SUPREME COURT OF INDIA

TATA Motors Limited

Vs.

State of Jharkhand

C.A.No.5299-5304 of 2003

(A.K.Sikri and M.R.Shah,JJ.,)

14.12.2018

JUDGMENT

A.K.Sikri,J.,

1. A common question of law which arises in all these appeals pertains to levy of tax by the respondent No.1 State under Section 6 of the Bihar Motor Vehicles Taxation Act, 1994 (hereinafter referred to as the 'Bihar Act') on the chasis of the motor vehicles manufactured by the appellants during the period these chasis are in their "possession", i.e., before they are delivered to the dealers and/or the purchasers of the said vehicles.

2. The Bihar Act envisages three kinds of taxes, namely:

(a) on registered vehicles under Section 5 of the Act;

(b) on vehicles held under trade certificates as per Section 6 of the Act; and

(c) in respect of vehicles registered, where the registration is temporary, a marginal tax under Section 7(4) of the Act.

3. As would be noticed, tax under Section 5 of the Bihar Act is paid by the ultimate buyers who, on purchase of vehicles and becoming owners thereof, get these vehicles registered in their names. After the manufacture of the vehicle and before it is sold to the ultimate buyer to use the said vehicle, a temporary registration is required by the manufacturer under Section 7 of the Bihar Act. Since this registration is temporary for a limited duration, a fractional tax is paid by the manufacturer or dealer under Section 7(4) of the Bihar Act. Section 6, on which the fulcrum of dispute revolves, deals with those vehicles which are in possession of a manufacturer or dealer in the course of his business and are held under trade certificates. Sections 5, 6 and 7 are reproduced below in order to have an idea of the payment of these three motor vehicle taxes:

"5. Levy of tax - (1) Subject to other provisions of this Act, on and from the date of commencement of this Act, every owner of a registered motor vehicle shall pay tax on such vehicle at the rate specified in Schedule I.

(2) Subject to other provisions of this Act, on and from the date of commencement of this Act, every owner of a registered motor vehicle shall pay Additional Motor Vehicles Tax on such vehicle at the rate specified in Schedule II.

(3) The State Government may, by notification from time to time, increase the rate of tax specified in the Schedules:

Provided that no such increase shall, during any year, exceed fifty percent of the rate of taxes prescribed in the Schedules.

6. Tax payable by a manufacturer or a dealer - A tax at the annual rate specified in Schedule III in lieu of the rates specified in Schedule I shall be paid by a manufacturer or a dealer in motor vehicles in respect of the motor vehicles in his possession in the course of his business as such manufacturer or dealer under the authorisation of trade certificate granted under the Central Motor Vehicles Rules, 1989.

7. Payment of tax -

(4) In the case of motor vehicles temporarily registered under Section 43 of the Motor Vehicles Act, 1988, the tax for vehicles other than personalised vehicles shall be levied at the rate of 1/12th of the tax payable for the year for such vehicles. In case of extension of the period of temporary registration under the proviso to sub-section (2) of Section 43 tax at the rate of 1/12th payable for the year shall be payable on every extension of temporary registration for period of 30 days or part thereof; Provided that for temporary registration of personalised vehicles the rates of tax will be Rs.50/- for a motor cycle (including moped, scooter and cycle with attachment for propelling the same by mechanical power) and Rs. 100/- for a motor car."

4. As is clear from the reading of these Sections, Section 5 is the charging section as per which every owner of a registered motor vehicle is under an obligation to pay tax on such vehicle, rates whereof are specified in Schedule I. Insofar as Section 6 is concerned, liability is cast on the manufacturer of motor vehicles or a dealer in motor vehicles to pay tax in respect of motor vehicles in his possession in the course of his business as a manufacturer or a dealer, under the authorisation of trade certificate granted under the Central Motor Vehicle Rules, 1989 (hereinafter referred to as 'MV Rules'). Here tax is at annual rate specified in Schedule III, which is 'in lieu' of the rates specified in Schedule I. It clearly implies, therefore, that a manufacturer or dealer pays the tax in respect of vehicles in his possession for which he has been granted trade certificate which authorises him to possess the said vehicle before it is sold to the ultimate consumer. Obviously, the rate specified in Schedule

III is much lesser than the tax which is payable by the registered owner under Section 5 of the Bihar Act.

5. Section 7(4), on the other hand, applies to those cases where the motor vehicles are temporarily registered under Section 43 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'MV Act'). In contrast with Section 6, here the person, unlike the manufacturer or dealer having trade certificate, gets the vehicle registered on temporary basis. The tax levied here is 1/12th of the tax payable for the year for such vehicles.

