
(1987) 04 MP CK 0021
In the Madhya Pradesh High Court
Case No : M.P. No. 3125 of 1985

G. D. Anklesaria and Company (M/s)	APPELLANT
Vs	
State of M.P. and others	RESPONDENT

Date of Decision : 01-04-1987

Acts Referred:

Madhya Pradesh Motor Vehicles Taxation Act, 1947 — Section 3(2)(a)

Citation : (1987) JLJ 604

Hon'ble Judges : N.D. Ojha, C.J.; C.P. Sen, J

Bench : Division Bench

Advocate : A.K. Chitle, for the Appellant; S. L. Saxena, D.A.G., for the Respondent

Judgement

N.D. Ojha, C.J.—By this writ petition, the constitutional validity of the Madhya Pradesh Motor Vehicles Taxation (Amendment) Act, 1985 (hereinafter referred to as the 1985 Amendment Act) has been challenged.

2. By the 1985 Amendment Act, after sub-section (2) of section 3 of the M.P. Motor Vehicles Taxation Act 1947 (hereinafter referred to as the Act), sub-section 2 (a) of Section 3 of the Act has been inserted. Sub-section 2 (a) inserted as aforesaid read as hereunder ;

"(2-a). Notwithstanding anything contained in Sub-section (2), the owner of a motor cycle-

(i) which is registered on or after 1st January 1985, but before the commencement of the Madhya Pradesh Motor Vehicles Taxation (Amendment) Act 1985 u/s 24 of the Motor Vehicles Act 1939 (No. 4 of 1939) shall deposit the amount of tax in lump sum for ten years minus the amount of tax already deposited in respect of that motor cycle within 90 days of the commencement of the Madhya Pradesh Motor Vehicles Taxation (Amendment) Act, 1985; and

(ii) applying for registration after the commencement of the Madhya Pradesh Motor Vehicles Taxation (Amendment) Act, 1985, shall deposit the amount of tax

in lump sum for ten years, the amount of tax deposited under clause (i) of clause (ii) shall be treated as payment of tax for fifteen years in respect of that motor cycle".

During the pendency of the writ petition, a further amendment has been made in the Act by the M.P. Motor Vehicles Taxation (Amendment) Act, 1986 (hereinafter referred to as the 1986 Amendment Act). A new proviso has been added to sub-section (2) of section 3. Since the validity of that proviso is not under challenge before us, we do not think it necessary to quote the same here.

3. By clause (b) of section 2 of the 1986 Amendment Act, sub-section (2-a), as inserted by the 1985 Amendment Act, has been substituted and the said sub-section (2-a) now reads as hereunder :

"(2-a). Notwithstanding anything contained in sub-section (2)-

(i) the owner of a motor cycle, the unladen weight of which exceeds 70 Kilograms and which has been registered during the period between 1st January 1985 and 31st August 1985. shall deposit the amount of tax in lump sum for ten years minus the amount of tax already deposited in respect of such motor cycle before 1st July 1986; and

(ii) the owner of a motor cycle, the unladen weight of which exceeds 70 Kilograms applying for registration on or after 1st September 1985, shall deposit the amount of tax in lump sum for ten years. The amount of tax deposited under clause (i) or clause (ii) shall be treated as payment of tax for ever in respect of such motor cycle :

Provided that the owner of a motor cycle the unladen weight of which does not exceed 70 Kilograms, will have the option to deposit the amount of tax in lump sum for ten years and the amount of tax so deposited, shall be treated as payment of tax for ever in respect of that motor cycle". With reference to various provisions of the Act and the Rules, it has been urged by counsel for the petitioners that levy and recovery of the tax which is commonly known as "road tax", is permitted only as a regulatory and compensatory measure and the provision, as inserted by the two amending Acts referred to above, takes the Act in this behalf beyond its regulatory and compensatory measure.

4. Having heard counsel for the petitioners and Shri S. L. Saxena, Dy. A.G. for the respondents, we find substance in this submission. The relevant entry which entitles the State Legislature to make an enactment of the present nature, is Entry 57 of List II of the Seventh Schedule to the Constitution which reads as hereunder :

"57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tram cars subject to the provisions of entry 35 of List III".

Section 3 of the Act which deals with the levy of tax, is the charging provision and sub-section (2) thereof contemplates that the tax leviable under subsection

(1) shall be paid by the owner of the motor vehicle used or kept for use-

(i) for a whole quarter of one-fourth of the annual rate specified in the First Schedule, and for two or more whole quarters, pro rata, or

(ii) for any period expiring on the last day of a quarter and not exceeding two months at one sixth or one twelfth of the rate specified in the First Schedule, according as the period exceeds, or does not exceed one month.

