
(2017) 02 P&H CK 0058
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 25356 of 2015

DCM Textiles

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-02-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 2

Citation : (2017) 2 ACC 115 : (2017) AIR(Punjab) 85

Hon'ble Judges : S.J. Vazifdar, CJ. and Anupinder Singh Grewal, J.

Bench : Division Bench

Advocate : Mr. Vinod S. Bhardwaj, Advocate, for the Petitioners; Mr. Alok Jain, Advocate, for the Union of India; Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana, for the Respondents

Final Decision : Dismissed

Judgement

Anupinder Singh Grewal, J. The petitioner company has sought a direction to register its vehicles as non-transport vehicle after treating them as private service vehicles. It has also sought the setting aside of memo dated 14.09.2004 to the extent directions have been issued by the State Transport Controller, Haryana to register the vehicles in the name of the petitioner as transport vehicles. A writ in the nature of certiorari for setting aside entry No.(x) in the notification issued by the Central Government on 05.11.2004 to the extent that only private service vehicles registered in the name of an individual to be treated as non-transport vehicle and a mandamus to respondents No.2 to 4 to renew the registration of the vehicle without charging any passenger tax and refund of tax already paid have also been sought.

2. The petitioner company registered in the name of DCM Textiles, Hisar is stated to have purchased three vehicles i.e. two Mahindra Boleros and one Eicher 10.90 L. These vehicles are used for fetching employees from their residence to the petitioner's textile mill. It is the case of the petitioner that these vehicles are not being used for any hire or reward or for any commercial purpose and are

therefore, covered under the definition of private service vehicle under Section 2(33) of the Motor Vehicles Act, 1988.

3. A challenge has been made to the notification dated 05.11.2004 to the extent of classifying only the vehicles owned by individuals to be non-transport vehicles while the vehicles which are owned by a company are treated as transport vehicles and subjected to passenger tax. The petitioner company had earlier preferred CWP No.1871 of 2015 claiming somewhat similar reliefs as claimed in the instant petition which was disposed of by a Division Bench of this Court on 07.09.2015 with a direction to respondents to pass a speaking order on the representation of the petitioner company. The representation of the petitioner has been rejected by the order dated 04.11.2015 passed by respondent No.5 which has also been impugned in this petition.

4. Learned counsel for the petitioner company has contended that the classification of private service vehicle as non-transport and transport vehicle by treating only the vehicles registered in the name of individuals and owned by an individual to be non-transport vehicle is contrary to the provisions of the Motor Vehicles Act, 1988 inasmuch as the Act only refers to registration of vehicles in the name of an owner and does not make any distinction between an individual or any juristic person including a company. The term "owner" includes both individual as well as company and cannot be further classified. Learned counsel also contended that the vehicles which are being used by the company are not for any commercial purpose but for the purpose of ferrying its employees from their places of residence to the mill. No fare is being charged from the employees. The vehicles are exclusively used by the company for its efficient functioning and not for any commercial purpose and therefore, it cannot be treated as a commercial purpose whatsoever, to exclude it from the classification of non-transport vehicle as in the case of an individual owner and such a classification in the notification dated 05.11.2004 is arbitrary and discriminatory and it is thus liable to be struck down.

5. Per contra, learned counsel appearing for the respondents has contended that the scheme of the Motor Vehicles Act provides for classifying the vehicles as public and private service vehicles as well as transport and non-transport vehicles. The Motor Vehicles Act read with the Punjab Passengers and Goods Taxation Act, 1952 extended to the State of Haryana empowers the state government to levy passenger tax on the transport vehicles and therefore, the action of the respondents in this regard cannot be faulted.

6. It is necessary to refer to the relevant provisions of Section 2 of the Motor Vehicles Act, 1988 and the notification dated 05.11.2004 which are set out hereinafter:-

"Section 2—(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms;

- (21A) "manufacturer" means a person who is engaged in the manufacture of motor vehicles;
- (22) "maxicab" means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward;
- (23) "medium goods vehicle" means any goods carriage other than a light motor vehicle or a heavy goods vehicle;
- (24) "medium passenger motor vehicle" means any public service vehicle or private service vehicle, or educational institution bus other than a motor cycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle;
- (25) "motorcab" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward;
- (26) "motor car" means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage;
- (27) "motor cycle" means a two-wheeled motor vehicle, inclusive of any detachable side-car having an extra wheel, attached to the motor vehicle;
- (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 a 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 centimetres;
- (29) "omnibus" means any motor vehicle constructed or adapted to carry more than six persons excluding the driver;
- (30) "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement*, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;
- (33) "private service vehicle" means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes;
- (35) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage;
- (47) "transport vehicle" means a public service vehicle, a goods carriage, an

educational institution bus or a private service vehicle;

