

(1999) 06 MAD CK 0087

In the Madras High Court

Case No : Writ Petition No's. 4207 and 4312 of 1990

A. Venugopal and Others

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 18-06-1999

Acts Referred:

Constitution of India, 1950 — Article 14

Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 3, 3(2)

Citation : AIR 1999 Mad 431 : (1999) 2 MLJ 731

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : V. Raghavachari, in W.P. No. 4207/90 and R.A. Danasekaran, in W.P. No. 4312/90, for the Appellant; S. Gopinathan, Govt. Advocate (W), for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Since the issues in both the writ petitions are one and the same, they are being disposed of by the following common order. In W.P. No. 4207/90, the petitioner seeks a writ of prohibition prohibiting the respondents from collecting the excess tax for his vehicles T.M. X. 6817, T.C. X. 3886 and T.M.T. 7346 and direct them to collect the tax applicable for vehicles of similar horse power at cubic capacity or unladen weight which could be 1/3 the tax that has been levied for the said three vehicles. In W. P. No. 4312/90 the petitioner, owner of a car bearing Registration No. TMJ 8039, has prayed for a writ of declaration declaring Article 7(b) of Schedule I of the Tamil Nadu Motor Vehicles Taxation Act, 1974 as illegal and ultra vires and consequently direct the respondents to classify the car bearing Registration No. TMJ 8039 as Indian vehicle.

2. According to the petitioner in W.P. No. 4207 of 90, he had purchased 3 foreign vehicles, namely, (1) Peugeot 504 of 1976 Model Regn. No. TMX 6817 (2) Volkswagon Doshier 1975 Model Regn. No. TCX 3836, and (3) R.A.F. Omnibus

1977 model Registration No. TMT. 7346 from the State Trading Corporation. All the 3 vehicles were purchased in India and the motor tax levied for these 3 vehicles are as follows:--

- 1) Rs. 1050/- for Peugeot 504.
- 2) Rs. 1050/- for Volkswagon Dasher.
- 3) Rs. 1200/- for R.A.F. Omnibus.

The tax has been increased for these three vehicles three times more than the tax levied for other vehicles of Indian Origin with the same horse power or cubic capacity or unladen weight. The vehicles had been purchased only in India with the sanction of the State Government and hence there is no reason why the tax should be increased for the foreign vehicles which has been sold by the Government through the State Trading Corporation when the other vehicles sold by the company with the licence of the Government to manufacture and sell has been taxed three times less. This increase of tax, according to the petitioner, for his 3 vehicles is arbitrary and without any justification. It is further stated that he had not imported the above three vehicles. On the other hand, he had purchased the same from the State Trading Corporation. It is further stated that most of the parts (sic) and he is using only . Indian parts and not any imported foreign parts. On the other hand, Indian cars like Maruthi, Contessa Classic, Premier N.E. 118 and Standard 2000 have more foreign parts than Indian. But they were classified as Indian Cars. In such circumstance, according to him, the claim for higher tax cannot be sustained.

3. In W. P. No. 4312 of 90. the petitioner has raised similar contentions. It is stated that when he was working in Air Tanzania Dar-E-Salam for a period of 4 years from 1979-1983 on deputation by the Government of India, he had purchased a second-hand car of 1972 model, paying Rupees 1500/- American Dollars. On completion of his 4 years contract, he had to bring his old car. He returned to India from Africa in 1983 and since then he is finding difficult to maintain the car as the spare parts are not available in India. Many of the parts were purchased from junk spare part shops and modified as per the old part and used in his car. As per Entry 7(b) of the Tamil Nadu Motor Vehicles Act, the tax payable by the petitioner comes up to Rs. 1050/- as the petitioner's car have been classified by the respondents as Imported Vehicles. It is stated that even though his car has been classified as an imported vehicle, almost every nut and bolt of his car except perhaps the body itself is not only of Indian origin but in all probability purchased at the second hand spare parts shops such as those found in the local Chintadripet market. It is further stated that the classification resorted by the respondent is arbitrary and violative of Article 14 of the Constitution of India. Accordingly, he prayed for issuance of a Writ of Declaration declaring Entry 7(b) of the first Schedule of Tamil Nadu Motor Vehicles Taxation Act, 1974 as illegal and ultra vires.

