(1985) 12 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1509 of 1984

Balakrishna Borewells and Others — APPELLANT

Vs

The Govt. of A.P. and Another — RESPONDENT

Date of Decision : 31-12-1985

Acts Referred:

Andhra Pradesh Motor Vehicles Taxation Act, 1963 — Section 2, 3
Motor Vehicles Act, 1939 — Section 2(18), 2(7), 2(8)

Citation : (1992) 1 ALT 195

Hon'ble Judges : Rama Rao, J;Raghuvir, J

Bench : Division Bench

Advocate : S. Venkata Narayana, Y.V. Narayana, P. Ramakoti Kesav Pillai, M. Laxmana Sharma, A. Krishna Moorthy, M.P. Chandra Mouli, B. Sushan Reddy, D. Reddappa Reddy, Prakash Reddy, Mjrza Munwar Ali Bag, R. Narsimha Reddy, M. Jagan Mohan Reddy, T. Bheemsen, D. Pratap Reddy, K.N. Jwala and O. Raghunath Raj, for the Appellant; G.P., for the Respondent

Final Decision : Allowed

Judgement

Rama Rao, J.—In this batch of writ petitions the petitioners assail the validity of circular dated 21-11-1983 issued by the Government of Andhra Pradesh and consequential notification dated 13-12-1983 by the 2nd respondent seeking to levy tax on rig mounted vehicles treating them as goods vehicles under Sections 2(7) and 2(8) of the Motor Vehicles Act and requiring registration as transport vehicles.

2. The petitioners state that they are owners of rigs constructed and manufactured for the purpose of drilling and bring to surface underground water and the rig is fastened to a vehicle. The rig is constructed on wheels and the rig mounted vehicle does not carry any goods and as such it cannot be considered as goods vehicle and the exigibility to tax treating it as goods vehicle and requiring it to be registered as transport vehicle is not justified.

3. In the counter-affidavit filed by the Additional Secretary to Government of

Andhra Pradesh, it is stated that the rig mounted vehicle was previously registered as non-transport vehicle. The Government of Tamilnadu in their letter dated 13-1-1983 informed that rig mounted vehicles are registered as transport vehicles in their State and the Government after examining the same issued a memo dated 21-11-1983 stating that rig mounted vehicle should be treated as goods vehicle and pursuant to the same circular was issued to the Registering authorities to register rig mounted vehicles as transport vehicles. It is stated that when a rig is transported from one place to other it comes under the definition of ''goods'' and the chassis carrying the goods could be considered as ''goods vehicle''. The owner of the chassis as well as the rig fixed to it is carrying the rig from one place to another and they are using the vehicles for hire or reward.

4. The learned counsel for the petitioners raised two-fold contention namely, that the rigs do not fall within the ambit of ''goods vehicle'' and in any event in the absence of a notification u/s 3 of the A.P. Motor Vehicles Taxation Act and without amending the schedule in force, the licensing authority is not empowered to treat the rig mounted vehicle as a goods vehicle or transport vehicle. The learned Government Pleader for Transport contended that the rig is fastened to the vehicle and is carried from place to place for drilling operation and as such it should be treated as goods vehicle and the amendment to schedule is not necessary as the goods vehicle is liable to tax under the existing notification.

5. Section 3 of the A.P. Motor Vehicles Taxation Act is a charging section seeking to levy tax on motor vehicles and the Government is empowered to issue notification specifying the class of motor vehicles and rate of tax thereon. Pursuant to the power conferred u/s 3, the notification being G.O.Ms. No. 175, dated 28-5-1985 is issued fixing the rates for diverse types of motor vehicles namely motor cycles, scooters, goods vehicles, motor vehicles plying for the hire and used as stage carriages and other vehicles indicated in the residuary clause No. 8 of the notification seeking to levy tax on the motor vehicles not covered by the vehicles catalogued in the preceding clauses. Section 2 pertains to definitions and Clause (j) of Section 2 incorporates by reference the connotation given in Motor Vehicles Act for the words and expressions not adverted to in this Act. Under the notification issued u/s 3, goods vehicles and other types of vehicles belonging to the genus of motor vehicles are exigible to levy of tax at different rates. The incidence of tax oh goods vehicles is the highest among the categories of motor vehicles. The contention of the learned counsel for the petitioners is that the rig mounted vehicles cannot be brought within the fold of goods vehicles and the levy of tax treating them as goods vehicles is illegal. To get at this contention, it is necessary to have a close-up of the connotations of "motor vehicle", "goods" and "goods vehicle" given in the statutory dictionary under Motor Vehicles Act. Section 2(18) pertaining to "motor vehicle" is as follows:-

"motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises."

