
(2003) 04 RAJ CK 0054

In the Rajasthan High Court

Case No : C.S.A. (W) No's. 184, 188, 206, 207 and 208 of 2003 and etc.

Birla Cement Works and Another etc.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 2(28)
Rajasthan Motor Vehicles Taxation Act, 1951 — Section 2, 4
Rajasthan Motor Vehicles Taxation Rules, 1951 — Rule 25

Citation : (2004) 1 ACC 86 : AIR 2003 Raj 251 : (2003) 4 RLW 2248 : (2003) 3 WLC 428

Hon'ble Judges : Sunil Kumar Garg, J; N.N. Mathur, J

Bench : Division Bench

Advocate : B.L. Maheshwari, R.K. Rathi, Rajesh Joshi, J.P. Joshi and Tarun Joshi, for the Appellant; Vineet Kothari and Avinash Acharya, for the Respondent

Judgement

Mathur, J.—In this group of special appeals and writ petitions the common question of law arises whether dumpers though used only within the enclosed factory premises fall within the exempted category and are "motor vehicle" being adaptable and kept for use on roads even though actually used within the enclosed premises of petitioner factory or the mines area, are liable to pay tax u/s 4 and 4-B of the Rajasthan Motor Vehicles Taxation Act, 1951?

2. The contention of the petitioners/appellants is that the dumpers are essentially earth moving equipment not adapted for use upon the roads and, therefore, are outside the ambit of the Rajasthan Motor Vehicles Taxation Act, 1951 (hereinafter referred to as the Act of 1951). On the other hand the case of the Department is that the dumpers are vehicles adapted or suitable for use on roads and being "motor vehicle" per se and same liable to pay the tax on the footing of their use or kept for use on public roads. In our view the controversy is settled by the decision of the Apex Court in M/s. Central Coal Fields Ltd. and Others Vs. State of Orissa and others, Union of India and others, Vs. Chowgule

and Co. Pvt. Ltd., etc. etc., and Chief General Manager, Jagannath Area and Others Vs. State of Orissa and Another, and a Division Bench judgment of this Court in Rajshree Vs. Principal Judge, Family Court, Lucknow and Another, It is held that dumpers run on tyres, in marked contrast to chain plates like caterpillars or military tanks and as such have been adapted and suitable for use on roads irrespective of its weight and special restriction and being used in an enclosed factory premises. A "motor vehicle" per se being suitable for use on roads is liable to taxation on the footing of their use or kept for use on public roads, the network of which, the State spreads, maintains it and keeps available for use of motor vehicles and hence is entitled to a regulatory and compensatory tax. Thus, the special appeals and the writ petitions are liable to be dismissed.

3. After answering the question posed, as objective type, we proceed to deal with the matter in traditional way. In the instant bunch, three special appeals are filed by M/s. Birla Cement Works against the judgment of the learned single Judge relegating the petitioners to the statutory remedy of revision under the Act of 1951. Similar two special appeals by M/s. Grasim Industries Ltd. are also filed against the judgment of the learned single Judge relegating the petitioner to the statutory alternate remedy. There are two writ petitions filed by Hindustan Zinc Ltd. Both the petitions pending before the learned single Judge were directed to be heard along with the instant special appeals by order dated 13-3-2003. The relevant facts of the special appeals and writ petitions are set out as followed :--

M/S. BIRLA CEMENT WORKS :

4. The appellant-Company carries on the business of manufacturing cement and for that purpose it has been sanctioned mining lease for the limestone in village Bherda measuring 6 Sq. Kms. in Tehsil Chittorgarh. The say of the appellant is that it installed a crusher in the mining area for the purpose of crushing excavated limestone in order to make it suitable for manufacturing cement. After crushing process the crushed limestone is taken to the site plant through overland long rubber conveyor belts. From the mine to the crusher, the limestone is taken in the dumpers. The Company has purchased 27 dumpers for the purpose of carrying limestone from mines site to the crusher. The Company was asked to pay the tax under the Act of 1951 with respect to 8 dumpers. This was objected by the Company. The R.T.O. by order dated 4th January, 1972 held that the dumpers as well as the tractor-trolley came within the definition of "motor vehicle" and were compulsorily registrable u/s 22 of the Motor Vehicles Act, 1939 (hereinafter referred to as the M.V. Act) and also held that the dumpers are liable to payment of tax under the Act of 1951 w.e.f. 1st April, 1972 or from the date of purchase whichever was later. A similar order was passed by him on March 1, 1974. M/s. Birla Jute Manufacturing Co. Ltd. approached to this Court by way of petition under Article 226 of the Constitution of India. The petition was allowed in part and the demand raised against the Company regarding the tax under the Act of 1951 in respect of 8 dumpers and the tractor trolley was quashed. In the said case being Birla Jute Manufacturing Co. Ltd. v. R.T.O. reported in 1980 WLN

(UC) 375, held,

"(a) Eight dumpers and tractor-trolley are compulsorily registrable under the Motor Vehicles Act, 1939;

(b) The dumpers and tractor-trolley are not taxable under the Rajasthan Motor Vehicles Taxation Act, 1951 so long as they are used within the premises of the Company."

5. By a show cause notice dated 13-10-92 issued by the D.T.O. the appellant-Company was called upon to state if the tax has been deposited as per the audit report for the year 1982-83. The notice was replied stating that no tax was liable to be paid in view of the decision of the High Court in Birla Jute Manufacturing Co. Ltd. case. The respondent again (in) view of observations in the audit report, issued notice in Form M.T.E. dated 6-3-1997. The petitioner-Company challenged the notice of demand before the Rajasthan Taxation Tribunal, Jaipur. The State of Rajasthan repelled the Rajasthan Taxation Tribunal Act, 1995 in February, 1999, as such the matter came to be transferred to this Court. The petition was registered as S.B. Civil Writ Petition No. 3479/99. The petition was dismissed on 9-12-99 on the statement made by the counsel for the Department that it was covered by the decision of the Court dated 7-8-99 rendered in Ambika Crushers v. Union of India. The petitioner preferred a special appeal against the said judgment on the ground that the case of M/s. Ambika Crushers pertains to excavators and not the dumpers and as such has no application to the facts of the case. The special appeal was allowed by order dated 10-2-2000. The Division Bench remanded the matter for fresh decision. The petitioner-Company also filed a writ petition, which was registered as D.B. Civil Writ Petition No. 148/2000 challenging the vires of Section 4 and 4-B of the Act of 1951. The said writ petition was also disposed of vide order dated 8-2-2000 remanding the matter to the Original Authority.