The term "quarter" is defined in section 2 (c) of the Act and according to this definition, it means a period of three months commencing on the 1st day of April, the 1st day of July or the 1st day of October.

5. Sub-section (3) of section 3 of the Act contemplates that as owner who keeps a transport vehicle of which the certificate of fitness and the certificate of registration are current or an owner who keeps a motor vehicle other than a transport vehicle of which the certificate of registration is current shall, for the purposes of this Act, be presumed to keep such vehicle for use.

6. Section 5 of the Act provides that the time at which, the manner in which and the authority to whom the tax payable under this Act shall be such as may be prescribed. Sub-rule (2) of Rule 3 of the Rules framed under the Act contains the necessary provision in this behalf. It provides that the tax payable u/s 3 and 3-B of the Act shall be paid to the Taxation Authority by the owner in the following manner :

(a) If the tax is payable for a quarter, not later than 15 days after the commencement of the quarter;

(b) If the tax is payable for a period less than a quarter, on or before the date on which the tax becomes payable

We do not consider it necessary to reproduce here the proviso to this sub-rule. Sub-rule (3) of Rule 3, however, provides that the tax may be paid for two or more quarters in advance. Sub-rule (i) of Rule 3 makes provision for the manner in which the tax is to be paid, whereas sub-rule (5) of the said Rule contemplates that the tax payable under sub-rule (4) of the Act shall be paid to the Taxation Authority in the manner stated therein.

7. It has been urged by counsel for the petitioners that the various provisions of the Act and the Rules referred to above indicate that the tax really was contemplated to be paid for each quarter. According to counsel for the petitioners, the purpose for realising tax every quarter was to ensure that a person who is required to pay tax may not have to pay it for any period more than the period for which the vehicle is actually used or may be in use as contemplated by the Act. According to him, these provisions ensure compliance of the purpose of the taxation, namely, that it should be regulatory and compensatory. It was urged that in making the tax payable in advance for 10 years, the Legislature has failed to take into consideration that the motor cycle

may not at all be used or be usable for this period. It does not make any provision for refund of the tax for the period after it may become unusable. To that extent the provision ceases to be regulatory and compensatory and becomes confiscatory. In this connection it has been urged that a motor cycle does not have a very long life and in majority of cases it becomes unusable much before ten years. Sometimes it even gets destroyed on account of some accident. It was also urged that if an amount representing tax for ten years is invested in some long term deposit the interest on that amount would be more than the required quarterly or even yearly tax and even after paying such tax the owner of a motor cycle will continue to hold the principal amount. Since as a result of the impugned provision the capital amount together with its interest stands appropriated, the tax ceases to be regulatory and compensatory even if the motor cycle remains usable for ten years or more. We find force in this submission.

8. While dealing with the scope of entry 57 of List II of the Seventh Schedule to the Constitution, with reference to the Motor Vehicles Act and its subsequent amendment by the Motor Vehicles (Amendment) Act 1956, it was held by the Supreme Court in *Bolani Ores Ltd.*, that the 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. Entry 57 of List II empowers the Legislation 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, It was further held that the power exercisable under entry 57 is the power which imposes taxes which are in the nature of regulatory and compensatory measures. The regulatory and compensatory nature of the tax is that the taxing power should be exercised to impose taxes on motor vehicles which use the roads in the State or are kept for use thereon either throughout the whole area or parts thereof and are sufficient to make and maintain such roads. Elaborating the term "regulatory measure" imposing compensatory tax, it was held as under;

"The Taxation Act is a regulatory measure imposing compensatory taxes for the purposes of raising revenue to meet the expenditure for making roads, maintaining them and for facilitating the movement and regulation of traffic. The validity of the taxing power under Entry 57, List II of the Seventh Schedule read with Art. 301 of the Constitution depends upon the regulatory and compensatory nature of the taxes. It is not the purpose of the Taxation Act to levy taxes on vehicles which do not use the roads or in any way, form part of the flow of traffic on the roads which is required to be regulated. The regulations under the Motor Vehicles Act for registration and prohibition of certain categories of vehicles being driven by persons who have no driving licence, even though those vehicles are not plying on the roads, are designed to ensure the safety of passengers and goods etc. etc. and for that purpose, it is enacted to keep control and check on the vehicles. Legislative power under Entry 35 of List III (Concurrent List) does not bar such a provision. But Entry 57 of List II is subject to the limitations

referred to above, namely, that the power of taxation thereunder cannot exceed the compensatory nature which must have some nexus with the vehicles using the roads, viz. public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Act, they cannot be taxed. This very concept is embodied in the provisions of Section 7 of the Taxation Act as also the relevant sections in the Taxation Act of other States namely that where a motor vehicle is not using the roads and it is declared that it will not use the roads for any quarter or quarters of a year or for any particular year or years no tax is leviable thereon and if any tax has been paid for any quarter during which it is not proposed to use the motor vehicle on the road, the tax for that quarter is refundable".

