

(1996) 10 KAR CK 0004
In the Karnataka High Court
Case No : WPs. 26067-68/92

Evershine Granites

APPELLANT

Vs

Dy. Commr. for Transport, Bangalore Div. and Another

RESPONDENT

Date of Decision : 23-10-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 2 (28), 41 (4)

Citation : (1997) ILR (Kar) 143

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : B.R.S. Gupta, for the Appellant; H.G. Ramesh, GA, for the Respondent

Judgement

G.C. Bharuka, J.—The twin questions which have fallen for consideration herein are:-

i) Whether the crane is a motor vehicle within the meaning of Section 2(28) of the Motor Vehicles Act, 1988 (in short the "1988 Central Act") thereby making the same exigible to tax under the provisions of the Karnataka Motor Vehicles Taxation Act, 1957 (for short "the Taxation Act") and,

ii) If found to be so exigible, under which item of part-A to the Schedule of the Taxation Act will it fall for the purpose of determining the rate of tax.

2. The 1st and 2nd petitioners are respectively the owners of cranes bearing Registration No. CKI 4482 and CKJ 5187. These two vehicles were registered on 8.9.1986 and 5.9.1987 as cranes. The tax payable in respect of these vehicles was assessed at Rs. 500/- per quarter under item 16 of Part-A of the Schedule to the Taxation Act. Since according to the taxation authorities, the vehicle should have been classified as goods vehicles and made liable to higher rate of tax, petitioners were served with notices to the said effect (annexure "A" and "B").

3. Petitioners filed their objections to the proposed actions. But the same were rejected. Consequently, they were subjected to higher rate of tax treating the

cranes as goods vehicles on the basis of their actual RLW as certified by the manufacturers. Petitioners thereupon went in appeals u/s 15 of the said Act. But the same were also dismissed by a composite order dated 26.6.1992 (ann. "C"). Consequently, they have been served with demand notice ann. "D" and "E" requiring them to pay difference of tax for the period from 1.3.1991 to 31.8.1992. Petitioners seek quashing of the appellate order and the consequential demand notices. Re: Question No: 1

4. Section 2(28) of the 1988 Central Act defines "Motor Vehicle" or "vehicle" to mean:-

"Any mechanically propelled vehicle adopted 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 thirty five cubic centimeters."

5. It is not in dispute that the cranes used to be of various types having varying and different capacities of hooks, heights, chassis, travel speeds and the hoist speeds. They have the mobility and are also suitable for use on a public road so far as the movement is concerned. The cranes invariably will have Driver's cab. It also contains seat. It contains mechanism of operating the crane in order to load or unload the goods either horizontally or vertically by hooking the same. But in respect of such cranes it cannot be said that the same are adopted for use only in a factory or any other encroached premises. Admittedly, the cranes in question are mobile cranes and can be used at any place accessible to road. In this view of the matter, it cannot be seriously disputed that the cranes are motor vehicles within the meaning of Section 2(28) of the Motor Vehicles Act. A similar view has been taken by a Bench of the Bombay High Court in the case of Ishardas and Co. and Others Vs. State of Maharashtra and Another, . Similarly, in the case of M/s. Central Coal Fields Ltd. and Others Vs. State of Orissa and others, , dumpers and rockers have been held to be motor vehicles since those were found to be adapted for use on road.

6. Section 3 of the Taxation Act provides for levy of tax at the rates specified in Part-A of the Schedule on all motor vehicles suitable for use on road. In the present case, as noticed above, it cannot be disputed that the cranes in question are motor vehicles suitable for use on roads. Accordingly, these are liable for levy of tax under the provisions of the Taxation Act.

Re. Question No: 2

7. For ascertaining rate of tax, one has to look to the Schedule to the Taxation Act. So far as this question is concerned, according to the respondents, the cranes owned by the petitioners are liable to be taxed under Item No. 3(O) of Part-A of the Schedule to the Taxation Act as "goods vehicle" having Registered

Laden Weight (in short RLW) exceeding 15,000kgs. Whereas, on the contrary, according to the petitioners the tax on the cranes could have been levied only at the rates prescribed under Item No. 16 of Part-A of the Schedule to the Taxation Act being the residuary item since cranes had not been classified specifically under any of the items from 1 to 15.

8. It cannot be disputed that for applying the rate of tax prescribed under Item No. 3(0) referred to above the vehicle must satisfy the description of "goods vehicle" as statutorily defined for the purposes of the Taxation Act. Though the Taxation Act itself has not defined the said expression, but, Section 2(j) of the Act provides that the words and expressions used but not defined in this Act shall have the meaning assigned to them in the Motor Vehicles Act, 1939 (in short "1939 Central Act").

9. Clause (8) of Section 2 of the "1939 Central Act" defines goods vehicle to mean :-

"any motor vehicle constructed or adapted for use for the carriage of the goods or any motor vehicle not so constructed or adapted when used for carriage of goods solely or in addition to passengers".

10. Therefore, for holding a vehicle to be a "goods vehicle" either (i) it should be constructed or adapted for use for the carriage of the goods, or, (ii) even if not so constructed or adapted, it should be found to have been used for carriage of goods either solely or in addition to passengers.

11. Accordingly, even if as pleaded by the petitioners, the cranes owned by them are not constructed or adapted for use for the carriage of goods, but if the assessing authorities on the basis of materials available on record would have, as a matter of fact found that the cranes owned by the petitioners had been used solely or partially for carriage of goods, then cranes owned by them could have been justifiably subjected to tax as "goods vehicle". But no such finding has been recorded either by the assessing officer or the Appellate Authority.

12. According to the said authorities under the Act, the cranes need to be taxed as "goods vehicle" under item 3(0) of Part-A of the Schedule to the Act as a matter of law for the reasons that -

i) RLW of the vehicle is more than 15000 kgs;

ii) It is capable of moving on road and used for lifting the materials and depositing the same at the desired place; and,

iii) As per the notification issued by the Central Government u/s 41(4) of the Motor Vehicles Act, 1988, the cranes fall under the category of "heavy motor vehicles".

13. In my considered opinion, none of the three reasons given for subjecting the cranes to tax as "goods vehicle" can be said to be relevant. It is for the reasons that for being placed in the category of "heavy goods vehicle" it must first be

shown that it is a "goods vehicle" within the meaning of Clause (8) of Section 2 of 1939 Central Act. So far reason No. (ii) is concerned it is inconsequential for the purpose of determining the rate of tax of a vehicle. Further, so far as reference to Section 41(4) of the Central Act 1988 is concerned, the vehicles are required to be specified thereunder as falling under a particular type as notified by the Central Government for the purposes of registration of vehicles and as such description of the type of the vehicle is of no consequence for determining the rate of tax applicable to such vehicle under the provisions of the Taxation Act.

14. It may also be noticed here that by Karnataka Act 12 of 1993, the Legislature by amending item No. 11 of Part-A of the Schedule to the Taxation Act was now specifically included the motor vehicles registered as cranes in the said item with effect from 1.4.1993.

15. For the foregoing reasons, in my opinion, keeping in view the materials on record and findings of the respondent authorities, the cranes owned by the petitioners can be subjected to tax only under the residuary item No. 16 of Part-A of the Schedule to the Taxation Act.

16. Accordingly, the impugned orders are quashed with liberty to the assessing authorities to recompute the tax liability of the petitioners in accordance with law.

17. Thus the Writ Petitions are partly allowed but without costs.