6. The definition is a comprehensive provision taking in its sweep all categories of vehicles operated by mechanical device and by enveloping chassis and trailer by inclusive process the attachment of body is not an essential requisite for considering the vehicle as motor vehicle. The broad perspective of motor vehicle given u/s 2(18) and the connotation of diverse categories of motor vehicles is amplified and for the purpose of this case it is sufficient to refer to definitions of "goods" and "goods vehicle" under Sections 2(7) and 2(8) which are as follows:-

Section 2(7): "goods includes live-stock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle." Section 2(8): "goods vehicle" means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers."

7. The ''goods vehicle'' envisaged u/s 2(8) comprises the motor vehicle designed as goods vehicle and also the vehicle though not designed as such is used for the purpose of carrying goods. The initial limb of this clause pertains to structure of the vehicle intended for carriage of goods and the later portion seeks to bring within the fold of the definition the vehicles on the basis of user though the vehicle is not structured for the carriage of goods. The vehicle visualised under this clause is a carrier pressed into service for conveying the goods from one place to another involving operation of loading and unloading. The goods vehicle is used for carrying goods from one place to another and the attachment of the vehicle or carrier with the goods is a temporary phase as detachment is a necessary follow-up event. The projection under Clause 8 is amplified by the definition of goods in Section 2(7). The connotation of goods is all embracing one except living persons and the equipment ordinarily used with the vehicle. The bracketed portion brackets out the mechanical equipment or parts inter twined with the vehicle from the ambit of goods. This expression takes colour from the purpose for which the chassis or motor vehicles envisioned u/s 2(18) is designed. If the body on the chassis is designed as a lorry the built-up portion in the front and an open carrier" in the rear side is necessarily an equipment. Likewise the entire closed built-up portion interspersed with seating arrangement for a vehicle known as bus or double decker and so also for mobile post office and medical unit the designing of the body to suit the purpose is an equipment and likewise for a road-roller the sturdy stony three wheels along with a open seat for the driver are necessary equipments. It is necessary to have a scan of the anatomy of rig mounted vehicle to consider whether the build-in structure can be fitted with a cap of goods vehicle. The rig mounted vehicles gained currency in recent times due to increased necessity to fathom the deeper depths into earth to cater

