the writ petitioners is that Section 3A mandates payment of tax in advance even though the vehicle may not at all be used. It may be noticed that Section 3A of the Act lays down that there shall be levied and collected on all omnibuses which are used or kept for use in the State exclusively as contract carriages a tax at the rates specified in the table. The incidence of tax is, therefore, on omnibuses which are 'used or kept for use in the State'. A similar controversy was examined in Travancore Tea Co. vs. State of Kerala . Here the company alleged that the vehicles were purchased by it solely and exclusively for use in the tea estates and intended to be used only for agricultural purposes and were not used nor kept for use in the State, as contemplated by Section 3 of Kerala Motor Vehicles Taxation Act. It was further alleged by the company that for the purpose of plantation it was maintaining the roads, fit for vehicular traffic, in the eight estates covering a length of 131 miles. Paragraphs 4, 5 and 6 of the Reports which are relevant are being reproduced below:

*"4. The question that falls for decision is whether on the assumption that the motor vehicles are used or kept for use within the estate, and not intended to be used on public roads of the State; the tax is leviable? In order to appreciate the question raised, it is necessary to refer to the relevant entry in the Constitution, the provisions of the Act and the Motor Vehicles Act and the decision relating to the question rendered by this Court. Entry 57 in List II of the Constitution relates to taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III. This entry enables the State Government to levy a tax on all vehicles whether mechanically propelled or not, suitable for use on roads. There is no dispute that the vehicles are mechanically propelled and suitable for use on roads. $ **

5. Section 3 of the impugned Act (Kerala Motor Vehicles Taxation Act (Act 24 of 1963) provides that a tax 'shall be levied on all motor vehicles used or kept for use in the State." They levy is within the competence of the State legislature as entry 57 in List II authorities levy on vehicles suitable for use on roads. It has been laid down by this Court in Bolani Ores Ltd. vs. State of Orissa (1975) 2 SCR 138 at p.155; (AIR 1975 SC 17), that under Entry 57 of List II, the power of taxation cannot exceed compensatory nature which must have some nexus with the vehicles using the roads i.e. public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Act, they cannot be taxed.

6. If the words 'used or kept for use in the State' are construed as used or kept for use on the public

roads of the State, the Act would be in conformity with the powers conferred on the State legislature under Entry 57 of List II. If the vehicles are suitable for use on public roads they are liable to be taxed. In order to levy a tax on vehicles used or kept for use on public roads of the State and at the same time to avoid evasion of tax the legislature has prescribed the procedure..." $ *

(Emphasis supplied)

After laying down the above principle of law the question whether estate roads as public roads as left for investigation and decision by R.T.O.

15. The validity of payment of advance tax was examined in State of Karnataka vs. K. Gopalakrishna Shenoy , with reference to Mysore Motor Vehicles Tax Act, Section 3(1) whereof provided for levy of tax on all motor vehicles suitable for use on roads, kept in the State of Mysore. The explanation appended to Sub-section (1) of Section 3 laid down that a motor vehicle of which certificate of registration is current shall, for the purpose of the Act, be deemed to be a vehicle suitable for use on roads. Section 4 provided that the tax under Section 3 shall be paid in advance by the registered owner or person having possession or control of the motor vehicle. Section 7 provided for refund of tax if it was proved to the satisfaction of the prescribed authority that the vehicle had not been used during the whole of the period for which tax had been paid or a continuous part thereof not being less than one calendar month, a refund shall be made of such portion of the tax and subject to such conditions as may be prescribed. In paras 6 and 7 of the Reports, it was held as under:

"6... On a reading of Sections 3 and 4 it may be seen that they make the registered owner or person having possession or control of a motor vehicle kept in the State absolutely liable to pay tax in advance at the rates specified in Part A of the Schedule thereto for a quarter, half-year or year at his choice. The Motor Vehicle Taxation Acts in all the States of the Indian Union follow a uniform pattern. Entry 57 of List II of Schedule VII of the Constitution is the Legislature Entry conferring power on the States to levy the tax. It has been observed by this Court in Automobile Transport Ltd. vs. State of Rajasthan (1963) 1 SCC 491: (AIR 1962 SC 1406) that the tax on motor vehicles is a compensatory tax levied for the use of the roads and it is not a tax on ownership or possession of motor vehicles. The object of the Act is achieved by charging to tax all motor vehicles suitable for use on roads kept in the State, the registered owner or person having possession or control being held liable to pay the tax in advance and then providing for grant of refund for non-user subject to prescribed conditions.

