

(1968) 07 BOM CK 0016

In the Bombay High Court

Case No : Criminal R. Application No's. 63 and 64 of 1968 & Criminal Revision
Application No's. 63 and 64 of 1968

Govindsingh Amarsingh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-07-1968

Acts Referred:

Bombay Motor Vehicles Tax Act, 1958 — Section 3, 4

Citation : (1969) 71 BOMLR 333 : (1969) MhLj 144

Hon'ble Judges : Chandurkar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Chandurkar, J.—These two revision applications arise out of two prosecutions started against the applicant for a breach of the provisions of Section 16(1)(a) read with Sections 3 and 4 of the Bombay Motor Vehicles Tax Act, 1958. The applicant is the owner of a goods vehicle BYY 546 and the prosecution case is that according to the provisions of the Act the quarterly rate of tax of the vehicle payable by the accused was Rs. 352.50. The complaint which is lodged by the Regional Transport Officer and Taxation Authority, Nagpur, states that the tax of the vehicle was payable by the registered owner by January 28, 1966, but the same was not paid and the owner did not send any intimation of non-use of the said vehicle as required by Rule 5(1) of the Bombay Motor Vehicles Tax Rules, 1959. Thus as the owner of the vehicle had not paid the tax Rs. 352.50 for the period January 1, 1966 to March 31, 1966, according to the complainant, he had committed an offence u/s 3 read with Section 16 of the Bombay Motor Vehicles Tax Act, 1958, in respect of the abovesaid period. The applicant was thus prosecuted in summary case No. 268 of 1967. On similar allegations in respect of the subsequent quarter, namely, for the period from April 1, 1966 to June 30, 1966, the applicant was prosecuted in summary case No. 270 of 1967.

2. The accused admitted non-payment, as alleged by the complainant, but his

case was that intimations of non-use of the vehicle were sent to the office in advance. It appears that the Office of the Regional Transport Officer had sent notices to the applicant for compounding the offence, but the case of the applicant was that the vehicle was not in use at the relevant period and as advance intimations were sent to the Regional Transport Officer under certificates of posting, tax was not paid by him and he had, therefore, committed no breach, as alleged. As the accused pleaded not guilty, on behalf of the complainant one witness was examined, who was a clerk in charge of the taxation department. The accused put himself in the witness-box and deposed to the despatch of the necessary intimations of non-use and he produced true copies of the said intimations and also the certificates of posting. It appears that since the two cases were similar, evidence of the accused was recorded only in Criminal Case No. 268 of 1967, The complainant's witness denied that any such intimations, as alleged by the applicant, were received. This evidence was accepted by the trying- Magistrate, who held that the intimations did not reach the proper authorities. The trying Magistrate further held that the intimations sent were not in proper form, as prescribed by Rule 5(1) of the Bombay Motor Vehicles Tax Rules, 1959, the provision of which, according to the learned Magistrate, was mandatory, the result was that the applicant was held guilty of the offence u/s 16(1)(a) of the Act and he was called upon to pay the tax amount of Rs. 352.50 and a penalty of Rs. 355 or in default of fine to undergo simple imprisonment for one month in Criminal Case No. 268 of 1967 and a similar order was passed in other case also.

3. The accused challenged both these orders of the trying Magistrate by filing two separate appeals being "Criminal Appeals Nos "94 and 95 of 1967. The learned Sessions Judge who disposed of the appeals reversed the finding of the trying Magistrate that the applicant had not sent the necessary intimations, the copies of which were exhs. 15 and 18, The learned Sessions Judge came to a conclusion that the certificates of posting filed by the applicant raised a presumption that the intimations which the applicant claims to have sent had reached the addressee and the learned Judge also gave a positive finding on evidence that it must be presumed that the originals of exhs. 15 and 18 were despatched under certificates of posting. However, though that finding was given in favour of the applicant, the learned Sessions Judge took the view that the delivery of the intimations was not in compliance with the provisions of Rule 7 of the Bombay Motor Vehicles Tax Rules, 1959, and that they were not in the prescribed form "NT", He also found that the applicant had not sent certificate of taxation along with the above mentioned intimations. The learned Judge thus came to the conclusion that the applicant had not complied strictly with the provisions of law and he confirmed the conviction of the applicant recorded by the trying Magistrate and dismissed the appeals. The orders of the two appeals are now being challenged by the applicant in the revision applications,