to the increased demand for water and also depletion of available resources. The rig mounted vehicle is a unit comprising the chassis fitted with enclosed seating arrangement in the front besides the steering wheel and rig apparatus in the rear side. The rig is a heavy apparatus weighing about 9 tons consisting of wind unit, rotation unit, Heavy Duty mast, Centralised controls, Rod handling instrument and levelling jacks and also equipped with drill rods, air compressors rotation unit, wind unit, hydraulic system and levelling jacks. The rig is devised for diving into the bowels of earth in search of water in greater depths with a view to bring the water to surface. The drilling operation is done by the rig and the hole size is upto 8. Apart from the weight of about 9 tons the length mast up is of the length of 8.6 metres and length mast down is of 10.6 metres and width is 2.25 metres. The dimensions of the rig clearly disclose that it is a heavy and unwieldy machine defying easy conveyance. With a view to facilitate the operation of the rig at several places the rig is fixed to the chassis and the rig apparatus so fastened to the chassis is designated as rig mounted vehicle. The unit of rig mounted vehicle minus the rig apparatus is only chassis. The rig mounted vehicle should be considered as one wholesome and indivisible unit comprising chassis fitted with rig apparatus and the chassis constitute the base and the rig mounted thereon is a vital component of rig mounted vehicle. The chassis is a base with mechanical device of moving operation and the edifice thereon constituting bodies or apparatus can be fashioned to suit the diverse needs and necessities and they are styled as lorries, buses, vans, water tankers, road-rollers, mobile post offices and medical units. Likewise the rig apparatus is fastened to the chassis and it is designated as rig mounted vehicle and this unit is moved to the places where drilling operation is summoned. It is not professed that this unit known as rig mounted vehicle is carrying any goods other than the mounted rig apparatus. The contention of the learned Government Pleader is that the rig apparatus cannot be considered as an equipment to the vehicle and as such it should be considered as goods within the meaning of the definition u/s 2(7). It is true that the rig apparatus as such cannot be considered as an equipment to any vehicle but this aspect should not be considered from such truncated perspective as the rig apparatus along with the chassis should be considered as a single unit styled as rig mounted vehicle. The endeavour of the learned Government Pleader appears to be to disassociate the rig apparatus from the chassis and designate the rig as goods and this process leads to the conclusion that the chassis is a goods vehicle. It is true that the chassis by themselves is a motor vehicle by virtue of the inclusive process under the definition in Section 2(18) but the chassis themselves cannot be considered as a goods vehicle within the meaning of Section 2(8) as the chassis are not structured for carrying goods and cannot be made use of for such purpose. The contention that the rig apparatus considered in isolation severed from the chassis should be considered as goods is untenable as the rig apparatus along with the chassis constitute a single and indivisible unit known as rig mounted vehicle. Therefore, it is not possible to accommodate the rig apparatus within the definition of goods u/s 2(7) of the Act and as such the question of considering rig mounted vehicle as goods vehicle does not arise.

8. The learned Government Pleader relied upon the decision in Clarke v. Cherry, 1953 (1)All England Law Reports. 267 wherein the window cleaner, for the purpose of his trade, was carrying buckets, washing clothes and leathers inside the motor van and he also adapted the van so that he could carry the ladders on the top, attached to a permanent fixtures and he was charged for unlawfully using the van without a licence, contrary to Section 1(1)(b) of the Road and Rail Traffic Act. It was found by the justices for the County of Lincoln that the articles carried in the van were solely the tools of his trade and not goods carried for sale and, therefore, the van was not being used for the carriage of goods for or in connection with any trade or business within the meaning of Section 1(1)(b) of the Act. Reversing this view, the Queen''s Bench speaking through Lord Goddard, C.J., held as follows:-

"I am not surprised that the justices tried to find a way to avoid a conviction in a case of this sort, but I am afraid that they cannot do it by reading into the statute words which are not there. The statute does not say anything about the goods carried being goods for sale."

It is further held as follows:-

"A goods vehicle means a motor vehicle constructed or adapted for use for the carriage of goods. The respondent, therefore, required a C licence to entitle him to carry goods for or in connection with any trade or business carried on by him."

It is held that even if the person takes the goods which are useful for his business or trade the vehicle should be considered as a goods vehicle. This decision turned upon the issue whether the goods carried otherwise than for sale stamps the vehicle with character of goods vehicle and as such not applicable to the situation in the instant case. In Sweetway Sanitary Cleansers Ltd. v. Bradley 1961 (2) All ER 821, the limited company, which carried on the business, of emptying and cleansing septic tanks used a vehicle with a C licence and the vehicle was fitted with a pump and tank and the vehicle was taken to put disinfectant into the customer''s septic tank and pumpted out the contents into the vehicle tank which was taken along the highway to a farm and there discharged the effluent from its tank. It was alleged that the company used the vehicle for the carriage of goods for hire or reward contrary to the terms of the C licence. In the context of considering whether the vehicle was a goods vehicle within the meaning of the Road and Rail Traffic Act, 1933, Lord Parker, C.J., voicing the opinion of the Queen''s Bench Division, held as follows:-

"It is perfectly clear in this case that this vehicle was in fact adapted by the appellant for the carriage of effluent. Indeed, if there were any doubt about the matter it is to be observed that Section 1(7) excepts (5) from the need for a licence vehicles used by a local authority for, amongst other things, the disposal of refuse, night-soil or the contents of cesspools.

The real question in this case is whether the carriage of the effluent was a carriage of goods which the appellants were entitled to carry under a C licence."