D.B. CIVIL SPECIAL APPEAL NO. 1847 2003. BIRLA CEMENT WORKS V. STATE OF RAJASTHAN AND ORS.

6. The 3rd respondent issued a notice in Form M.T.Q. dated 11-1-2001 in respect of 27 dumpers for the period April 1997 to March 2000. The petitioner-Company challenged the same by filing a writ petition which was registered as S. B. Civil Writ Petition No. 180/2000. The learned single Judge dismissed the writ petition on the ground that the petition was not maintainable on the principle enshrined in the provisions of Order 2, Rule 2, C.P.C. as well as on the principle of constructive res judicata. It was noticed that the petitioner had earlier filed a writ petition being S.B. Civil Writ Petition No. 3479/99 raising the same issue which was dismissed by the Court on 9-12-99. Against which though a special appeal was filed by the petitioner as D.B. Civil Special Appeal No. 1540/99 but the same is still pending as such the petitioners ought to have raised an additional ground raised in the earlier petition which they now wanted to raise in the petition. The Court further observed that because of their failure to do so principle of

constructive res judicata was attracted. The learned Judge also relegated the petitioner-Company to the statutory remedy of appeal under the Act. The matter was carried in appeal before the Division Bench. The Division Bench reversed the decision of the learned single Judge as far as it pertains to upholding the preliminary objections of non-maintainability of the writ petition on the principle of Order 2, Rule 2, C.P.C. and the principle of res judicata.

"By reading the two judgments, we are left with only guesswork as to what were the controversy and what findings of fact have been arrived at between the parties in the petition filed by the petitioners. Even, we are not any wiser from the order passed in S.B. Civil Writ Petition No. 1645/99 as to what controversy has been decided therein by reading the two orders. We are able to infer that the petition has been dismissed on account to the ratio of decision rendered in S.B. Civil Writ Petition No. 2311/99 *Ambika Crushers v. Union of India* on 7-8-1999. It is quite one thing to say that the petition has been decided following the ratio laid down in other case not between the same parties then saying that the Court has reached a finding between the parties about the facts in his own case. The ratio in another case may be binding as a precedent, however, it cannot operate as res judicata. To satisfy ourselves, we had also looked into the decision in *M/s. Ambika Crushers v. Union of India* along with a group of cases. In that case, the controversy was about the inclusion of excavator in the definition of "motor vehicle" by issuing notification dated 19-6-1992. The Court was examining whether the excavator was "motor vehicle" or not. While deciding the issue that the excavator was a "motor vehicle" or not the learned single Judge, deciding the issue in *Ambika Crushers*" case, has referred to few decisions of the Supreme Court and reached his own conclusion. Obviously decision was in respect of a different article, and in the context of a notification issued specifically to cover such article. Such are not the facts of the present case. In the aforesaid circumstances, when the petition has been dismissed with reference to an earlier decision, which itself has been dismissed with reference to another decision, the findings given in the case are not clear on the merits of the controversy."

7. The Division Bench dealt with both the preliminary objections in great details. The Division Bench was of the view that the learned single Judge committed error in dismissing the writ petition on the ground of alternate remedy. The Court found that before raising demand vide Annexures 4/1 to 4/27 no notice was issued to the assessee for considering any objection as to the liability to be assessed to tax, nor an opportunity has been offered to the petitioners to show cause to the Assessing Authority even after proposing to raise a demand to raise objection to it, if he has any. The Division Bench also touched the merit of the case. The Department heavily relied upon the three decisions of the Apex Court being *Chief General Manager, Jagannath Area and Others Vs. State of Orissa* and *Another, M/s. Central Coal Fields Ltd. and Others Vs. State of Orissa* and *others, and Union of India and others, Vs. Chowgule and Co. Pvt. Ltd., etc. etc.*, The Court observed to know whether the dumpers are special type adapted for use only within the factory premises an enquiry was necessary. The Court also

observed that the dominant movement will be decisive factor. The relevant observations are extracted as follows :--

"For deciding whether the vehicle is of special type adapted for use only in factory or any other enclosed premises, for the purposes of levy of tax under the Taxation Act, it becomes a relevant enquiry to find what is the principle or dominant use for which such adaption has been made and not the incidental movement of the vehicle on roads. Where the claim is that a vehicle which is mechanically propelled and adapted for use in factory or the premises of the owner only, the dominant movement will be decisive factor to determine whether it is "motor vehicle" falling in the general definition of motor vehicle or it comes within special type of vehicles falling in the exclusion clause."

The Division Bench allowed the special appeal and remitted the matter to the Original Authority for determination of demand afresh after considering the objections of the petitioner-Company. The decision of the Division Bench in Birla Cement Works and Another Vs. State of Rajasthan and Others, The petitioner-Company filed the objection before the appellate authority. The Department proceeded for determination of the fresh demand as per the directions of the Division Bench. The State preferred a special leave to appeal against the said decision before the Apex Court. The Apex Court disposed of the leave to appeal by a brief order which is extracted as follows :--

"Heard the learned counsel for the parties.

This appeal is filed against the judgment and order dated 24-2-2000 passed by the Division Bench of the Rajasthan High Court in Civil Special Appeal No. 149/2000 by the impugned judgment and order, the High Court has finally disposed of the Civil Special Appeal by holding-as under :--

"Accordingly, we allow this appeal as well as the petition filed by the petitioners, set aside the demand raised vide Annexures 4/1 to 4/27 by treating the same to be the show cause notices against proposed levy of tax under the Act of 1951. The appellants petitioners shall be free to file objections, if any, to the aforesaid notices within a period of six weeks. On filing such objections, the assessing officer shall decide those objections after affording the petitioner opportunity to lead any evidence as they want to and the taxation officer shall also be free to bring evidence on record which he wants and decided upon such objections and determine the demand, if any, recoverable from the petitioners within a further period of six months in accordance with the observations made above. During this period the amount deposited by the assessee shall not be refunded but shall remain as security for the demands proposed to be raised vide the impugned notices, to be adjusted against the amount, if any, that may be found recoverable on the final outcome of the proceedings. The appellants shall further furnish a security to the satisfaction of the Taxation Officer for the balance amount proposed to be assessed against him. There shall be no orders as to costs."

At the time of the hearing of this matter, learned counsel for the respondents submitted that on the basis of the direction given by the High Court the competent authority under the Act has passed appropriate orders. Those orders are challenged by the respondents.