"Notifications under Motor Vehicles Act and Rules

(Central Government Notifications)

1. Specification of Types of Motor Vehicles

No. S.O.1248 (E), dated 5.11.2004.—In exercise of the powers conferred by sub-section (4) of Section 41 of the Motor Vehicles Act, 1988 (59 of 1988) and in supersession of the notification of the Government of India in the erstwhile Ministry of Surface Transport No.S.O. 451 (E), dated the 19th June, 1992, the Central Government hereby specifies the types of motor vehicles as mentioned in columns 1 and 2 of the Table below for the purposes of said sub-section (4):-

TABLE

Transport Vehicle

Non-Transport Vehicle

(1)

(2)

(i) Motor cycle with side car for carrying goods

(i) Motor cycle with or without side car for personal use.

(ii) Motor cycle with trailer to carry goods.

(ii) Mopeds and motorized cycle(Engine capacity exceeding 25cc).

(iii) Motor cycle used for hire to carry one passenger on pillion and motorized cycle-rickshaw for goods or passengers on hire.

(iii) Invalid carriage.

(iv) Luxury cab.

(iv) Three-wheeled vehicles for personal use.

(v) Three wheeled vehicles for transport of passenger/goods.

(v) Motor car.

(vi) Goods carrier trucks or

(vi) Fork lift. tankers or mail carriers (N1 - N3 category).

(vii) Power tiller and Tractors using public roads.

(vii) Vehicles or trailers fitted with equipments like rig, generator, compressor.

(viii) Mobile clinic or X-Ray van or Library vans.

- (viii) Crane mounted vehicle.
- (ix) Mobile workshops.
- (ix) Agricultural Tractor and Power Tiller.
- (x) Mobile canteens.
- (x) Private service vehicle, registered in the name of an individual and if declared to be used by him solely for personal.
- (xi) Private Service Vehicle.
- (xi) Camper van or trailer for private use.
- (xii) Public Service Vehicle such as maxi cab, motor cab, stage carriages and contract carriages including tourist vehicles.
- (xii) Tow trucks, Breakdown Van and Recovery Vehicles.
- (xiii) Education Institution buses.
- (xiii) Tower Wagons and tree trimming vehicles owned by Central, State and local authorities.
- (xiv) Ambulances
- (xiv) Construction Equipment Vehicles as defined in rule 2(ca)"
- (xv) Animal ambulances
- (xvi) Camper vans or trailers
- (xvii) Cash vans
- (xviii) Fire tenders, snorked ladders, auxiliary trailers and fire fighting vehicles.
- (xix) Articulated vehicles.
- (xx) Hearses.
- (xxi) Omnibus

7. It is apparent from perusal of afore-noted sub sections of Section 2 that the Motor Vehicles Act, 1988 contemplates a distinction between transport and non-transport vehicles. The two concepts which have been defined under the Motor Vehicles Act, 1988 are motor vehicle and owner. Section 2(28) defines motor vehicle as mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted from an external or internal source but does not include vehicles having an engine capacity of less than 25 cubic cms. Sub-sections 2(21) to (29) other than sub-section (28) define different types of motor vehicles. Each one of these sub sections defines a particular type of motor vehicle. However, as far as owner is concerned section 2(30) does not specify a type of owner meaning thereby that any person can be an owner. We therefore,

can reasonably presume a juristic person like a company to be an owner. Sub-section 2(33) and 2(35) specify two classes or categories of motor vehicles viz. private service vehicle and public service vehicle. A private service vehicle is defined as a motor vehicle carrying more than six persons besides the driver in connection with trade or business otherwise than for hire or reward. Public service vehicle is defined as a vehicle which is used for hire or reward. Sub section 2(47) defines transport vehicle which includes four classes such as (a) public service vehicle (b) goods carriage (c) an educational institution bus and (d) a private service vehicle. Therefore, only four classes of transport vehicles have been defined in sub-section 2(47). It thus follows that all other categories would have to be treated as non-transport vehicles.