While considering the permission to carry the goods under a C licence, it s held as follows:-

" Accordingly, as it seems to me, in considering this sub-section one has to ask oneself first: were goods being carried in connexion with any trade or business carried on by the appellants? The answer to that is clearly: yes, they were carrying on the business of contractors for the purpose of cleaning out cesspools and septic tanks, a business which involved on occasions carrying the effluent away in the vehicle."

The question posed again is whether any reward was being paid to the appellants in respect of the carriage of the goods. In the context of considering this aspect, it is held as follows:-

"Several operations are involved in the cleaning out of a cesspool; There is the cleaning out, disinfecting and cleaning of the pipes and drains, and there is also the disposal of the effluent. From the owner''s point of view the thing that he really wants is that the effluent should be removed, unless the case is one of those rare cases where he wants it on his own land and it is for that that he is paying the amount charged. In any event I find it quite impossible to say that the cost of carriage, albeit only for a quarter of a mile, involved in the disposal of the effluent, can be regarded in any way as de minimis."

It is held that carrying the effluent does not form part of the business of delivery or collection and the contention that it amounts to subjecting to a process or treatment in the course of a trade or business was repelled. This decision is concerned with the contravention of condition in C licence and the carriage of goods is not in the course of business activity and the vehicle should be considered as goods vehicle and therefore this decision does not bear affinity to the situation in this case. In Anderson and Heeley Ltd. v. Paterson 1975 (1) All ER 523 the persons were carrying on the business of street lighting contractors and the vehicle in question was used for the erection of street lamps. The vehicle was originally a normal goods vehicle but it was reconstructed and the body was removed from the chassis and in its place an extensible contrivance called a Hiab loader was fitted behind the cab. Further in place of the original deck, a low side platform was constructed. It was stated that the vehicle was carrying on the platform a concrete pillar or pillars which were to be part of the street lamps and also various tools and equipment and the vehicle was also drawing a cement mixing machine and all these various items were to be used with the erection of the pillars as part of the street lighting. It was contended that the vehicle is a ''tower wagon'' and the goods carried on the vehicle are required for use in connection with the work for which the vehicle is ordinarily used and in view of Section 60(1) of the Transport Act, the operators'' licence is not required. The Queen''s Bench Division speaking through Shaw, J., held as follows:-

"What that is the ordinary popular meaning to be attributed to the descriptive phrase ''tower wagon''? It seems to be that it must connote a mobile tower enabling overhead work to be done in such places as it false to be executed. Moreover this must be its sole function. But however if its construction is such as to make it also usable for the carriage of general goods/it is not merely a tower wagon but something more than and different from a tower wagon."

It is further held as follows:-

"It was a goods vehicle with an extensive contrivance incorporated in its construction. That it was so is demonstrated by the justices finding that apart from tools and equipment the vehicle was at material time carrying also a concrete pillar to be erected as a lamp standard."

It is concluded as follows:-

"It follows that unless concrete pillar to be erected as a lamp standards come within the category of articles used in connection with the contrivance the vehicle was not certainly in the circumstances of its use at the material time a tower wagon. In my judgment by no stretch of language can a concrete pillar to be erected as a lamp standard be regarded as an article used in connection with the Hiab loader."

The issue considered in this case that the goods carried in the vehicle does not form part of the contrivance or equipment and on the basis of user the vehicle is considered as goods vehicle. It is not suggested in this case that the goods other than the equipment for rig is carried and therefore the principle of user cannot be applied and as such this decision also is not applicable. In Bolani Ores Ltd., . the question is whether the Dumpers, Rockers and Tractors are motor vehicles and taxable under the Bihar and Orissa Motor Vehicles Taxation Act and the Supreme Court held that the Dumpers, and Rockers are motor vehicles as defined under the Motor Vehicles Act, but however they are not taxable under the Bihar Taxation Act as long as they are working within the premises of the respective owners. This conclusion was arrived at on the basis of the provisions of the Bihar Taxation Act and this decision is far removed from the issue arising in this case. In In Re: Manager, Indian Express, , a motor car owned by the petitioner was twice used for carrying bundles of newspapers to the railway station without a permit and in that context it was held by the Madras High Court that when the car was used for taking the bundles of newspapers it came within the definition of a ''goods vehicle'' as defined u/s 2(8) and therefore the permit u/s 42(1) was necessary and as the owner had no permit thereunder, he was guilty of an offence punishable u/s 123. This decision is based upon the actual user of the vehicle though not designed as goods vehicle. In State of Mysore Vs. Syed Ibrahim, the owner of a motor car carried 8 passengers in the car and collected Rs. 5/- from each of them. He was charge-sheeted u/s 42(1) read with Section 123 of the M.V. Act for having used the said car as a transport vehicle without the permit required u/s 42(1). In the context of considering whether the car can be considered as a transport vehicle, the Supreme Court held as follows at paragraph 8:-