6. The three situations, thus, become obvious. A manufacturer after manufacturing motor vehicle would be in possession of the said vehicle till it is delivered to a dealer. Likewise, a dealer would remain in possession of such a vehicle till it is sold to the consumer. Ordinarily, a motor vehicle cannot be driven unless it is registered. That requirement is provided under Section 39 of the MV Act. It is in consonance with this provision that under Section 5 of the Bihar Act, tax is levied by the respondent State on the owner of the registered vehicle, at the time of registration. Since this tax is to be paid by the ultimate owner who purchases the vehicle, to avoid double taxation and payment of same tax by the manufacturer or dealer, Rule 33 of the MV Rules exempts such manufacturer or dealer from the necessity of registration subject to the condition that they obtain trade certificates from the registering authority. It is because of the reason that in the course of their business as manufacturer or dealer the vehicle would come on the road and would be driven. For this reason, a dealer or a manufacturer of motor vehicle is permitted to obtain trade certificate so that he is exempted from registering the vehicle in his name. The Bihar Act, even in such a case, contemplates levy of tax. This tax is payable under Section 6 at the annual rate specified in Schedule III, as noted above. In case a dealer or a manufacturer is not having trade certificate, in order to drive the motor vehicle during the period it remains with him, he is supposed to get the vehicle registered for a temporary period. This temporary registration is to be done as per the provisions contained in Section 43 of the MV Act. It may be clarified that such temporary registration can be obtained by any person who is the owner of a motor vehicle and is not confined to a dealer or a manufacturer. An owner who gets the vehicle temporarily registered in his name is supposed to pay tax under the Bihar Act though at a much lesser rate than the rate specified in Schedule I, inasmuch as it is only at the rate of 1/12th of the tax payable for the year for such vehicles. It is because of the reason that temporary registration is for a period of one month.

7. All the appellants in these appeals fall in the category of manufacturers or dealers of the motor vehicles. They have paid taxes under Section 7(4) of the Bihar Act. Likewise, in respect of those vehicles retained and used by the appellants for their own purposes and not sold, these appellants have discharged their tax liability under Section 5 of the Bihar Act as well.

8. In the aforesaid backdrop, the issue is as to whether such manufacturers or dealers, like the appellants herein, are liable to pay tax under Section 6 as well. To reiterate, after the manufacture of the vehicle when it remains with the manufacturer (or when it remains with the dealer after delivery thereof to the dealer by the manufacturer) and before it is sold to the

ultimate consumer, the vehicle is brought on the road and is driven. It maybe for the purpose of testing the technical suitability of such a vehicle or when it goes for delivery from the manufacturer's factory to the dealer's showroom. Likewise, dealer may also drive this vehicle for limited purpose, say it is driven by the customer etc. Since, a vehicle cannot be brought on road and be driven without any valid registration, contemplates two situations to meet such contingencies. It provides for temporary registration under Section 43 of the MV Act. Another option is given to those manufacturers or dealers who obtain trade certificates from the registering authority and in such a case as per Rule 33 of the Motor Vehicle Rules, manufacturers or dealers are exempted from the necessity of registration. The appellants in these appeals are either manufacturers or dealers. They have paid taxes under Section 7(4) of the Bihar Act. In respect of such vehicles, taxes also stand paid under Section 5 of the Bihar Act. Question of additional tax liability under Section 6 of the Act arises in this backdrop.

9. Before we answer this question, it would be necessary to take note of those amendments in the Central Government, i.e., MV Act from time to time which have bearing on these cases.

10. Section 2(8) of the MV Act (the Central Act) provides the definition of 'dealer'. As per this provision, as originally stood, a manufacturer was also included in the definition of 'dealer'. However, this provision was amended vide Act 54 of 1994 whereby the Legislature omitted 'manufacturer' from the ambit of the expression 'dealer'. The manufacturer, therefore, no more remained the dealer. The amended definition of 'dealer' which came into effect with effect from November 14, 1994, is as under:

> "2. Definitions.—In this Act, unless the context otherwise requires,—
>
> (8) "dealer" includes a person who is engaged—
>
> (a)
>
> (b) in building bodies for attachment to chassis; or
>
> (c) in the repair of motor vehicles; or
>
> (d) in the business of hypothecation, leasing or hire-purchase of motor vehicle;"

11. Thus, under the Central Act, prior to its amendment in November, 1994, motor vehicles would require registration in all events, save and except those which were in possession of "dealers". In the latter event, the vehicles could be temporarily kept under a trade certificate, which, under the rules, provides extremely limited mobility. In November, 1994, manufacturers were taken out of this exception by amendment in the definition of dealers.