4. The learned Counsel for the applicant contends that the lower Courts were not right in holding that the intimations of non-use of the vehicle which are required

to be sent in accordance with Rule 5(1) are governed by Rule 7 of the Bombay Motor Vehicles Tax Rules, 1959. According to him, even if Rule 7 applied to the instant case merely because a document is sent by a mode other than the one which is prescribed by Rule 7, if, in fact, the document has been received at the other end, the applicant cannot be said to have committed any breach of the rule. It is also his contention that the requirement of Rule 5 that intimation of non-use must be given in form "NT" is not a mandatory requirement and that the applicant had substantially complied with the said requirement, and therefore, the applicant was not guilty of any breach. Before I go to the contentions raised by the learned Counsel, it is necessary to see the scheme of the Act and refer to certain relevant provisions.

5. Section 3 of the Bombay Motor Vehicles Tax Act, 1958, provides for a levy of tax on all motor vehicles used or kept for use in the State and the rates subject to the maximum specified in the First Schedule, have to be fixed by the State Government. Under Sub-section (2) of Section 8 of the Act, if for any period the Taxation Authority has not certified that a motor vehicle was not used or kept for use in the State, the registered owner, or any person having possession or control of a motor vehicle, of which a certificate of registration is current, is deemed to use or keep such vehicle for use in the State. Section 4 provides for different periods for which the tax is liable to be paid such as annually or for a quarter. It also lays down how the quantum of tax should be calculated, if the tax is to be paid for a period less than one year. Section 5 makes it obligatory on the Taxation Authority to issue to the person paying the tax a token and a certificate of taxation in the prescribed form, and Sub-section (2) of that section requires that where a certificate of taxation has already been issued in respect of a motor vehicle, the Taxation Authority shall, on payment of tax as aforesaid, cause to be made in the certificate of taxation an entry of any such payment. Section 6, which is now relevant having regard to the view which the Courts below have taken of Rule 7, is as follows:

6. (1) Subject to the provisions of this section, every registered owner, or person who has possession or control, of a motor vehicle used or kept for use in the State shall fill up, sign and deliver, in the manner provided in Sub-section (4), a declaration, and shall, along with such declaration, pay to the Taxation Authority the tax which he appears by such declaration to be liable to pay in respect of such vehicle.

(2) Subject to the provisions of this section, when a motor vehicle used or kept for use in the State, is altered or is proposed to be used in such manner as to render the registered owner, or person who has possession or control, of such vehicle liable to the payment of an additional tax u/s 7, such owner or person shall fill up, sign and deliver in the manner provided in Sub-section (4) an additional declaration and shall along with such additional declaration (accompanied by the tax token and the certificate of taxation in respect of such motor vehicle), pay to the Taxation Authority the additional tax payable under

that section, which he appears by such additional declaration to be liable to pay in respect of such vehicle.

(3) Such owner or person shall, at the time of making payment of tax under Sub-section (1), or of the additional tax under Sub-section (2), produce before the Taxation Authority a valid certificate of insurance, in respect of the vehicle, which complies with the requirements of Chapter VIII of the Motor Vehicles Act, 1939.

(4) The declaration under Sub-section (1), and the additional declaration under Sub-section (2) shall be in the prescribed form, containing the prescribed particulars, and shall be delivered, after being duly filled up and signed, within the prescribed time. The additional declaration shall indicate clearly also the nature of the alteration made in the motor vehicle, or as the case may be, the altered use to which the vehicle is proposed to be put.

(5) On receipt of the additional tax under Sub-section (2), the Taxation Authority shall issue to the registered owner, or person who has possession or control, of the vehicle a fresh tax token in place of the original token and shall cause an entry of such payment to be made in the certificate of taxation.

This section requires a registered owner or a person who has possession or control of the motor vehicle used or kept for use to fill up, sign and deliver a declaration and along with such declaration pay to the Taxation Authority the tax which he declares he is liable to pay in respect of such vehicle. This declaration which is referred to in Section 6 is required to be in the prescribed form containing the prescribed particulars and has to be delivered within the prescribed time as would be clear from Sub-section (4) of Section 6 of the Act, The form is prescribed by Rule 6 of the Bombay Motor Vehicles Tax Rules as being- Form "AT ". Rule 6 is as follows:

6. Declaration.-(1) A declaration shall be in Form "AT". It shall state-

- (a) the registration mark, if any, of the motor vehicle ;
- (b) the period for which the tax is to be paid in advance in respect of the motor vehicle ;
- (c) the fuel used for the motor vehicle ;
- (d) if the motor vehicle is one which would be liable to be taxed at the rates specified in Class III or Class IV of clause A in the First Schedule to the Act, whether the motor vehicle is intended to be used-
 - (i) solely within the limits of a local authority which has levied a tax on motor vehicles, or
 - (ii) both within and without such limits.