8. The classification of vehicles owned by an individual for private use and vehicles used for hire or reward is valid. There is an intelligible differentia between purely private use and commercial use of vehicles. Similarly there is an intelligible differentia between purely private use of a vehicle and use of vehicles for carrying persons in connection with the trade or business. There does not seem to be anything illogical or illegal in such a classification.

9. Consequently there does not appear to be any doubt that the petitioners' vehicles which are stated to be carrying employees in connection with trade and business would fall in the category of private service vehicle as defined in sub section 2(33). Once the petitioners' vehicles fall in the category of private service vehicle, it is axiomatic that it would fall in the category of transport vehicle. Therefore, the petitioners' vehicles being categorized in the entry (xi) of notification dated 05.11.2004 is correct and we do not find it to be arbitrary or illegal in any manner whatsoever.

10. Insofar as classifying the vehicles owned by individuals as non-transport vehicle is concerned, it is clear from the afore-mentioned four categories of vehicles classified in sub Section 2 (47) that the vehicles owned by individuals do not fall in these four classes of vehicles categorized in Section 2(47). We, therefore, do not find any merit in the contention of the counsel for the petitioner that the vehicles of the petitioner should be categorized as non-transport vehicles as in the case of vehicles owned by individual owners. The vehicles of the petitioner are being used to ferrying its employees from their residence to the mill. Indisputably, the company of the petitioner is carrying out business or commercial ventures. The work of the employees who are being transported in these vehicles is directly in relation to the commercial purpose of the company. On the contrary, the vehicles owned by individuals for their personal use would be at an altogether different footing. They are not carrying any commercial activity as is being done in the case of the petitioner company while transporting its employees to the mill. We thus, do not find any arbitrariness or discrimination in the distinction carved out in the notification dated 05.11.2004 in the case of individuals who are using the vehicles for their personal use.

11. We now advert to the liability of the petitioner to pay the passenger tax

which is also impugned in the instant petition. The relevant provisions of Punjab Passenger and Goods Taxation Act, 1952 are set out hereinafter:-

"Definitions

2. In this Act, unless there is anything repugnant in the subject or context, -

(a) "business" means the business of carrying passengers and goods by motor vehicles;

(c) "fare" includes sums payable for a season ticket or in respect of the hire of a contract carriage;

(e) "owner" means the owner of a motor vehicle used for carrying passengers or goods in or through the territory of the State of Haryana and includes-

(i) the holder of a permit in respect of such vehicle,

(ii) any person for the time being incharge of such vehicle,

(iii) any person responsible for the management of the place of business of such owner,

(iv) Government, or a corporation constituted under the Road Transport Corporation Act, 1950;

(f) "passenger" means any person travelling in a motor vehicle other than a private and public carrier but shall not include the driver or the conductor or an employee of the owner of the vehicle travelling in the bona fide discharge of his duties in connection with the vehicle;

(g) "prescribed" means prescribed by rules framed under this Act;

(gg) "private carrier" means a goods carriage other than a public carrier used for the carriage of goods which are owner's property or the carriage of which is necessary for the purposes of owner's business not being a business of providing transport or the vehicle used for any of the following purposes:-

(a) the delivery or collection by or on behalf of the owner of goods sold, used or let or hire-purchase in the course of any trade or business carried on by him other than the trade or business of providing transport;

(b) the delivery or collection by or on behalf of the owner of goods which have been or which are to be subjected to a process or treatment in the course of a trade or business carried on by him; or

(c) the carriage of goods in a transport vehicle by a manufacture or agent or dealer in such goods while the vehicle is being used for demonstration purposes;

(ggg) "public carrier" means a goods carriage transporting or undertaking to transport goods, or any class of goods, for any other person at any time and in any public place for hire or reward, whether in pursuance of the terms of a

contract or agreement or otherwise;

(i) "motor vehicle" means a public service vehicle and includes public carrier, private carrier or a trailer when attached to any such vehicle and omnibus used by an employer other than the Government, for carriage of his employees;

(j) all words and expressions used in this Act but not defined shall have the meaning assigned to them in the Motor Vehicles Act, 1988 (Central Act 59 of 1988).

Levy of tax.