12. The Bihar Motor Vehicle Rules, 1992 (Bihar Rules) as applicable in the State of Bihar and in some other States were amended as empowering the manufacturers themselves to act as authorities, who could grant temporarily registration. Thus, under the revised scheme post

November, 1994, it is only a dealer (other than a manufacturer) who could keep a vehicle for a limited period of time under a trade certificate. Manufacturers, therefore, would have to temporarily register the vehicle under Section 43 of the Central Act. Upon its purchase, the customer would then register the vehicle finally under Section 39 of the Central Act.

13. The State of Bihar enacted Bihar Motor Vehicles Taxation Act in April 1994 at a time when the manufacturers also could continue in possession of Tariff heading vehicles under a trade certificate.

14. After the amendment of 1984, the facility of trade certificate to a manufacturer stands withdrawn. The manufacturer undoubtedly can possess a vehicle, which is in his factory as long as it is not used in any place contrary to Section 39 of the Bihar Act. The only manner in which a manufacturer can use a vehicle is the manner indicated under Section 39 without obtaining a registration.

15. Prior to the above-said amendment of the Central Act, a Division Bench of the Patna High Court took the view that vehicles, which were in use, would either require a registration certificate, permanent or temporary, or would require a trade certificate. A manufacturer who is required to obtain a trade certificate but did not do so, would not escape the net of tax by being the beneficiary of his own wrong.

16. To complete the narrative, it would also be pertinent to mention that after the amendment in November, 1994, as noted above, when the Assessing Authority sought to levy tax under Section 6 of the Bihar Act, this action was challenged by the appellants by filing writ petitions in the High Court of Patna. In those writ petitions, vires of Section 6 of the Bihar Act were also challenged. The challenge was repelled by the High Court vide its judgment dated July 03, 1998, with the leading case known as *Tata Engineering and Locomotive Company Ltd. vs. State of Jharkhand*[1] (TELCO case). This judgment has attained finality as Special Leave Petition thereagainst was dismissed by this Court. After the aforesaid judgment, the District Transport Office, Jamshedpur again confirmed the demand of tax under Section 6 of the Act vide his order dated July 05, 1999 in the case of the appellant/TELCO. This order was confirmed by the Appellate Authority at Ranchi on December 18, 1999 as well as by Revisional Authority by his order dated April 20, 2000. Writ petitions were filed challenging this order in the High Court which have been dismissed vide impugned judgment dated September 24, 2002. In appeal Nos. 5299-5304 of 2003 validity of the judgment is questioned. Civil Appeal Nos. 5299-5304 of 2003 arise out of this judgment.

17. Civil Appeal Nos. 8-12 of 2004 are filed by a dealer who has paid the tax under Section 6 of the Act as well, however, for delayed payment, penalty and interest are imposed which were challenged by the said appellants in the High Court and the High Court has dismissed the case of the appellants vide its judgment dated July 22, 2003 following its judgment in TELCO case.

18. It is in this conspectus, this Court is to first determine the question of liability of tax under Section 6 of the Bihar Act and in the event this tax is upheld, question of penalty and interest would have to be determined.

19. We may point out that before the High Court, the appellants had challenged the vires of Section 6 on the ground that the State Legislature lacks competence to make a provision of this nature. It was pointed out that Section 6 levies the tax on a manufacturer or a dealer of motor vehicles merely on 'possession' thereof by such a manufacturer or a dealer. It was argued that the Bihar Act was enacted by the State Legislature under Entry 57 of List II (State List) of the VIIth Schedule to the Constitution of India, which entry does not empower the State Legislature to impose tax on vehicle merely on possession. This entry 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."

20. The High Court, however, rejected this contention with the reason that under this entry, taxes on vehicles which are suitable for use on roads can be imposed and it was undisputed case of the parties that the vehicles manufactured by the appellants are suitable for use on roads. Therefore, the provision which stipulates the manufacturer or a dealer of a motor vehicle, in respect of the motor vehicle in his possession in the course of business as such a manufacturer or dealer shall pay tax, is within the legislative competence of Entry 57. This contention has been raised before us as well. However, we do not agree with the appellants as the reasoning given by the High Court is the correct analysis of Entry 57 of List II of VIIth Schedule to the Constitution.