(2) A fresh declaration shall be made every time the payment of tax is made.

Rule 6, therefore, gives the details of the information which are required to be

incorporated in the declaration as are found in Form "AT". Rule 2(1) defines "declaration and additional declaration" as meaning respectively, a declaration and additional declaration delivered u/s 6.

6. The relevant rule in respect of the intimation to be sent in the case of non-use of the vehicle by the owner is Rule 5, which is as follows:

5. Certificate for non-user.-(1) A registered owner of, or any person who has possession or control of, a motor vehicle, not intending to use or keep for use such vehicle in the State and desiring to be exempted from payment of tax on that account shall, before the expiry of the current period for which the tax on such vehicle has been paid, make a declaration in Form "NT" to the appropriate Taxation Authority along with the certificate of taxation.

(2) If the Taxation Authority is satisfied that the motor vehicle, in respect of which a declaration in Form "NT" has been made, has not been used or kept for use for the period mentioned in the declaration and for which tax has not been paid, it shall certify that the motor vehicle has not been used or kept for use for such period.

(3) Notwithstanding anything contained in Sub-rules (1) and (2), if such owner or person proves to the satisfaction of the Taxation Authority that the motor vehicle was not used or kept for use during the period for which tax has not been paid, such Taxation Authority may certify that such vehicle has not been used or kept for use during such period.

This rule will show that it also contemplates a declaration, but the declaration contemplated by that rule is to be made specifically in Form "NT" to the appropriate Taxation Authority along- with the certificate of taxation.

7. The declaration referred to in Rule 5 is not the same as is dealt with by Rule 6, because Rule 6 refers to a specific declaration in Form "AT". If Form "AT" is seen it shows that it is concerned with the payment of the tax due for the current financial year and the form itself states that the amount of the tax is tendered as being- the tax due. There are other details which are required to be filled up in that Form. Rule 7 which immediately follows Rule 6 requires that the declaration shall be delivered either by hand delivery or sent by registered post to the Taxation Authority. In other words, what is intended is that the Form "AT" shall be filled by the person who is making the payment of the tax and delivered in the manner prescribed by Rule 7. Rule 7 also requires that (a) the amount of tax due for the period specified in the declaration or the cheque, the demand draft, the money order receipt or, as the case may be, the treasury chalan in respect of such amount, (b) the certificate of taxation, if any, issued in respect of the motor vehicle, and (c) a valid certificate of the insurance in respect of the vehicle is also to be sent along- with the declaration. Rule 8 provides the period within which such declaration is to be made and it contemplates four different kinds of cases enumerated in that rule. This declaration is to be made within 3 days of the application for registration where a motor vehicle is brought for registration; in a

case where the use of the vehicle was discontinued and the discontinuance was duly intimated, it is to be made before the vehicle is again brought into use; the third kind of case contemplated is where tax has been paid for a certain period and the rule requires that the declaration should be made within 20 days from the date of expiry of such period, and the last case contemplated is that the declaration is to be made within 7 days from the date from which the vehicle is liable to be taxed or on demand from the Taxation Authority whichever is earlier. It is not necessary to refer to the next two rules which provide for an additional declaration, but suffice it to say that such an additional declaration is required to be made where, as a result of some alterations in the vehicle, the liability for the payment of tax increased and a Form for such additional declaration is also provided. Having regard to the provisions of Rules 6, 7 and 8 discussed above it is clear that Rule 7 which provides for the manner of delivery of declaration does not govern the declaration that is contemplated by Rule 5. Even the Forms which are made under the rules will show that the Form "NT" is headed as "Form of intimation of non-use in respect of a Motor Vehicle" while the Form "AT" is headed as "Form of Declaration to be made in respect of a Motor Vehicle used or kept for use in the State." The intimation of non-use cannot be considered to be a declaration as contemplated by Rules 6 and 9. In my view, Rule 7 provides a manner of delivery only in respect of the declaration and additional declaration as contemplated by Section 6 and Rules 6 and 9 which respectively require the declaration to be made in Form "NT" and Form "BT" respectively. It is not obligatory that the intimation of non-use under Rule 5 must be delivered in the manner prescribed by Rule 7. I am, therefore, unable to uphold the view of the learned Sessions Judge that the accused failed to comply with the provisions of Rule 7 and, therefore, the accused must be held to have failed to send the necessary intimation of non-use to the Authority.