7. What falls for consideration now is whether the owner or person having the possession or control of a motor vehicle is not bound to pay the tax under Section 3(1) of the Act because the vehicle was in a state of repair and was not put to use on the road and furthermore the Certificate of Fitness of the vehicle had not been kept current even though the Certificate of Registration was kept current. One factor which has to be borne in mind in interpreting Section 3(1) and its Explanation is the meaning to be given to the words 'suitable for use on roads', occurring in them as otherwise a misconception would arise. These very words occur in Entry 57 in the State List which reads as under:--

"Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tram cars, subject to the provisions of Entry 35 of List III".

*The words 'suitable for use on roads' in the said Entry have been construed by Hidayatullah, J. as he then was, 'in Automobile Transport (AIR 1962 SC 1406) case as under: **

"The words 'suitable for use on roads' describe the kinds of vehicle and not their condition. They exclude from the Entry, farm machinery, aeroplanes, railways etc. which though mechanically propelled are not suitable for use on roads. The inclusion of trams using tracks which may be on roads or off them makes the distinction still more apparent."

*It, therefore, follows that the same meaning should be given to those words, occurring in Section 3(1) and the Explanation also. The resultant position that emerges is that Section 3(1) confers a right upon the State to levy a tax on all more vehicles which are suitably designed for use on roads at prescribed rates without reference to the road worthy condition of the vehicle or otherwise. Section 14 enjoins every registered owner or person having possession or control of the motor vehicle to pay the tax in advance. The Explanation to Section 3(1) contains a deeming provision and its effect is that as long as the Certificate of Registration of a motor vehicle is current, it must be deemed to be a vehicle suitable for use on roads. The inevitable consequence of the Explanation would be that the owner or a person having control or possession of a motor vehicle is statutorily obliged to pay the tax in advance for the motor vehicle as long as the Certificate of Registration is current irrespective of the condition of the vehicle for use on the roads and irrespective of whether the vehicle had a Certificate of Fitness with current validity or not. The Act, however, takes care to see that the owner of a motor vehicle or a person having possession or control of it is not penalised by payment of tax in advance for a vehicle which had not been actually used during the whole of a period of part of a period for which tax had been paid by him...." **

After considering the provision for refund of the tax as contained in Section 7 of the Act, it was held as under in para 8 of the Report:

"8. The principle underlying the Taxation Act is that every motor vehicle issued Certificate of Registration is to be deemed a potential use of the roads all through the time the Certificate of Registration is current and therefore liable to pay tax under Section 3(1) read with Section 4. If, however, the vehicle had not made use of the roads because it could not be put on the roads due to repairs even though the Certificate of Registration was current, the owner or person concerned has to seek for and obtain refund of the tax paid in advance after satisfying the Authorities about the truth of his claim. It is not for the Transport Authorities to justify the demand for tax by proving that the vehicle is in a fit condition and can be put to use on the roads or that it had plied on the roads without payment of tax. It would be absolutely impossible for the State to keep monitoring all the vehicles and prove that each and every registered vehicle is in a fit condition and would be making use of the roads and is therefore, liable to pay the tax. For that reason, the State has made the payment of tax compulsory on every registered vehicle and that too in advance and has at the same time provided for the grant of refund of tax whenever the person paying the tax has not made use of the roads by plying the vehicle and substantiates his claim by proper proof. Any view of the contrary

*would defeat the purpose and intent of the Taxation Act and would also afford scope and opportunity for some of the persons liable to pay the tax to ply the vehicle unlawfully without payment of tax and later on justify their non-payment by setting up a plea that the vehicle was in repair for a continuous period of over a month or the whole of a quarter, half-year or year as they choose to claim." **

16. In Chief General Manager, Jagannath Area vs. State of Orissa 9, the question for consideration was whether the dumpers belonging to the appellant which were being used within the mining areas were taxable under Orissa Motor Vehicles Taxation Act, Section 3 whereof laid down that a tax shall be levied on every motor vehicle used or kept for use within the State at the rates specified in the Schedule. Two contentions were raised before this Court and the second contention was that the tax on vehicles being compensatory in nature, levy of such tax can be sustained only on the ground that the vehicles used the roads for which the tax is levied and if the vehicle in question did not use the roads and yet tax is levied on the same, the said levy is liable to be struck down. Repelling the argument that in absence of actual use of the road, the tax would not be leviable, this Court held as under in para 11 of the Reports:

*"11. The tax imposed on the motor vehicles is basically a tax for the use of the roads within the State. It is not doubt a compensatory tax which facilities trade, commerce and intercourse within the State by providing roads and maintaining roads in a good state of repairs. As has been held by this Court in Automobile Transport Ltd. vs. State of Rajasthan & others (1963) 1 SCR 491), it would not be right to say that the tax is not compensatory because the precise or specific amount collected is not actually used in providing any facilities. If a statute fixes a charge for a convenience or service provided by the State or an agency of the State, and imposes it upon those who choose to avail themselves of the service or convenience, or who can use the services provided for, the imposition assumes the character of remuneration or consideration charged in respect of an advantage sought or received or advantage which can be received. The mere fact that any particular individual though can take advantage of the convenience of the services provided by the State but for some reason or the other chooses not to enjoy the services provided cannot escape the taxing liability on that score nor can the provision imposing the tax become invalid on that score..." **