As against this, learned counsel appearing for the appellants submitted that the observations made by the Division Bench of the High Court are contrary to the decisions rendered by this Court in Chief General Manager, Jagannath Area and Others Vs. State of Orissa and Another, M/s. Central Coal Fields Ltd. and Others Vs. State of Orissa and others, Union of India and others, Vs. Chowgule and Co. Pvt. Ltd., etc. etc., In our view, considering the fact that matter is remitted to the competent authority for deciding afresh and the competent authority has already exercised its jurisdiction and passed appropriate order, the impugned order passed by the High Court does not call for any interference at this stage. The competent authority or the appellate authority would decide the matter in accordance with law particularly as interpreted by this Court including the aforesaid decisions relied upon by the learned counsel for the appellants and uninfluenced by the observations made by the High Court in the impugned Judgment.

The appeal stands disposed of accordingly. There shall be no order as to costs."

8. The appellate authority after considering the objections of the petitioner-Company held that the dumpers are motor vehicles and are exigible to tax under the Act of 1951. Accordingly the appeal was dismissed vide order dated 9-10-2001. The petitioners challenged the order of the appellate authority by way of petition before this Court under Article 226 of the Constitution of India. The writ petition was placed before the Division Bench as the petitioners challenged the constitutional validity of Sections 4 and 4-B of the Act of 1951. The petition came to be admitted on 2-11-2001. The recovery was stayed by ad interim order. However, by order dated 6-8-2002 the Division Bench directed the matter to be placed before the single Judge as the constitutional validity so far as Section 4 of the Act is concerned was no more required to be examined as the same was upheld by the Supreme Court in Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan, reported in AIR 1962 SC 1460 . Similarly the constitutional validity of Section 4-B of the Act of 1951 was upheld by the Division Bench judgment of this Court in Inder Kumar Goyal and Others Vs. State of Rajasthan and Others, . The learned single Judge rejected the petition by order dated 3-3-2003 on the ground of availability of alternate remedy of revision under Proviso 2 to Rule 14 of the Rules of 1951 and hence this special appeal. Thus, in the instant appeal the appellant seeks direction to quash the orders of the learned single Judge as well as appellate authority and the original authority and the demand pertaining to 27 dumpers for the period April 1997 to March 2000.

D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 206/2003. BIRLA CEMENT WORKS V. STATE AND ORS.

9. This special appeal pertains to the demand against 27 dumpers for the period 1982 to March 1997.

D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 208/2003 BIRLA CEMENT WORKS V. STATE AND ORS.

10. In continuation of the above facts while the matter was remitted to the Original Authority for fresh decision, the petitioner-Company decided to surrender the Certificate of Registration of 7 dumpers which had become unsuable. The petitioners on 13-3-2000 surrendered 7 Certificates of Registration (except of RJH 8943) in the prescribed pro forma. It was submitted before the Department that in the light of the judgments dated 18-9-1980, 10-2-2000 and 24-2-2000 no demand was outstanding. It was further submitted that the dumpers being not motor vehicles the question of payment of the taxes did not arise, as such, the surrender be accepted. The 3rd respondent rejected the application on the ground that the appellants did not produce any proof regarding the payment of tax till date as required by Rule 25 of the Rules of 1951. Thus, a direction has been sought to accept the surrender of the Certificate of Registration in respect of the seven dumpers w.e.f. 13-3-2000.

S.B. CIVIL WRIT PETITION NO. 1115/2002 S.B. CIVIL WRIT PETITION NO. 1099/2002 HINDUSTAN ZINC LTD. V. STATE OF RAJASTHAN AND ORS.

11. The petitioner Hindustan Zinc Ltd. is a Government of India Enterprises. The Company obtained a lease for mining and smelting of Zinc and Lead in Village Rampura Agucha in District, Bhilwara for an area measuring 1200 Hectares. It purchases 12 dumpers for carrying out raw material from the mine site to the crusher for the purpose of production of Zinc and Lead. Considering the said dumpers as "motor vehicles", the District Transport Officer, Bhilwara issued a demand notice dated 4-5-2000 asking the petitioner-Company to make payment of road tax on the said 12 dumpers for the period April 2000 to September 2000 under the provisions of the Act of 1951. The demand notice also includes the penalty. Against the said demand notice, the petitioner-Company filed an appeal u/s 14 of the Act of 1951 before the Regional Transport Authority, Bhilwara. The appeal has been dismissed by the Regional Transport Authority, Chittorgarh by order dated 20th August, 2001, the petitioner preferred a revision before the Additional Commissioner (Transport), which came to be rejected by order dated 1-2-2002. It is averred that during the pendency of the litigation, the petitioner's Bank Account was seized. Therefore, the Company made payment of road tax as per the demand notice Annexures 2 to 13. The Company filed a writ petition before this Court challenging the orders of the departmental authorities as well as the constitutional validity of Sections 4 and 4B of the Act of 1951. The petition has been registered as D.B. Civil writ Petition No. 11156/2002. The Division Bench found that as far as validity of Section 4 of the Act of 1951 is concerned the same has been upheld by the Apex Court in Automobiles Transport (Rajasthan) Ltd. etc. v. State of Rajasthan reported in AIR 1962 SC 1460. Similarly the constitutional validity of Section 4B of the Act of 1951 has been

upheld by this Court in Inder Kumar Goyal and Others Vs. State of Rajasthan and Others, In view of this the Division Bench by order dated 6-8-2002 directed the matter to be placed before the learned single Judge. However, keeping in view that this matter is also to be heard along with the identical matters, this Court by order dated 24-3-2003 directed the matter to be heard by Division Bench along with the identical matters. Another petition being D.B. Civil Writ Petition No. 1099/2002, pertains to the demand notice dated 29-12-99 asking the petitioner-Company to make payment of road tax of the 12 dumpers for the period 1996 to 1999-2000. It also includes the amount of penalty. The appeal against the demand notice was rejected by the R.T.A. The Additional Commissioner (Transport) has also rejected the revision. It is averred that petitioner Company had to deposit the amount under the compelling circumstances. In both the petitions the petitioner-Company has sought direction to refund the road tax deposited by the petitioner-Company with interest at the rate of 12% per annum. A further direction has been sought to quash the impugned demand notices as well as the order of the R.T.A. and the Additional Commissioner (Transport).

D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 188/2003. D. B. CIVIL SPECIAL APPEAL (WRIT) NO. 207/2003. GRASIM INDUSTRIES LTD. V. STATE OF RAJASTHAN AND ORS.