21. Insofar as argument predicated on the amendment in the Motor Vehicles Act (the Central Act), 1988 is concerned, we again find that the High Court has rightly concluded that this amendment would have no relevance to the provisions contained in the Bihar Act. Whether the definition of a dealer includes manufacturer or not would be immaterial inasmuch as under Section 6 of the Bihar Act, the Legislature has made provision to tax both the dealer as well as the manufacturer. We agree with the following observations of the High Court in this behalf:

> "7. ...It goes without saying also that 1994 Act has been enacted under and in terms of Entry 57 (supra) by the State Legislature; whereas 1988 Act has been enacted by the Union Parliament under and in terms of Entry 35 of the Concurrent List. Also, whereas the Preamble to 1988 Acts states that the Act has been enacted to consolidate and amend the law relating to Motor Vehicles, the Preamble to 1994 Act states that this Act has been made with a view to regulate the imposition and levy of tax on Motor Vehicles in the State of Bihar (as it was at the relevant time). Both the Act, therefore, deal with two different fields of legislation and the areas of their operation are also different, having been enacted by two different classes of Legislatures, one in terms of the power exercisable and vested under clause (2) and the other in terms of the

power vested and exercisable under clause (3) of Article 246 of the Constitution. Therefore, at the risk of repetition, we have no hesitation in saying that any change or alteration in one Act cannot be said to have any effect upon the other."

22. We also agree with the respondents that the tax was in respect of motor vehicles in possession of the manufacturer in the course of his business as a manufacturer, or in possession of the dealer in the course of his business as a dealer under the authorization of trade certificate granted under the Central Motor Vehicle Rules, 1989. The manufacturer comes in the possession of the motor vehicle after the vehicle is manufactured and is suitable for use on roads. The dealer in the course of his business of getting the Motor Vehicle from the manufacturer and selling it to a customer comes in the possession of the Motor Vehicle on the basis of a trade certificate granted under the Central Motor Vehicle Rules, 1989. Neither earlier nor now there is any obligations in a manufacturer to obtain a trade certificate under the 1989 Rules for carrying on the business of a manufacturer.

23. It is pertinent to mention that a challenge to the constitutionality of Section 6 laid by the appellants in the earlier round of litigation, in regard to the same Assessment Years, was repelled and constitutional validity of Section 6 was upheld in Telco case. The High Court had in coming to such a conclusion, referred to the judgment of this Court in *Bolani Ores Ltd. v. State of Orissa*[2], *Travancore Tea Estates Co. Ltd. & Ors. v. State of Kerala & Ors*[3]. *and M/s Central Coal Fields Ltd. v. State of Orissa & Ors.*[4]. Once Section 6 is held to be valid, it is only the interpretation thereof which was to be gone into by the High Court in this round, in order to find out whether the assessment orders passed in respect of these appeals were valid or not. On interpreting this provision, as observed earlier as well, liability to pay tax under Section 6 is linked with the incidence of manufacturer or the dealer possessing the vehicle which is suitable for use on road during the course of his business.

24. A half-hearted argument was also made by the appellants to the effect that Section 6 uses the expression 'in lieu of the rates specified in Schedule I' and it was argued that the tax which is to be paid is either as per Schedule I i.e. in accordance with Section 5 of the Bihar Act or at the annual rates specified in Schedule III. It was emphasised that the words 'in lieu of' cannot be read as 'in addition to'. However, there is no merit in this argument as well. Sections 5 and 6 operate in altogether different contexts. Under Section 5, tax is payable at the time of registration of the vehicle, which is payable by the registered owner. In contrast, Section 6 is the stage before that as it is on the event of the vehicle being possessed by the manufacturer or dealer. We, therefore, are of the opinion that the appellants are liable to pay tax under Section 6 of the Bihar Act. May be, Section 6 is not happily worded. But the intent is to convey that tax will not be payable as per Schedule I which is payable under Section 5 but in place thereof it would be payable as per Schedule III.

25. Insofar as imposition of penalty is concerned, it is as per the provisions of Section 23 of the Act which mentions that for non-payment of tax under the Act, penalty can be imposed. The appellants have referred to the judgment of this Court in *Hindustan Steel Ltd. v. State of Orissa*[5] which describes the nature of penalty as under:

"8. Under the Act penalty may be imposed for failure to register as a dealer — Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

26. It was argued that action of the appellants was bona fide inasmuch as when the notices were received for the first time for payment of tax under Section 6 of the Act, the same were challenged albeit the validity of Section 6 was upheld by the High Court. Thereafter, tax was paid by the appellants though challenged again in the present round of litigation. On that basis, it was argued that action of the appellants was bona fide.