17. This view has been reiterated in several decisions of this Court. In State of Kerala vs. Arvind Ramakant Modawdakar , the Court ruled that it is a settled position in law that the actual user of the road by the vehicles which are covered by the requisite permits is not always a relevant factor since the taxable event under Section 3(1) of Kerala Motor Vehicles Taxation Act occurs when the vehicle is used or is kept for use in the State and once the vehicle becomes liable for payment of tax, the extent and quantity of use by the vehicle is not a decisive factor for the purpose of levy of tax. In Mahakoshal Tourist vs. State of M.P. 3 the challenge made with regard to the absence of a machinery for assessment of tax for the vehicles plying in the State of Madhya Pradesh on the basis of All India Tourist permit and denying them refund of tax for the period they were not used or kept for use in the said State was considered. In view of the language used in Section 3 of the relevant Act which provided for levy of tax on every motor vehicle 'used or kept for use in the State' at the rate specified in the Schedule, it was held that the expression 'used' or 'kept for use' means, either the actual use of the vehicle on the roads of the State of Madhya Pradesh or keeping the vehicle (which is in condition and capable of being used) available for use in the State, if so desired. It was further held that while plying outside the State in connection with the contract, a vehicle will, nonetheless

be within the import of 'kept for use in the State' and it is immaterial for the purpose of Section 3 whether a vehicle is actually being used or is kept for use in the State.

18. The language used in Section 3A - all omnibuses which are used or kept for use in the State exclusively as contract carriages - is in conformity with Entry 57 of List II. The consistent view taken by this Court is that if a vehicle is 'used' or is 'kept for use' in the State, it becomes liable for payment of tax and the actual use or quantum of use is not material. The fact that the statute provides for refund of tax, if the authority is satisfied that the vehicle has not been used, does not mean that the legislature can only make a provision for levy of tax which is limited for the period of actual use or that no tax can be levied during the period the vehicle is not put to use in the State. The provision for the refund has been made only for the advantage of the operator so that he may be relieved of the burden of tax when he is not getting any income from the vehicle on account of its non-use but it has no relevance to the competence or authority of the State to enact a law providing for imposition of a tax on vehicles which are used or are kept for use in the State.

19. Learned counsel for the writ petitioners has laid great emphasis upon Bolani Ores Ltd. vs. State of Orissa 1975 AIR(SC) 17 where having regard to Bihar and Orissa Motor Vehicles Taxation Act an observation was made that 'it is not the purpose of the Taxation Act or levy taxes on vehicles which do not use the roads or in any way form part of the flow of traffic on the roads which is required to be regulated'. Another observation in the same judgment - 'but Entry 57 of List II is subject to the limitation that the power of taxation thereunder cannot exceed the compensatory nature which must have some nexus with the vehicles using the roads viz., public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Motor Vehicles Act, they cannot be taxed" has also been heavily relied upon for contending that tax can be levied only for the period when the vehicles is actually using the road and consequently Section 3A of the Act is invalid. In fact, the High Court has also taken support from the aforesaid observation for holding that for the period, the designated omnibuses are not using the roads and are merely standing, no tax is leviable. It is trite that any observation made during the course of reasoning in a judgment should not be read divorced from the context in which they were used. Bolani Ores Ltd. had filed a suit seeking a declaration that certain machineries like Shovels, Caterpillars Bulldozers, Rockers, Dumpers and Tractors, etc. which were used in mining operation in the area leased out to them were not liable for registration under Section 22 of the Motor Vehicles Act and cannot be taxed under Section 6 of the Bihar Taxation Act. The observation aforesaid was made in the context of the machinery which was used for mining operation within the leased area which obviously did not form part of the flow of traffic on the roads. The Court was not called upon to answer the question posed here, namely, whether a normal motor vehicle cannot be taxed for the period during which it is kept for use but is actually not operating. The Court did not hold as a proposition of law that for the period a vehicle is not used on the roads, it cannot be taxed.