12. The appellant-Company is engaged in manufacturing White Cement in its White Cement Division and selling the same under its brand name "Birla White". The appellant-Company was allotted 350 Bighas of land on lease at Rajshree Nagar, Kharia Khangar, District, Jodhpur. The Company is using two Pay-loaders and one Crane in the manufacture of the cement in the Factory. According to the appellant the Pay-loaders are material handling equipments used for feeding Clay and Gypsum into hoppers for raw-mill/cement mill for spreading and stacking of Gypsum, for stacking and re-handling of lime stone in the lime stone yard and for stacking and re-handling of clinker at dryer and decolouriser. The further say of the appellant is that the Pay-loaders and the crane operate exclusively in the enclosed premises of the Factory. The D.T.O., Jodhpur issued two demand notices dated 8-3-2000 and 10-3-2000, one in respect of Pay-loaders and another in respect of crane, the appellant has been asked to pay the road tax and special tax for the Pay-loaders and crane for the period 1-4-89 to 31st March, 2000. The appellant challenged the said notices by way of filing a writ petition before this Court which was registered as D.B. Civil Writ Petition No. 843/2000. The petition was disposed of by order dated 27-3-2000 relegating the appellant to the alternate remedy. The appellant filed an appeal before the R.T.A. The Appellate Authority found that the rubber tyres are maintained on the wheel of the impugned vehicles and as such they are plyable on the public roads as an ordinary vehicle. The Pay-underline are also having engine and speed. They have also capacity of transporting goods. The R.T.A. rejected the appeal of the appellant. The appellant challenged the demand notices as well as the order of the appellate authority, The appellant-Company also challenged the constitutional

validity of Sections 4 and 4B of the Act of 1951. In view of the fact that the constitutional validity of the said provisions has been upheld, the Division Bench directed the matter to be placed before the learned single Judge by order dated 6-8-2002. The learned single Judge by the impugned order dated 3-3-2003 dismissed the writ petition on the ground of availability of statutory alternate remedy of revision. The another D.B. Civil Special Appeal (Writ) No. 207/2003 on the same facts pertains to demand notice for the period 1-4-2000 to 31st March, 2001. The appellant's appeal has been rejected by the order of the R.T.A. The learned single Judge has rejected the writ petition relegating the appellant to the remedy of revision.

D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 218/2003. NATIONAL CONSTRUCTION CO. V. STATE OF RAJASTHAN AND ORS.

13. The appellant is a Construction Company having a contract with R.S.M.D.C. a Government of Rajasthan Undertaking for mining operations. For execution of the contract in the mining work required to be done by the appellant, haul-pack dumpers are required for mining operation. The appellant was served with a notice by the District Transport Officer dated 14-2-2001 calling upon it to deposit the road tax or the special tax with regard to 10 dumpers mentioned in the said notice. The D.T.O. has demanded tax for the period 1-6-97 to 31st March, 2001. The appellant approached to this Court by way of filing a writ petition. The learned single Judge rejected the writ petition by order dated 3-3-2003 on the ground that a writ petition against the show cause notice is not maintainable. The special appeal has been preferred against the said order of the learned single Judge.

CONSIDERATION OF CONTENTIONS :

14. It is submitted by Mr. B. L. Maheshwari learned counsel for the appellant that Supreme Court in Bolani Ores Ltd., has held 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 road i.e. public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Motor Vehicles Act, they cannot be taxed. It is further submitted that the area of operation of the dumpers with the mining area of the appellant to which public has no access, as such they are not taxable under the Rajasthan Motor Vehicles Taxation Act, 1951.

15. In Bolani Ores Ltd.'s case (supra) the Supreme Court dealt with the Bihar and Orissa Motor Vehicles Taxation Act, 1930. Section 2(c) of the said Act adopted the definition of "motor vehicle" as found in the Motor Vehicles Act, 1914, The Motor Vehicles Act, 1914 was repelled and replaced by the Motor Vehicles Act, 1939. The definition of "motor vehicles" in Section 2(18) excluded motor vehicles solely used on the premises of the owner. The Orissa Motor Vehicles Taxation Act was amended and Orissa Amendment Act, 1943 re-enacted the provision of Taxation Act. "Motor vehicles" was defined u/s 2(18) of the

Motor Vehicles Act, 1939 excluding vehicles used solely upon the premises of the owner. Subsequently the definition of "motor vehicles" u/s 2(18) of the Motor Vehicles Act was amended by Act of 100 of 1956 which confined to exemption from taxation to "motor vehicles" of special type adapted for use only in a factory or in any other enclosed premises and the exemption that was available before the Amendment by Act of 100 of 1956 to motor vehicles used solely upon the premises of the owner was taken away. The Apex Court held (para 29) :--

"If the subsequent Orissa Motor Vehicles Taxation (Amendment) Act, 1943 incorporating the definition of the "motor vehicles" referred to the definition of "motor vehicles" under the Act as then existing, the effect of the legislative method would in our view amount to incorporation by reference of the provisions of Section 2(18) of the Act in Section 2(c) of the Taxation Act. Any subsequent amendment in the Act or a total repeal of the Act under a fresh legislation on that topic would not affect the definition of "motor vehicle" in Section 2(c) of the Motor Vehicles Act."

16. Thus, in the Bolani Ores" case the debate as to which of the two definition was part of the Taxation Act governing the demand created. Court clearly held that the definition of motor vehicles" as existing prior to 1956 Amendment would be applicable as that was the one which stood incorporated in the Taxation Act. This took out the dumpers from the taxation net though they were held registrable under the Act. Anticipating a spate of refund applications as a result of Bolani Ores Ltd., the State of Orissa promulgated an Ordinance on February 11, 1975 known as the Orissa Motor Vehicles Taxation Laws (Amendment) Ordinance, 1975. The purpose of the amendment was not only to validate the tax collected but also to keep exigible to tax under the Taxation Act that too with retrospective effect. Section 2(c) of the Taxation Act defining "motor vehicle" was therefore substituted by making following provision :--

"Notwithstanding anything in any judgment or order of any Court, "motor vehicle means any mechanically propelled vehicle adapted for use upon roads whether the power is of propulsion 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 special type adapted for use only in a factory or in any other enclosed premises."

