

# RAJASTHAN HIGH COURT

State of Rajasthan

Vs.

Khalsa Travels

Civil Writ Petn. No. 4376 of 1997, 3869 to 3872 and 3880 of 1998  
(Dr. Ar Lakshmanan, C.J. and Rajesh Balia, J.)

16.08.2000

## JUDGEMENT

**Dr. AR Lakshmanan, C. J.**

1. Since common questions of law arise in all these writ petitions and, therefore, they have been heard together and are being disposed of by a common order.
2. In this case, there is no dispute that all the permits were surrendered by the vehicle operators and they were accepted or received by the concerned authorities. Once the Registration Certificates were surrendered and were in fact with the Department, the vehicles could not be plied on the roads. Therefore, in our opinion, the vehicle operators are entitled for remission of tax for the period of surrender irrespective of the period mentioned in Section 4B of the Rajasthan Motor Vehicles Taxation Act, 1951.
3. The supreme Court in a very recent judgment reported in *State of Gujarat v. Kaushikbhai K. Patel* <sup>1</sup> in an identical matter held that insistence to satisfy the State Govt. or authorized Officer as to reasons beyond control of registered owner or person in possession for non-use of vehicle beyond a particular period amounts to legislative competence of State. In that case, the Supreme Court has struck down the words 'for reasons beyond the control of such owner or person occurring in clause (b) of Sub-section (5) of Section 3-A of the Bombay Motor Vehicles Act, 1958.
4. In our opinion, the reasons for non-use of the vehicle on the road is irrelevant when the surrender of Registration Certificates are not in dispute.

5. Apart from the aforesaid, it is to be noticed that Section 4(2) governs the case of remission of tax for non-use of road where an application of such non-use is made by the owner of vehicle. That ordinarily arises in case where the presumption about continuous use of the vehicle on road arises. Remission in tax on the application of an owner on account of non-use of the vehicle for period is provided in sub-section (2) of Section 4 of the Act and that is on the premise that once vehicles are registered and said registration is current, there is a presumption that vehicles are kept for use or used by the owner within the State for the entire year for which the tax is to be levied. Anything to the contrary on the volition of the owner has obviously been regulated by Section 4(2). But where under statutory provisions a vehicle cannot be used on public roads for any specified or unspecified period, the levy is not within charging section itself. A vehicle which cannot be used on road, during any period because of requirement of law cannot be presumed to be used or kept for use on public roads within State unless contrary is proved. There is no doubt about the fact that the provisions of the Act are regulatory and compensatory and the tax is levied. There is no taxation when the vehicle is not used or is not in a position to be used on the roads. Where for the purpose of plying the vehicle on the roads, only under a regulatory permit and periodical renewal of the existing permit is required for which purpose, if during the period of pendency of renewal application, the permit is required under law to be surrendered with the authority concerned and the vehicles could be plied only on the renewal having been granted, the provisions of sub-section (2) of Section 4 of the Act would not operate because the basic requirement of sub-section (2) of Section 4 of the Act is giving a certificate by the owner of the vehicle about its non-use for a minimum period of, three months. But where under the provisions of the law, the vehicle is kept out of use for any period and the registration certificate remains surrendered for the purpose of renewal of permit, tax cannot be levied for such period during which Registration Certificate remains with the renewing authority. The duration for which such certificate remains with competent officer is not within the control of the owner, but depends upon the time taken by the deciding authority. This is so because under the field of legislative events, it is not competent for the State to levy tax for any period during which the vehicle is rendered ineligible to operate on public roads. That being so, when by operation of law, the petitioners in all these cases have undisputedly surrendered their registration certificates for the purpose of renewal as a matter of requirement of law and there was non-use of their vehicles during the period of pendency of renewal application, tax is not livable under the charging section itself for that period.

6. In view of the above, we direct the respondents to re-determine the tax in accordance with the law keeping in view the observations made hereinabove, regarding the treatment of period during which the respective Registration Certificates remain surrendered on account of pendency of application for renewal of permit under which the vehicle could use the public roads. If during this period, the owner is found to be plying the vehicle in contravention of law, he can be subjected to tax and be visited with other consequences for breach of law. However, no presumption can be raised about the fact that vehicle has used or been kept for use of public roads within the State of Rajasthan.

7. With this direction, all these writ petitions stand disposed of accordingly. There will be no order as to costs.

Order accordingly.

Cases Referred.

1. (2000) 6 SRJ 310