20. The principle laid down in State of Mysore vs. Sundaram Motors Pvt. Ltd. Reliance on which has been placed by the High Court has also no application here. Section 3 of Mysore Motor Vehicles Taxation Act provided that a tax shall be levied on all motor vehicles suitable for use on roads, kept in the State of Mysore. M/s. Sundaram Motors were dealers in motor vehicles which were manufactured in Bombay and some of these vehicles passed through the territory of State of Mysore on way to their destination in another State (Tamil Nadu) and during the course of the journey, the vehicles halted for rest and food, etc. of the drivers. It was held that the short break taken during the

course of journey could not fasten liability for tax as the words 'kept' employed in Section 3 had an altogether different connotation, which has an element of stationeries. The principle laid down in this case can hardly have any application here. Similarly, the writ petitioners can drive no assistance from State of Gujarat vs. Kaushikbhai K. Patel, wherein the words 'for reasons beyond the control of such owner or person' previously occurring in Section 3A(5)(b) were held to be beyond the legislative competence of the State. In this case the High Court had held that once the statute provided for refund of tax on account of non-use of the vehicle, the legislature could not have imposed a further condition to the effect 'for reasons beyond the control of such owner or person' and the said expression was held to be beyond the legislative competence. The appeal preferred by the State of Gujarat was dismissed by this Court and the view taken by the High Court was affirmed. We would like to point out that the judgment does not show that the attention of the Bench was invited to any of the decisions which we have referred to above, wherein it has been held that actual user of the road is not material and mere keeping of the vehicle which is capable of being used is enough to attract liability of tax.

21. Learned counsel for the writ petitioners has submitted that the purpose for which the Act was enacted was to augment the financial resources of the State to meet the huge expenditure on account of natural calamities etc. as has been mentioned in the Statement of Objects and Reasons. Therefore, the Act is not a compensatory enactment which may have been passed for collecting revenue for the purpose of maintenance of roads and consequently the same is invalid. In our opinion, the contention raised has not substance. In G.K. Krishnan vs. State of Tamil Nadu this Court has clearly ruled that if the State Legislature was competent to pass the Act, the question of motive with which the tax was imposed is immaterial and there can be no plea of a colourable exercise of power of tax if the Government had the power to impose the tax. it was further held that if the Government had a authority to impose a tax, the fact that it gave a wrong reason for exercising the power would not derogate from the validity of the tax.

22. Learned counsel for the writ petitioners has also submitted that only contract carriages which are designated as omnibuses and luxury or tourist designated omnibuses have been subjected to a very heavy tax under Section 3A of the Act, whilst all other vehicles are taxed under Section 3 of the Act and whereunder the quantum of tax is much lower as would be evident from First to Seventh Schedule of the Act. The submission is that these vehicles have been discriminated against in the matter of taxation and there is no lawful justification for meeting out such differential treatment to them. We are unable to accept the submission made. A similar contention was negatived in G.K. Krishnan vs. State of Tamil Nadu on the ground that the classification of vehicles as Stage carriage and contract carriage for the purpose of imposing a higher tax on the latter is presumed to be reasonable having regard to the fact that it was based on local conditions of which the Government was fully cognizant and the differentiation thus made has reasonable relation to the purpose of the Act. A similar contention made in Malwa Bus Service vs. State of Punjab was repelled and it was held as under:

"There is no dispute that even a fiscal legislation is subject to Article 14of the Constitution. But it is well settled that a legislature in order to tax some need not tax all. It can adopt a reasonable classification of persons and things in imposing tax liabilities. A law of taxation cannot be termed as being discriminatory because different rates of taxation are prescribed in respect of different items, provided it is possible to hold that the said items belong to distinct and separate groups and

*that there is a reasonable nexus between the classification and the object to be achieved by the imposition of different rates of taxation. The mere fact that a tax falls more heavily on certain goods or persons may not result in its invalidity..." **

It was further held that the Courts lean more readily in favour of upholding the constitutionality of taxing law in view of the complexities involved in the social and economic life of the community. Unless the fiscal law in question is manifestly discriminatory, the Court should refrain from striking it down on the ground of discrimination. This being the position of law, it is not possible to accept the contention of the writ petitioners that the tax imposed upon the designated omnibuses is discriminatory. #

23. Nothing new has been pointed out to challenge Gujarat Act No. 9 of 2002 by which the Bombay Motor Vehicles Taxation Act, as adopted in the State of Gujarat with up to date amendments, was further amended after the decision of the High Court which was rendered on 17th August, 2001. In fact, the main argument of the learned counsel for the writ petitioners is that the said amending Act merely rearranged the Sections and suffered from the same infirmity as the previous Act. Since we are of the opinion that **the view taken by the High Court is not correct and Section 3A and Rule 5 of the Rules, as incorporated vide notification dated 6.2.2001 are intra vires and are perfectly valid, the challenge made to Gujarat Act No. 9 of 2002 has no substance and must fail. #**

24. In the result, Civil Appeal Nos. 6462-6464 of 2001 filed by the State of Gujarat are allowed and the impugned judgment and order dated 17.8.2001 of the High Court is set aside. Writ Petition Nos. 249 and 252 of 2002 filed in this Court are dismissed. No costs.