"The combined effect of Section 42(1) and the definitions of a ''motor vehicle'', a ''public service vehicle'' and a ''transport vehicle'' is that if a motor vehicle, is used as a transport vehicle, the owner who so uses it or permits it to be so used is required to obtain the necessary permit. It is the use of the motor vehicle for carrying passengers for hire or reward which determines the application of Section 42(1). Therefore, whenever it is so used without the permit, there is an infringement of the Sub-section. If the construction of that Sub-section adapted by the High Court of Mysore were correct, it would mean that whereas an owner of a transport vehicle is required to have the permit, the owner of a motor vehicle not constructed or adapted as a transport vehicle can carry with impunity passengers for hire or reward without any permit therefor."

This decision is again concerned with the actual user and hence not applicable. In The Public Prosecutor Vs. Yellagadda Ramakrishna Rao and Another, the Division Bench comprising Basi Reddy and Narasimham, JJ. held that the tractor trailer combination would be a ''transport vehicle'' within the meaning of the Act and where the vehicle was carrying bricks, it is not a public vehicle but would undoubtedly fall within the definition of ''goods vehicle''. This decision is also concerned with the user. In Automotive Manufacturers (P) Ltd. etc. Vs. Government of Andhra Pradesh and Others, etc., in the context of considering the exigibility of tax of chassis of a motor vehicle, the Supreme Court held as follows at page 231:-

"In our view, it is not necessary for" a chassis to have a body attached to it before it can be used within the meaning of the Act inasmuch as it can be used by the man who drives it and such use of it on public roads would be enough to attract the levy. Ordinarily chassis have bodies attached to them for commercially profitable use but even without a body a chassis can be used and is actually used when it is taken over public roads."

In State of Kerala Vs. T.M. Muhammed Kunju Lebba, the motor lorry was driven along a public road and no tax was paid in respect of the same for the quarter in question. The view was taken by the Magistrate that no tax payable because on both occasions, the lorry was being tested after repair and was carrying no goods and in the context of considering this aspect, the Division Bench of the Kerala High Court comprising Sankaran and P.T. Raman Nayar, JJ, held that the vehicle being a motor lorry is a vehicle constructed or adapted for use for the carriage of goods and it is at all times a goods vehicle whether or not it is actually carrying goods. In this decision it is held that the vehicle designed and structured as goods vehicle is exigible to tax as goods vehicle irrespective of use. Relying upon this decision, the learned Government Pleader contends that the vehicle as such is constructed for the purpose of carrying the goods and the carriage of a rig though fitted to it does not make any difference, as it should be considered as the carriage of goods.

9. The other contention of the learned counsel that the rig mounted vehicle cannot be considered as goods vehicle in the absence of an appropriate amendment in the schedule roping the rig mounted vehicles to levy of tax as goods vehicle lacks substance. The diverse incidence of taxation on different types of vehicles is indicated in the schedule appended to the notification pursuant to Section 3 of the Motor Vehicles Taxation Act. The contention is that rig mounted vehicle comes within the purview of goods vehicle which is already exigible to tax and as such the contention of the petitioners in this regard is untenable.

10. In the result, it is declared that rig mounted vehicle cannot be considered as goods vehicle and is not exigible to tax as goods vehicle under Motor Vehicles Taxation Act.

11. Writ Petitions allowed No costs. Advocate''s fee Rs. 150/- in each writ petition. The amounts, if any, paid by the petitioners pursuant to the orders of this court shall be refunded.