17. Thus, the object of the Amendment was to legislate retrospectively on the subject directly instead of by incorporation as done earlier in Section 2(c) so as to bring uniformly the pre-amendment effect of Section 2(18) of the Act. The constitutional validity of the said Act was challenged before the High Court. A further prayer was made for injecting the opposite parties from imposing any tax on the petitioners" Dumpers, Rockers etc. and from realising the same in purported exercise of their powers under the said amending Taxation Act. The High Court took the view that the onus lay on the appellants to establish that dumpers and rockers in question was not suitable for use on the public roads. The High Court held that the Amending Taxation Act was within the legislative

competence of the State Legislature, which was empowered to impose taxes, regulatory and compensatory in nature, on vehicles which are suitable for use on public roads. The matter came up before the Supreme Court in group of writ petitions which was decided in *M/s. Central Coal Fields Ltd. and Others Vs. State of Orissa and others*, It was contended before the Apex Court that the dumpers are not adapted for use upon roads and, therefore, they are outside the scope of Section 2(b) of the impugned Taxation Act, 1975 and hence not within the ambit of the charging section. The Apex Court rejected the contention observing that the word "adapted" in the provision was read as "suitable" in *Bolani Ores* case by Interpretation on the strength of language in Entry 57, List III of the Constitution. The pictures of various types of dumpers were placed before the Apex Court. Seeing the pictures the Court observed as follows (para 8):-

"Pictures of various types of dumpers have been sent to us, which indicate prominently one factor that these dumpers plates like caterpillars or military tanks. By the use of rubber tyres it is evident that they have been adapted for use on roads, which means they are suitable for being used on public roads. The mere fact that they are required at places to run at a particular speed is not detract from the position otherwise clear that they are adapted for use on roads."

18. The Apex Court concluded that the dumpers are vehicles adapted or suitable for use on roads and being motor vehicles per se and as such liable to taxation on the footing of their use or kept for use on public roads. The Court further held that the network of which the State spreads, maintains it and keeps available for use of the motor vehicles and hence is entitled to a regulatory and compensatory tax.

19. In *Union of India and others, Vs. Chowgule and Co. Pvt. Ltd., etc. etc.*, it was pleaded that the dumpers were not actually used on roads and were neither suitable for use on roads, rather they were being used on enclosed premises of the Company. On that basis it was claimed that the dumpers were outside the taxation net. The Department took the plea that the dumpers were adapted and suitable for use on roads and were liable to tax under the Taxation Act. The Judicial Commissioner, Goa, Daman and Diu held that when dumpers and shovels were being used solely on the premises of the owner, they have therefore to be excluded from the purview of the Taxation Act since public roads were not being used by those vehicles. The learned Judicial Commissioner relied on *Bolani Ores Ltd.*, The Apex Court reversed the judgment. The Court held that a mere fact that dumpers were used solely on the premises of the owner or that they were in enclosed premises or permission of the authorities was needed to move them from one place to another and that they are not intended to be used or are incapable of being used for general purposes or that they have an unladen and laden capacity depending on their weight and size is of no consequence for, dumpers are vehicles used for transport of goods and thus liable to pay compensatory tax for the availability of roads for them.

20. It is submitted by Mr. B. L. Maheshwari learned counsel for the appellant that

the decision of the Apex Court in M/s. Central Coal Fields Ltd. and Others Vs. State of Orissa and others, and Union of India and others, Vs. Chowgule and Co. Pvt. Ltd., etc. etc., have been decided on the facts of the case and does not lay down that in all cases and in all circumstances the dumpers and rockers are vehicles. It is further submitted that the Court was not called upon to determine the issue whether the dumpers in question are of special type adapted for use in mining or any other enclosed premises in either of the case. It is further submitted that appellate authority on appreciation of evidence produced by the petitioner and other material has recorded a finding of fact that the subject vehicles are of special category.

21. In order to appreciate the contention, it would be convenient to acquaint with the relevant provisions having bearing on the controversy. The levy and payment of road tax and special tax is governed by the provisions contained in the Rajasthan Motor Vehicles Taxation Act, 1951 and the Rajasthan Motor Vehicles Taxation Rules, 1951. Section 4 of the Act of 1951 provides for imposition of road tax. Section 4B of the Act of 1951 provides for levy of special road tax. Sections 4 and 4B reads as under :--

"4. Imposition of Tax : (1) Save as otherwise provided by this Act or by the Rules made thereunder or any other law for the time being in force there shall be levied and collect on all motor vehicles used or kept for use in the State.

(a) A Tax in respect of such vehicles which are not covered by Clauses (b), (c) or (d) at such rates as may be specified by the State Govt. by Notification in Official Gazette which shall not exceed 5% of the cost of the chassis/vehicle per annum.

Provided that where the rates are not specified on quarterly or monthly basis, by the State Govt., by notification in the official gazette and if the tax is permissible to be paid quarterly and month, the amount payable shall be equivalent to the one forth or one twelfth respectively of the annual rate of tax.

(b) a one time tax in the case of non-transport vehicles at such rates as may be notified by the State Govt. by notification in the official gazette which shall not exceed 10% of the cost of the vehicle.

Provided that in addition to one time tax, there shall be paid by the owner or the person having possession or control of a motor vehicle on which one time tax is payable, any tax or penalty as was payable under this Act for any period prior to the coming into force of the provisions of Chapter V of the Rajasthan Finance Act, 1997 (Rajasthan Act No. 9 of 1997) at such rates as were applicable to such vehicles from time to time.

(c) a tax in respect of such vehicles requested outside the State using roads in Rajasthan or under temporary permits, at such rates as may be notified by the State Govt. by notification in the official gazette which shall not exceed Rs. 200/- per day per seat in case of the passenger vehicles and shall not exceed Rs. 250/- per thousand Kg. of GVW/RLW or part thereof for 30 days or part thereof in case

of goods vehicles; and,

(d) a tax on dealers in, or manufacturers of motor vehicles in respect of such vehicles as are in their possession in the course of his business as such manufacturers or dealer under the authorisation of a Trade Certificate granted or deemed to be granted under the Motor Vehicles Rules for the time being in force in the State of Rajasthan, at such rates, as may be specified by the State Govt. by notification in the Official Gazette which shall not exceed rupees ten thousand for every 50 vehicles or part thereof in respect of three or four wheeled vehicles and shall not exceed Rs. 10,000/- for every 100 vehicles or part thereof in respect of two wheeled vehicles.

(2) A tax shall be payable under this section by the owner of motor vehicle except for the period during which the owner surrenders the certificate of registration to the taxation officer, in the prescribed manner, that the vehicle has remained out of use for such reasons as may be prescribed, or satisfies the taxation officer that vehicle has not been used for due to following reasons:--

(i) that the motor vehicle was restrained from plying by the competent Court or authority;

(ii) that the motor vehicle was involved in an accident and a report to this effect was made to the police and because of accident, it remained out of use;

(iii) that the motor vehicle was attached for the recovery of tax under the Rajasthan Land Revenue Act, 1956 (Act No. 15 of 1956) by the competent authority or attached under the warrant of attachment issued by the competent authority or Court and during the period of attachment the vehicle did not remain in his possession.