9. In *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, while dealing with the provisions of the Madras Motor Vehicles Taxation Act, 1931, it was pointed out that if the taxation is compensatory or regulatory, it cannot operate as a restriction on the freedom of trade or commerce. In regard to determination of the question as to whether the tax is a compensatory tax, the following guideline was laid down :

"Strictly speaking, a compensatory tax is based on the nature and the extent of the use made of the roads, as, for example a mileage or ton-mileage charge or the like, and if the proceeds are devoted to the repair, upkeep, maintenance and depreciation of relevant roads and the collection of the exaction involves no substantial interference with the movement. The expression "reasonable compensation" is convenient, but vague. The standard of reasonableness can only be in the severity with which it bears on traffic and such evidence of extravagance in its assessment as come from general considerations. What is essential for the purpose of securing freedom of movement by roads is that no pecuniary burden should be placed upon it which goes beyond a proper recompense to the state for the actual use made of the physical facilities provided in the shape of a road. The difficulties are very great in defining this conception. But the conception appears to be based on a real distinction between remuneration for the provision of a specific physical service of which particular use is made and a burden placed upon transportation in aid of the general expenditure of the state".

10. A perusal of the law laid down by the Supreme Court in the aforesaid cases shows that the road tax can be justified only if it fulfils the test of its being regulatory and compensatory in the manner pointed out in the aforesaid two cases. On a perusal of the impugned sub-section (2-a) which has been inserted by the Amendment Act of 1985 and substituted by the Amendment Act of 1986, it is apparent that in requiring the owner of a motor cycle which term has been defined in section 2 (17) of the Motor Vehicles Act, 1939, as a person who has a two wheeled motor cycle the unladen weight of which, inclusive of the unladen weight of any detachable side car, having an extra-wheel, attached to motor vehicle, does not exceed 600 kilograms, to deposit tax for ten years in advance it

is not in conformity with the requirements of the tax being regulatory and compensatory in nature. Not only that, it is also inconsistent with many of the provisions in the Act. For instance, there is a proviso to Section 3 (2) of the Act that if a person does not want to use his vehicle for a particular period, he may make an application in the prescribed form and if that is done, he is to be exempted from payment of tax for that period. In view of the impugned sub-section (2-a) this provision becomes notice with regard to motor cycles. There is also provision in the Act, as already seen above, for payment of quarterly tax. On the other hand, by the amended provision, an owner of a motor cycle is required to pay tax for ten years even if his motor cycle may not, be used or be usable for that period. This makes the tax confiscatory in regard to the period after the motor cycle has become unusable and also for the period during which it may not have been used there being no provision for its refund. As owner of a motor cycle may manage his affairs in such a manner that he may make along term deposit of the amount representing ten years tax and pay the quarterly or even yearly tax from its interest and retain ownership of the capital amount. By requiring him to deposit tax for ten years in advance not only the interest but also the capital amount is appropriated. All this obviously takes the tax out of its province of being regulatory and compensatory and renders it ex proprietary. Consequently, we are of the opinion that sub-section (2-a) of Section 3 of the Act which has been inserted by the 1985 Amendment Act and substituted by the 1986 Amendment Act is beyond the legislative competence of the State Legislature conferred on it by Entry 57 of List II of the Seventh Schedule to the Constitution and as such deserves to be struck down.

11. It was urged by Shri Saxena appearing for the respondents, in justification of sub-section (2-a) aforesaid, that the provision had to be made for administrative convenience in the matter of realisation of tax of motor cycles the number whereof had become considerably large. In our opinion, keeping in view of the scope of Entry 57 of List II and the nature of the tax, mere administrative convenience cannot provide a valid justification for inserting such a provision in the Act as contained in sub-section (2-a) aforesaid. The object of administrative convenience could perhaps to a considerable measure have been achieved, even without defeating the purpose of the taxation, by making the requirement of the entire sub-section (2-a) optional as was done by the proviso to this sub-section as substituted by the 1986 Amendment Act with regard to a motor cycle the unladen weight of which does not exceed 70 kilograms.

12. In the result, sub-section (2-a) of the Section 3 of the Act as inserted by the 1985 Amendment Act and substituted by the 1986 Amendment Act is held to be ultra vires of the powers of the State Legislature. The respondents are, therefore, directed not to enforce the provisions of the said sub-section (2-a) against the petitioners by requiring them to pay tax for a period of ten years as contemplated by the said sub-section. It shall, however, be open to them to realise tax in accordance with the provisions of the Act ignoring the amendment aforesaid, In the circumstances of the case, there shall be no order as to costs.

Security amount be refunded to the petitioners.