4. On behalf of the respondents, first respondent in W. P. No. 4207/90 has filed a

counter-affidavit disputing various averments made by the petitioner. It is stated that the Tamil Nadu Motor Vehicles Taxation (Amendment) Act, 1989 (Tamil Nadu Act 25 of 1989) which came into force from 1-4-89 and published in the Tamil Nadu Government Gazette dated 19-6-89 provides for the levy of motor vehicles tax for certain new classification of vehicles in respect of cars, viz., (a) indigenous make or imported and (b) Indian made vehicles etc., owned by companies registered under the Companies Act, 1956 or others. It is stated that Entry 7 of the First Schedule to the said Act is neither invalid nor unconstitutional. It does not make any discrimination between the owners of motor vehicles. The classification is between the vehicles as "imported" or locally made. It is further stated that since no classification is made between the owners, it is not violative of Article 14 of the Constitution of India. The Government have powers to decide whether or not to encourage the influx of imported items. The levy of motor vehicles tax is based on class or type of motor vehicles. The State legislature has been empowered under the said Act to levy different rates of tax for different classes or types of motor vehicles. It is the general policy of the Government to curb influx of imported items for which indigenous alternatives are available, so as to promote the use of indigenous items and safeguard the interest of local manufacturers. One of the measures adopted to discourage influx of imported items is to impose high rate of customs duty and tax on imported items. As such, levy of a higher rate of motor vehicles tax in respect of imported vehicles is in tune with the said policy of the Government. The classification between motor cars as "imported" or Indian made cannot be considered as invalid or improper. Hence, there is no substance in the contention raised in the writ petition.

5. In the light of the above pleadings, I have heard the learned counsel for the petitioners and the learned Government Advocate for respondents.

6. The point for consideration is whether Entry 7 of the first Schedule to the Tamil Nadu Motor Vehicles Taxation Act, 1974 (hereinafter referred to as "the Act") is unconstitutional, illegal or ultra vires and whether the respondents are justified in claiming higher motor vehicles tax for their vehicles?

7. There is no dispute that the petitioner in W.P. No. 4207/90 had imported three foreign vehicles through the State Trading Corporation. Likewise, the petitioner in W. P. No. 4312/90 had also imported a car from Tanzania. Before considering the claim of the petitioners, it is useful to refer the relevant provisions. The Government of Tamil Nadu have enacted The Tamil Nadu Motor Vehicles Taxation Act, 1974 (Act 13 of 1974) in order to levy tax on motor vehicles in the State of Tamil Nadu. Section 3 speaks about levy of tax as under:--

" Section 3. Levy of tax :-- (1) Subject to the provisions of Sub-section (2) tax shall be levied on every motor vehicle used or kept for use in the State of Tamil Nadu at the rate specified for such vehicle in the First Schedule or, as the case may be, in the Second Schedule.

(2) The Government, may, by notification, from time to time, increase the rate of tax specified in the schedule.

Provided that such increase, by notification, under this sub-section shall not, in the aggregate, exceed fifty per cent of the rate specified in the First Schedule or, as the case may be, in the Second Schedule on the date of the commencement of the Tamil Nadu Motor Vehicles Taxation (Amendment) Act, 1989.

(3) All references made in this Act to the Schedules shall be considered as relating to the Schedules as for the time being amended in exercise of the powers conferred by this section."