Provided that the period of such surrender or the period of such non-use, as the case may be, shall be for a period of not less than one month.

Provided further that if the vehicle is found plying after the certificate of registration has been surrendered, the owner shall pay the tax for the entire period during which the certificate of registration remained surrendered.

Explanation. The cost of the chassis/vehicle for the purpose of computation of tax shall include purchase price and such other elements as may be prescribed by the State Govt.

(2) For determining the vehicles kept in possession of a dealer or manufacturer, the number of vehicles declared by them likely to be in their possession or the vehicles sold by them, during the preceding year, whichever is higher, shall be taken into consideration.

4B. Special Road Tax.--(1) in addition to the tax levied u/s 4 and subject to the Rules as may be made by the State Govt. in this behalf, there shall be levied and paid to the State Govt. a special Road Tax on all transport vehicles at the rates as may be specified by notification in the Official Gazette, by the State Govt.

which shall not exceed Rs. 2,000/- per day in respect of passenger vehicles and shall not exceed Rs. 250/- per thousand Kg. of load carrying capacity or part thereof for thirty days in respect of goods vehicles of other States or for vehicles playing on temporary permits of this State, and not exceeding 5% of the costs of the Chassis/Vehicle per month in respect of other vehicles."

22. Section 2(28) of the Motor Vehicles Act, 1988 defined "motor vehicle" which reads as under :

"(28) "motor vehicle" or "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 special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty five cubic centimeters."

23. The Rajasthan Motor Vehicles Taxation Act, 1951 which came into force in 1951 as originally enacted had adopted words and expressions used in the Act of 1951 but not defined therein but so defined in Motor Vehicles Act, 1939 by reference of provisions of Motor Vehicles Act. The original clause which came into existence in the present form reads as under :--

"Words and expressions used but not defined in this Act and defined in the Motor Vehicles Act, 1939 (Central Act) have the meaning assigned to them in that Act."

24. Thereafter it was substituted by Section 2 of the Rajasthan Act of 20 of 1982 published in Rajasthan Gazette, Part 4-A of Extraordinary Gazette on 30th September, 1982 with the following :--

2(e) "Words and expressions used but not defined in this Act and defined in the Motor Vehicles Act, 1939 (Central Act) shall have the meaning assigned to them in the Act as amended from time to time."

25. Thereafter when 1939 Act was repealed with the commencement of the Motor Vehicles Act, 1988, correspondingly in Rajasthan Motor Vehicles Taxation Act, 1951, the Clause (e) of Section 2 was substituted by Rajasthan Act No. 14 of 1990 as follows :--

"(e) Words and expressions used but not defined in this Act and defined in the Motor Vehicles Act, 1988 (Central Act) shall have the meaning assigned to them in that Act and Rules as amended from time to time."

26. Motor Vehicles Taxation Acts are enacted in exercise of powers conferred on the State Legislatures under Entry 57 of List II of the Seventh Schedule to the Constitution, while the Motor Vehicles Act is enacted by the Parliament in exercise of the concurrent legislative power in Entry 35 of List III of the Seventh Schedule to the Constitution, Entry 57 of List II empowers the legislature in

respect of 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. The power exercisable under Entry 57 is the power to impose taxes which are in the nature of regulatory and compensatory measures.

27. Section 4 of the Act of 1951 is the charging section. The levy is attracted on existence of true material facts i.e. (1) existence of motor vehicle and (2) it being used or being kept for use within the State by the owner thereof. It is not in dispute that the dumpers belonging to petitioners are registered under the Motor Vehicles Act. The "motor vehicle" has been defined u/s 2(28) of the Motor Vehicles Act, 1988 (Section 2(18) under the old M. V. Act i.e. 1939 or 1956 Act). The "motor vehicle" as such is not defined under the Taxation Act, but the definition of "motor vehicle" u/s 2(28) of the M. V. Act has been incorporated under the Taxation Act by making reference to the definition of "motor vehicle" under the Act for the purpose of the Taxation Act. It is now well settled that if a subsequent Act brings into itself by reference to some of the clauses of the former Act, the legal effect of that is to writ those section into the new Act just as if they had been actually written in it. Reference may be made to the judgment of the Supreme Court in *Ram Sarup Vs. Munshi and Others*, a Five Bench Judges held that repeal of the Punjab Alienation of Land Act, 1900 has no effect on the continued operation of the preemption Act and the expression "agricultural land" in the later Act has to be read as if the definition in the Alienation of Land Act had been bodily transposed into it. The Rajasthan Motor Vehicles Taxation Act, 1951 adopted the definition of "motor vehicle" so defined in the Motor Vehicles Act, 1939 by reference. It is evident that when the Act of 1939 was repealed with the commencement of the Motor Vehicles Act, 1988 the definition was further substituted by the Rajasthan Act No. 14 of 1990 and the Clause (e) was drafted as extracted above. Thus, it is to be seen that the dumpers in question are "motor vehicles" within the meaning of the Motor Vehicles Act, 1988 as per the definition that exist during the relevant period. Since 1980 prior to amendment by making the applicability of the definition of Motor Vehicles Act as amended from time to time the consistent view of the Court is that by making a reference to the Motor Vehicles Act, 1939 at the time of enactment of the Act the legislature had adopted well known method of legislating by incorporating the provisions of the Motor Vehicles Act by reference. The "motor vehicle" u/s 2(28) can be read in two parts. Firstly "motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from 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 special type adapted for use only in a factory or in any other enclosed premises. Much emphasis is laid on the finding of fact recorded by the Original Authority and the appellate authority to the effect that the dumpers is a vehicle of special type. However, it is significant to notice that the dumpers have not been held to be a vehicle, of special type adapted for use only in the factory or any other enclosed premises.

We have referred to two decisions of the Apex Court i.e. M/s. Central Coal Fields Ltd. and Others Vs. State of Orissa and others, and Union of India and others, Vs. Chowgule and Co. Pvt. Ltd., etc. etc., wherein it is held that the dumpers do not fall within the exempted category as they are motor vehicles being adaptable and kept for use on roads even though actually used only within the enclosed premises of the owner's factory.

28. Mr. B. L. Maheshwari learned counsel with his usual vehemence has made a faint attempt to distinguish both the cases. He has referred to some of the decisions. Now, we proceed to deal with the cases referred by him.