8. Even assuming that the view of the lower Court that the intimation under Rule 5 must be sent in the manner prescribed by Rule 7, I am unable to see how it could be held in this case that the accused had not sent the necessary intimation to the Authority. The learned Sessions Judge has himself given a finding that the two letters which the applicant says he sent intimating to the authorities that the vehicle would not be used during the period January 1, 1966 to June 30, 1966 were received by the authorities concerned. He has also gone to the extent of holding in favour of the accused that exhs. 15 and 18 are copies of the letters which were posted by the accused. The question whether these letters are intimations as contemplated by Rule 5 or whether they were required to be in the prescribed Form or not is a question with which I shall deal later, but if the finding which the learned Sessions Judge gave was that intimations sent by the accused reached the authorities, I fail to see how this fact could be ignored merely because the said intimations were not sent as required by Rule 7. Rule 7 only provides for a manner of delivery. It does not rule out any other manner of delivery and if the owner of the vehicle succeeds in proving that forms or papers which he sent had reached the authorities concerned the mode of delivery really

becomes immaterial.

9. The other ground on which the learned Sessions Judge has held against the applicant is that the declaration sent is not in Form "NT". The learned Sessions Judge has not given a positive finding that compliance with the form was mandatory, but that probably is his view, because he has held failure to send the declaration in the prescribed Form as one of the reasons for justifying the conviction. Rule 5 which is reproduced above, no doubt, requires the registered owner of, or any person who has possession or control of, a motor vehicle, to send an intimation in Form "NT" that he does not intend to use or keep for use such vehicle in the State and desires to be exempted from payment of tax. On such intimation being sent, the Taxation Authority, if it is satisfied that the motor vehicle in respect of which the intimation is sent has not been used or kept for use for the period mentioned in the declaration and for which tax has not been paid, is required to certify that the motor vehicle has not been used or kept for use for such period. Sub-rule (3) of Rule 5 of the Bombay Motor Vehicles Tax Rules is as follows:

5. (3) Notwithstanding anything contained in Sub-rules (1) and (2), if such owner or person proves to the satisfaction of the Taxation Authority that the motor vehicle was not used or kept for use during the period for which tax has not been paid, such Taxation Authority may certify that such vehicle has not been used or kept for use during such period.

This sub-rule will show" that in a given case the motor vehicle owner or the person concerned may not give a declaration in Form "NT" at all, and yet there is power in the Taxation Authority to issue the certificate for non-user if it is satisfied that the vehicle had not been used or kept for use during the said period, The object of Rule 5 is merely to furnish intimation to the Taxation Authority that a particular vehicle was not used or kept for use during the specified period. Rule 5 does not provide for any penalty for non-compliance with that provision and it cannot be said that the rule is mandatory in character.

10. In *Bhikraj v. Union of India* AIR [1962] S.C. the Supreme Court has laid down the test on the basis of which the question whether the provision is mandatory or directory should be decided and it has been observed (p. 119) :

. ..Where a statute requires that a thing shall be done in the prescribed manner or form but does not set out the consequences of non-compliance, the question whether the provision was mandatory or directory has to be adjudged in the light of the intention of the legislature as disclosed by the object, purpose and scope of the statute. If the statute is mandatory, the thing done not in the manner or form prescribed can have no effect or validity: if it is directory, penalty may be incurred for non-compliance, but the act or thing done is regarded as good.

As I have said above, Rule 5 itself does not prescribe any penalty for non-compliance and if the object of Rule 5 read with the Form "AT" is that the Taxation Authority must get sufficient knowledge of the fact that a particular

vehicle owned by a particular person is not intended to be used or kept for use during a particular period, then if this intimation is sent by a communication which is not strictly in compliance with Form "NT", I fail to see why that intimation cannot be effective. The only object is that record of the Taxation Authority must be complete with regard to the receipt or non-receipt of the tax for a particular period and if tax is not paid, then if the reason for that non-payment is; non-user, the Taxation Authority must have intimation of such non-user. I have already referred to Sub-rule (3) of Rule 5, which empowers the authority to issue a certificate of non use irrespective" of the fact that no intimation has been given. Having regard to the purpose and object of Rule 5, in my opinion, the requirement of Rule 5 cannot be considered as mandatory, and in my view if a written intimation, the contents of which are sufficient to give notice to the Taxation Authority, that a particular vehicle owned by a particular person will be kept out of use for a particular period at a particular place, it will amount to substantial compliance with the provisions of Rule 5.