3. (1) There shall be levied, charged and paid to the State Government a tax at such rate not exceeding sixty per centum of the value of -

(i) fare or freight, as the case may be, on all passengers and goods carried by a motor vehicle other than a private carrier; and

(ii) freight as calculated on the basis of freight rate fixed for public carriers by the competent authority under the [Motor Vehicles Act, 1988 (Central Act 59 of 1988)] on all goods carried by a private carrier, as the State Government may, by notification, direct, the amount of tax being calculated to the nearest multiple of five paise by ignoring two paise or less and counting more than two paise as five paise:

Provided that in case of contract carriages, public carriers and private carriers, the State Government may accept a lump sum in lieu of the tax chargeable on passengers and goods respectively, in the manner prescribed:

Provided further that in case of stage carriages, the State Government may accept a lump sum in lieu of the tax chargeable on passengers and goods, in the manner and subject to such conditions as may be prescribed:

Provided further that-

(a) no such tax shall be levied, charged and paid on goods, including minerals and mineral ores, proved to be exported out of the territory of India, whether by one transaction or by a series of transactions;

(b) in respect of minerals and mineral ores carried to any place within the territory of India, such tax shall be levied, charged and paid at the rate of one-twentieth of the value of the freight;

(c) the rate of tax on all passengers and goods carried by motor vehicles in hilly areas or sub-mountain areas, specified in this behalf by the State Government, by notification, shall be one-sixth of the value of the fare or freight as the case may be.

Explanation. - When passengers and goods are carried by a motor vehicle other than a private carrier, and no fare or freight is charged or only token or confessional fare or freight is charged, the tax shall be levied and paid as if such

passengers and goods are carried at the normal rate prevalent on the route or at the rate fixed by the competent authority under the Motor Vehicles Act, 1988 (Central Act 59 of 1988)], whichever is higher."

12. Section 2(i) defines a motor vehicle to include a private carrier as well as omnibus used by an employer other than the government, for the carriage of its employees. In section 2(j), it is stated that all words and expressions used in the Act but not defined would have the same meaning which is assigned in the Motor Vehicles Act, 1988. The term omnibus is defined in Section 2(29) of the Motor Vehicles Act, 1988 as a motor vehicle which carries more than six persons excluding the driver. The vehicles of the petitioner which are carrying its employees would thus be included in the definition of motor vehicle as defined in the Punjab Passengers and Goods Taxation Act, 1952.

13. It is the case of the petitioner that there is a different mode/rate of taxation for transport and non-transport vehicles and its vehicles have been subjected to passenger tax at higher rates. Although the details are not set out in the petition we proceed on the basis that the vehicles owned by individuals would be taxed at lower rates than the vehicles of the petitioner company. The definition of "passenger" in Section 2(f) of the Punjab Passengers and Goods Taxation Act, 1952 includes any person travelling in a motor vehicle but excludes driver, conductor or an employee of an owner travelling in discharge of his duties in connection with the vehicle.

14. We do not find any infirmity in treating the employees of the petitioner company as passengers under the Punjab Passengers and Goods Taxation Act, 1952 and subjecting the company to passenger tax. The passengers including the employees who are being ferried from their residence to the mill cannot be taken out of the ambit of the definition of the passengers. The definition excludes only driver, conductor or an employee in discharge of duties in connection with the vehicle which could well be cleaner etc. but not the officials of the company who do not have any connection with the vehicle. Section 3(1) itself includes within its ambit the petitioners' vehicles. The employees of the petitioner company are included in Section 2(f). Therefore we cannot accept the contention of the learned counsel for the petitioner that its employees who travel in its vehicles to the mill are not passengers.

15. Further, bare reading of Section 3 indicates that tax is to be calculated as percentage of fare. Fare has been defined in Section 2(c) which includes sums payable for a season ticket or in respect of the hire of a contract of carriage. In the explanation to Section 3(1) it is set out that even when passengers are carried by motor vehicle and no fare is charged the tax shall be levied and paid as if such passengers are carried at the normal rate fixed by the competent authority. Therefore, merely because the petitioner company does not charge its employees does not mean fare cannot be computed. It has to be computed as per the explanation to Section 3(1). Fare can be levied on passengers carried by a motor vehicle other than a private carrier. The employees of the petitioner are

passengers. The vehicles of the petitioner company are motor vehicles and not private carriers which carry goods etc. Therefore, they would squarely fall in Section 2(i).

16. For these reasons we do not find any illegality in classifying the petitioners' vehicles as transport vehicles and charging passenger tax thereon.

17. In the result the petition stands dismissed.