29. The first case which the learned counsel has referred to is Travancore Tea Estates Co. Ltd. and Others Vs. State of Kerala and Others, In the said case the Court was dealing with the provisions of the Kerala Motor Vehicles Taxation Act which provided that there shall be presumption that a motor vehicle for which the certificate of registration is required shall deemed to be used or kept for use in the State. This provision safeguards the revenue of the State by relieving it from the burden of proving that the vehicle was used or kept for use on the public roads of the State. The Court also safeguards the interest of bona fide owner by enabling him to claim and obtain a certificate of non-user from the prescribed authority. This authority has no bearing on the controversy involved.

30. Relying upon the decision of the Apex Court in Goodyear India Ltd. Vs. Union of India and others, the learned counsel submitted that a close reading of the definition of "motor vehicle" in Item 34 reveals that the striking Ingredient thereof is that it should have been adapted for use upon the roads. In our view the case cited in completely out of context. Similarly, the decisions cited by the learned counsel in State of Gujarat and Others Vs. Kaushikbhai K. Patel and Another, , Akhil Gujarat Pravasi Vahan Sanchalak Mahamandal and Others Vs. State of Gujarat and Others, do not advance the case of the appellants/petitioners.

31. It is vehemently argued by Mr. Maheshwari that the appellants have led positive evidence that the dumpers used by them are of special type and they had never been used on the public roads. It is also submitted that the Transport Inspector has admitted this fact in his statement. We have already dealt with this aspect and rejected the contention on the ground that the word "adapted" means suitable. Thus, the only requirement is that the vehicle should be suitable for use on the roads whether the vehicle is actually used or not does not bring out the vehicle from the tax net.

32. The controversy is so settled by the two decisions of the Apex Court in M/s. Central Coal Fields Ltd. and Others Vs. State of Orissa and others, and Union of India and others, Vs. Chowgule and Co. Pvt. Ltd., etc. etc., that when in identical circumstances a SLP came up before the Apex Court against the decision of the Orissa High Court by one of the Company namely The Chief General Manager. Jagannath Area the Court was not inclined to grant leave to appeal. However, a

senior counsel appearing for the petitioners preferred to re-argue the entire matter at length for considerable period, the Court by a detailed judgment reaffirmed the view expressed in the two earlier judgments. In Chief General Manager, Jagannath Area and Others Vs. State of Orissa and Another, the Court formulated the contention raised by the learned counsel as follows :--

"(1) The dumpers which have been taxed under the Taxation Act are used only within the mining areas and are not capable of being used on the public roads and, therefore, cannot be held to be motor vehicles and consequently are not taxable under the Taxation Act.

(2) Secondly, the learned Senior Counsel argued 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 tax is levied. 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."

33. In the said case the manufacturer company had given a certificate to the effect that vehicles were not meant for plying on highways the reasons given by the company are extracted In Para 8 of the judgment. They are reproduced as follows :--

"(i) Culverts and bridges on highways are generally not designed to take care of such axle loads continuously;

(ii) the vehicles cannot run at reasonable speed on highway and hence obstruct the flow of normal traffic;

(iii) Width and height of the equipment will adversely affect the traffic and minimum preferable width of the road required for plying these vehicles is 50 ft.

(iv) The vehicles are fitted with specially designed heavy duty tyres and the heat generation is much more and generally cannot be run for more than about 5 Kms. at one stretch which is not so in case of normal conventional hauling units which ply on highway."

34. Noticing the facts the Court held as follows :--

"On these facts it is difficult for us to hold that the vehicles are not adapted or suitable or capable of being used on public roads, even though for most of the time they might actually be used within the mining areas on the roads prepared by the mining owners. Following the two earlier judgments of this Court in M/s. Central Coal Fields Ltd. and Others Vs. State of Orissa and others, and Union of India and others, Vs. Chowgule and Co. Pvt. Ltd., etc. etc., we hold that the dumpers in question are motor vehicles and are taxable within the ambit of the Taxation Act.

35. Dealing with the contention, the Court reminded of the ratio in M/s. Central Coal Fields Ltd. and Others Vs. State of Orissa and others, as follows :--

"Coming now to the second argument of Mr. Shanti Bhushan, learned Senior Counsel which is on the question of compensatory nature of the Act it is to be seen that in the very decision in Central Coal Fields Ltd, v. State of Orissa it was held : (SCC p. 140, para 9) (at p. 1379, para 5)

"Thus on the fact-situation, we have no hesitation in holding that the High Court was right in concluding that dumpers and rockers are vehicles adapted or suitable for use on roads and being motor vehicles per se as held in Bolani Ores Ltd., were liable to taxation on the footing of their use or kept for use on public roads, the network of which, the State spreads, maintains it and keeps available for use of motor vehicles and hence is entitled to a regulatory and compensatory tax."

36. The Court has summarised the entire law on point in issue as follows :--

"The tax imposed on the motor vehicles is basically a tax for the use of the roads within the State. It is no doubt a compensatory tax which facilitates trade, commerce and intercourse within the State by providing roads and maintaining roads in a good state of repair. As has been held by this Court in Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan (AIR 1962 SC 1460) 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. Such levy of tax for keeping a motor vehicle for use on the public roads or which is capable of being used on the public roads are no doubt compensatory taxes but does not violate provisions of Article 301 of the Constitution of India."

37. Mr. J. P. Joshi learned counsel appearing for National Construction Co. while adopting all the contentions of Mr. B. L. Maheshwari has referred to a letter addressed to the Transport Secretary, Ministry of Surface Transport dated 18th October, 1993 wherein it is observed that the specialized equipment used within enclosed Mine Areas cannot be deemed to be a motor vehicle u/s 2(18) of the Motor Vehicles Act. A request has been made by the Ministry to the effect that while deciding the question whether or not a specialized equipment used within the enclosed Mine Area is required to be registered under the Motor Vehicles Act, 1988, the State Governments/UT Administrations may take into account the observations made in the letter. Such sort of letters dehors of the statutory provisions and such cannot be made enforceable. The contention deserves to be rejected.