We are not concerned with the other provisions. The only other provision which is relevant is Entry 7 in Schedule I. It deals with rate of tax applicable to imported vehicles and Indian made vehicles owned by individual and others. By pointing out that the tax on the imported vehicles are higher than the Indian made vehicles owned by the individual and others, it is contended that it violates Article 14 of the Constitution of India. It is also stated that the classification resorted to by the respondents is arbitrary. A perusal of the Tamil Nadu Motor Vehicles Taxation (Amendment Act 1989) (Tamil Nadu Act 25/89) which came into force from 1-4-89 provides for the levy of motor vehicles tax for certain new classification of vehicles in respect of cars, viz., (a) indigenous make or imported and (b) Indian made vehicles etc. owned by companies registered under the Companies Act, 1956 or others. The main argument would be that even though they purchased foreign vehicles according to the petitioner in W.P. No. 4207/90, he had purchased the same only through the State Trading Corporation, and, according to the petitioner in W.P. 4312/90, on completion of his contract, he had brought his car from Tanzania. Hence, according to them, those vehicles are not coming under the category "imported vehicles". The said contention cannot be accepted for the following reasons. I have already extracted Section 3 of the Act which enables the State Government to levy tax on every motor vehicle used or kept for use in the State of Tamil Nadu at the rate specified for such vehicle in the First Schedule or, as the case may be, in the Second Schedule. It is also clear from Section 3(2) , Government is empowered to increase the rate of tax specified in the Schedule, from time to time by way of Notification. Even though higher rate of tax is levied for imported vehicles than the tax levied for Indian made vehicles, it does not make any discrimination between the owners of motor vehicles. It is clear that the classification is between the vehicles as "imported" or locally made. Since no classification is made between the owners, it is not violative of Article 14 of the Constitution of India. The prime difference between imported vehicles and Indian made vehicles is their origin or place of manufacture. The Government have powers to decide whether or not to encourage the influx of imported items. It is also clear that the levy of motor vehicles tax is based on class or type of motor vehicles. The State Legislature has been empowered under the said Act to levy different rates of tax for different classes or types of motor vehicles.

8. It is also clear from the information furnished in the counter-affidavit that it is the general policy of the Government of Tamil Nadu to curb influx of imported items of vehicles for which indigenous alternatives are available, so as to promote the use of indigenous items and safeguard the interest of local manufacturers. One of the measures adopted to discourage influx of imported items is to impose high rate of customs duty and tax on imported items. While indigenous items enjoy the subsidy grants by the Government, the imported ones are made costlier to discourage their use. In such circumstances, levy of higher rate of motor vehicles tax in respect of imported vehicles is in accordance with the said policy of the Government and the same cannot be said as arbitrary or violative of Article 14 of the Constitution of India. It is also clear that the motor vehicles tax is not levied merely on the laden or unladen weight of the vehicle or the difference in the use of roads by the motor vehicles. As stated above, it is based on the class, type and service rendered by a motor vehicle. A perusal of the entire Schedule clearly shows that passenger vehicles are made liable to pay higher rate of motor vehicles tax compared to goods carriages having the same laden weights. Likewise, the passenger vehicles have been classified as town services, mofussil stage carriages, express stage carriages etc., and different rates of tax is levied on them. Hence, it is clear that the tax is based on the type of vehicles and services rendered by it. In such circumstances, the classification between motor cars as "imported" or Indian made cannot be considered as invalid or improper. On the other hand, the classification is quite reasonable and acceptable, and hence, I am unable to accept any one of the contentions raised by the learned counsel for the petitioners.

9. Learned Government Advocate has also brought to notice a decision rendered by Y. Venkatachalam, J., in W.P. No. 11101 of 89 dated 19-8-1998 (C Jose Ukkur v. State of Tamil Nadu) wherein the learned Judge had an occasion to consider the similar claim made by an owner of an imported car with regard to the higher rate of tax on imported cars. The learned Judge, after considering the relevant provisions at length, came to the conclusion that the classification between motorcars as imported and locally made cannot be considered as invalid or improper and dismissed the writ petition. After going through the entire judgment, with respect, I am in agreement with the view expressed by the learned Judge and I am unable to accept the attempt made by the learned counsel for the petitioner to distinguish the said judgment of the learned Judge.

10. In the light of what is stated above, I hold that the classification between motor cars as "imported" or Indian made cannot be considered as invalid or improper and the State legislature is empowered under the Motor Vehicles Act to levy different rates of tax for different classes or types of motor vehicles. Consequently, both the writ petitions fail and are accordingly dismissed. However, there shall be no order as to costs.