11. It is true that Rule 5 requires a certificate of taxation to be sent along with the intimation. Now this certificate of taxation is one which is issued in accordance with the provisions of Rule 5 and this certificate which is to be issued in Form "TT" under Rule 11 only indicates the amount of tax paid, the period for which tax has been paid, the registration marks of the vehicle, the annual rate of tax and the quarterly rate of tax. It is not disputed that the certificate of taxation "only contains information regarding payment of tax. It is also not disputed, and that is the evidence, that the authorities maintain regular registers from which it could be found out whether in respect of a particular vehicle tax has been received or not. It is not the case of the prosecution that in the absence of a certificate of taxation the authorities would not be able to make the necessary entries in the records, if proper intimations are received with regard to the non-use of the motor vehicle. The object of the requirement regarding enclosing the certificate of taxation with the intimation of non-use appears to be only to facilitate the collection of information by the Taxation Authority with regard to the amount of tax and the period for which the tax has been paid in respect of the vehicle regarding which the intimation has been sent. It has not been contended on behalf of the State that there is any other purpose for which this certificate is required by the Authorities. I am unable to see how a failure to send this certificate along with the intimation of non-use can render the intimation ineffective, because even in the Form "NT" the vehicle number is given and the period for which the tax has been paid and the authority to whom it is paid can also be ascertained from it.

12. If in the light of the above discussion, the intimations, which have been held to have been sent by the applicant to the Taxation Authority, are perused in both the cases, they clearly mention the name of the applicant. The subject in exh. 15 is shown as "non-use of truck No. BYY 546 for the quarter ending March 1966" and in exh. 18 the subject is shown as "non-use of truck No. BYY 546 for the quarter ending June 1966." These two documents are in the form of letters

addressed to the Secretary, Regional Transport Authority and the contents of these two letters are clear that it is intimated to the Authority that the said truck will not ply for the relevant quarters and that it will be stationed at Wardha on Bachelor Road. At the top of the address of the applicant is given as "" Bachelor Road, Wardha"" and this communication also requests the Authority that necessary entry for non-use be kindly made on record. It is true that these two letters did not mention some other details which are specified in Form "NT". But it is not the case of the prosecution that in the absence of these details it would not have been possible for the Authority to make the necessary entries. In my view the applicant has substantially complied with the requirements of Rule 5(1) and merely because the declaration was not sent in the Form "NT" and was not accompanied by a certificate of taxation, it cannot be said that the applicant had failed to give intimations of non-use.

13. The learned Sessions Judge himself has found that exhs. 15 and 18 must be taken to have reached the Taxation Authority and since I have now found that the documents exhs. 15 and 18 can well be construed as intimations as required by Rule 5(1) in my view the accused cannot be said to have committed an offence u/s 16(1)(a) of the Bombay Motor Vehicles Tax Act, 1958.

14. In addition to this, the accused has examined himself and has stated that the vehicle, that is, his truck No. BYY 546, was not in use during the period January 1, 1966 to June 30, 1966. This statement stands unrebutted. Before a person can be prosecuted u/s 16(1)(a) of the Act, it is for the prosecution to establish that such person was either the registered owner, or had the possession or control of a motor vehicle, which was used or kept for use without having paid the amount of the tax. No doubt, u/s 3(2) of the Act if a certificate of non-use as required by Rule 5 is not given by the Taxation Authority, the registered owner, or a person who is having possession or control of a motor vehicle of which a certificate of registration is current, is deemed for the purposes of the Act to use or keep such vehicle for use in the State. In other words, in the absence of certificate for non-use, if the certificate of registration is current in respect of a vehicle, a presumption arises that the vehicle is used or kept for use in the State. This presumption is, however, a rebuttable presumption. In the instant case evidence has been given on behalf of the Taxation Authority that certificate of registration was current. The applicant has, however, stated that he has not used the vehicle during the relevant period and there is not an iota of evidence on the side of the prosecution to show to the contrary. The presumption u/s 3(2) of the Act is thus rebutted and it cannot be held that the accused used or kept for use the vehicle in respect of which he had sent intimations to the Taxation Authority.

15. The result, therefore, is that the applicant cannot be held guilty of offence u/s 16(1)(a) of the Bombay Motor Vehicles Tax Act, 1958. His conviction is, therefore, liable to be set aside. The judgments of both the Courts below are set aside and the accused is acquitted. Fine, if paid, shall be refunded. Conviction set aside.