38. Thus, we are of the view that the definition of the Motor Vehicles Act u/s 2(28) is quite comprehensive. The exemption incorporated therein relating to the vehicle "all special type adopted or used only in a factory or any other enclosed premises significantly has used word "adapted" and another word "only". The expression "adapted" for use on roads means that the vehicle should be fit and apt to use on roads. It does not mean "actually used on roads". By the use of rubber tyres it is evident that they have been adapted for use on roads, which means that they are suitable for being used on public roads. The dumpers can certainly be used for carrying loads even outside the factory premises. The dumpers are suitable for use on public or private roads. Simply because it is the special type of vehicle and that they have been used in the factory premises will not bring within the exemption provided u/s 2(28). It is the user of the vehicle who determines its adaptability. The test is if the vehicle is reasonably suitable for being used along with the public roads the mere fact that the manufacturer have made or intended a particular vehicle for one purpose or the other or the dealers have sold it for a particular purpose or that a particular vehicle is described by a particular name or description is no criteria to decide whether the vehicle is adapted for use upon the roads within the meaning of definition of Motor Vehicles Act u/s 2(28) of the M.V. Act. 1998. Another word "only" is also of a great significance. It clearly shows that the exemption is confined to only those kinds of vehicles which are exclusively designed for use in a factory or any enclosed premises, the actual use for particular purpose is no criteria to decide whether the vehicle is a motor vehicle. Thus, if the dumpers are suitable for use on public roads, it is a motor vehicle despite the fact they may have been used only in factory premises. Thus, we hold that the dumpers owned by the appellants/petitioners are motor vehicles within the meaning of Section 2(28) of the Motor Vehicles Act, 1988 as it does not fall in the exempted category in spite of being a special type of vehicle, being adaptable or suitable for being used on roads (by the use of rubber tyres) even though actually used only within the enclosed premises of the appellants/petitioners' factory. Hence they are liable to be taxed.

39. Three special appeals being D.B. Civil Special Appeals Nos. 184/2003, 206/2003 & 208/2003 filed by M/s Birla Cement Works, two special appeals being D.B. Civil Special Appeals Nos. 188/2003 & 207/2003 filed by M/s. Grasim Industries Ltd. and another special appeal being D.B. Civil Special Appeal No. 218/2003 filed by National Construction Co. are against the judgment of the learned single Judge dismissing the writ petition on the ground of availability of alternate remedy under the Rajasthan Motor Vehicles Taxation Act, 1951. On the same controversy the revisional authority Additional Commissioner Transport has taken the view in favour of the Department and the same has been challenged by way of petition under Article 226 of the Constitution of India. Thus, having known the view of the revisional authority, no purpose could be served to relegate the parties to the remedy of revision. Since the matter has come before this Court after number of rounds, it was considered desirable to decide the

controversy on merit. Thus, the two writ petitions filed by Hindustan Zinc Ltd. which were pending before the learned single Judge have been heard along with the special appeals. This way, we had an advantage of knowing the view of the revisional authority. In these peculiar facts of the case, we need not pronounce judgment on the question of alternate remedy.

40. With respect to demand for the year 1982 to 1997 in D.B. Civil Special Appeal No. 206/2003 it is submitted by Mr. B. L. Maheshwari learned counsel that this court in Birla Jute Manufacturing Co. Ltd. Vs. The Regional Transport Officer and Taxation Officer and Another, held that dumpers are not motor vehicles so long as they are used in the premises of assessee-Company and they are not liable to tax. It is submitted that the said judgment was accepted by the State Government as that was the law prevailing during that period and as such the levy of tax on the dumpers is unwarranted. The learned counsel has placed reliance on the decision of the Apex Court in Commr. of Income Tax v. Hindustan Electro Graphites reported in (2000) AIR SCW 1010 : (AIR 2000 SC 1481). We are unable to agree with the submission of the learned counsel. A Division Bench of this Court has taken the view as back as in the year 1993 that the dumpers are motor vehicles for the purpose of taxation under the Rajasthan Motor Vehicles Taxation Act, 1951 Rajshree Vs. Principal Judge, Family Court, Lucknow and Another, Thus, the contention is rejected.

41. In D. B. Civil Special Appeal No. 208/2003, it is submitted that 7 dumpers had become unusable and became unworthy for operation as such appellants surrendered the certificates of registration, but they were rejected by order dated 29-3-2000. It is also submitted that the said order was challenged by way of filing a writ petition bearing No. 2415/2000 and by interim order it was directed by this Court to provisionally accept the surrender which order was complied with. However, the matter was remanded to the R.T.O. vide order dated 9-4-2001. The appeal filed before the R.T.O. came to be decided on 9-10-2001. The petitioner filed a writ petition against the said order. The learned single Judge has relegated the petitioner to the alternate remedy of revision. We have read the order of the Original Transport Authority. In the opinion of the appellate authority the surrender could not be accepted in view of non-compliance of Rule 25 of the Rajasthan Motor Vehicles Taxation Rules, 1951. It appears from the letter dated 29-3-2000 that the application for the surrender was rejected as the petitioner failed to produce proof regarding payment of tax till date, token, permit Parts A & B. In order to appreciate the contention we may refer to Rule 25 of the Rajasthan Motor Vehicles Taxation Rules, 1951 which reads as follows :--

"25. Surrender of the Certificate of Registration :-- (1) The request for the surrender of documents u/s 4 of the Act, shall be in writing and it shall be accompanied with the certificate of Registration and the current token of the vehicle. In case where the certificate of Registration has either been seized, or deposited in a Court of law or with any competent authority, the owner shall file the receipt obtained by him in lieu of the certificate or registration and in such

cases the owner shall also file an affidavit to the effect that due to the circumstances mentioned therein he was not bale (sic) to surrender the Certificate of Registration forthwith.

Provided that in case of transport vehicles the Parts A and B of the permit if any issued to the vehicle shall also be accompanied with the application.

(2) In case of Motor Vehicle if current token could not be issued for want of mechanical fitness or permit then the owner shall satisfy the Taxation Officer that M.V. Tax and Special Road Tax which have become due have been paid.

(3) The owner of the vehicle shall specify the place where the vehicle will be kept during the period of non-operation and shall not remove the vehicle from the specified place to any other place except with the prior written permission of the Taxation Officer.

(4) The Taxation Officer will complete Part II of form MTG, and return to the applicant and shall at the same time enter in the Registration Certificate the date of its surrender. On the receipt of application in Part III of M.T.G., the certificate of registration, token and any other documents surrendered will be returned to the applicant, and the Taxation Officer after satisfying himself that the vehicle actually remained off the route, shall issue a certificate to the owner to this effect."

42. A reading of Rule 25 clearly shows that there is a requirement regarding production of proof recording production of the tax till date, token, permit Parts A & B. We do not find any infirmity in the order of the D.T.O. Thus no ground is made out to interfere with the impugned order.

43. In view of aforesaid discussion, we find no merit in the bunch of special appeals and the writ petitions. Consequently, all the special appeals and the writ petitions stand dismissed. No order as to cost.