27. In order to test this argument, we shall have to consider the provision under which penalty can be imposed. The provision in the Act is Section 23 and Rule 4 of the Taxation Rules provides for the rates of penalty. Section 23 reads as under:

"Liability to pay penalty for non-payment of tax in time. - If the tax payable in respect of a vehicle other than personalised vehicle has not been paid during prescribed period, the person liable to pay such tax shall pay together with the arrears of tax, a penalty at the rates prescribed by the State Government."

28. Rule 4, likewise, is to the following effect:

"4. Due date of payment and penalty for non-payment of taxes in time.—

(1) For vehicles other than personalised vehicles the due date of payment of tax shall be the date of expiry of the period for which the tax has been last paid. In cases where no such tax had previously been paid, the date of acquisition of the vehicle or the date when such tax is imposed by law shall be due date for tax payment. For payment of differential taxes under the provision of Section 8, the due date shall be within seven days from the date of alteration in the vehicle or the change in its use.

(2) Where the tax for any period in respect of a vehicle has not been paid as required under the provisions of sub-rule (1) and continues to remain unpaid thereafter, the taxing officer may impose penalty in respect of such vehicles at the rate specified in the table below:—

TABLE

Period Amount of penalty

(i) If paid within fifteen days from the due date of payment. Nil. This will be treated as a grace period.

(ii) If paid after fifteen days but within 30 days of the due date of payment. Penalty to be charged at the rate of 25 per cent, of the tax.

(iii) If paid after 30 days Penalty to be charged at the rate of but within 60 days of the due date of payment. 50 per cent, of the taxes due.

(iv) If paid after 60 days but within 90 days of due date of tax payment. Penalty to be charged equal to the taxes due.

(v) If paid beyond 90 days after the due date. Penalty to be charged will be twice the taxes due.

(3) Where the composite fee in respect of vehicles plying under National Permit Scheme has not been paid within the due date as required under the provisions of the said Scheme, the Taxing Officer shall impose penalty at the rate provided in the said Scheme, in respect of such vehicle."

29. Section 23, in no uncertain terms, lays down that any person who does not pay the tax during the prescribed period shall pay a penalty at the rate prescribed by the State Government together with arrears of tax. Therefore, for non-payment of the tax within the prescribed period, penalty becomes payable at the rates specified in Rule 4. The vires of Section 6 were challenged in the High Court in earlier proceedings and this challenge was repelled. Further, since Rule 4 uses the expression 'may', on that basis it was also argued that this rule gives discretion to the Assessing Officer. That argument was also repelled in Telco case. This position in law has attained finality. At this stage, it would be useful to refer to the judgment in State of U.P. & Ors. v. Sukhpal Singh Bal6 wherein this Court held:

"15. ...A penalty may be the subject-matter of a breach of statutory duty or it may be the subject-matter of a complaint. In ordinary parlance, the proceedings may cover penalties for avoidance of civil liabilities which do not constitute offences against the State. This distinction is responsible for any enactment intended to protect public revenue..."

30. It is clear that under the Bihar Act, as per Section 23, penalties levied for breach of statutory duty for non-payment of tax.

31. In view of the aforesaid specific legal provisions, judgment in the case of Hindustan Steel Ltd. referred to by the appellants will not be applicable in the instant case. It is also to be borne in mind that while upholding the validity of Section 23 of the Act in Telco, insofar as penalty is concerned, the Court had set aside the same on the ground that before imposing the penalty, no show cause notice was issued. Permission was given to the tax authorities to take fresh decision after giving the show cause notice. It is an admitted case that show cause notices were issued and after hearing the appellants, the penalty was imposed. Taking into consideration all these aspects, the High Court in the impugned judgment dated July 22, 2003 in the case of M/s. R.K. Automotives & Ors. (Civil Appeal Nos. 8-12 of 2004) has repelled the challenge against imposition of penalty. We agree with the aforesaid conclusion.

32. As a result, all these appeals are dismissed.

Judgment Referred.

[1]*AIR 1999 Pat 0062*
[2]*(1974) 2 SCC 0777*
[3]*(1980) 3 SCC 0619*
[4]*(1992) Supp. 3 SCC 0133*
[5]*(1969) 2 SCC 0627*