
(1970) 11 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No's. 1984 and 1985 of 1969

Gurdial Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 09-11-1970

Acts Referred:

Punjab Passengers and Goods Taxation Act, 1952 — Section 22, 4
Punjab Passengers and Goods Taxation Rules, 1952 — Rule 9
Punjab Reorganisation Act, 1966 — Section 74

Citation : AIR 1971 P&H 317

Hon'ble Judges : Harbans Singh, C.J; R.S. Narula, J; P.C. Jain, J

Bench : Full Bench

Advocate : Laxmi Grover and H.S. Sawhney, for the Appellant; J.N. Kaushal, General, Mela Ram Sharma, Sr. Dy. A.G., Anand Sarup, Ashok Bhan and U.S. Sawhney, for the Respondent

Judgement

Narula, J.—These two writ petitions (Civil Writs 1984 and 1985 of 1969) have been heard together as each of them calls for an answer to the common question-

"Whether the first proviso to R. 9 of the Punjab Passengers and Goods Taxation Rules, 1952 (as amended in its application to the State of Haryana) framed u/s 22 of the Punjab Passengers and Goods Taxation Act, 1952 (as subsequently adapted by the State of Haryana in its application to that State) does or does not apply to the case of the petitioners so as to make them liable for payment of lump sum of Rs. 1,215/- per annum or any other lump sum on account of goods tax u/s 3(3) read with the proviso to Section 4 of the 1952 Act."

2. Shorn of unnecessary details the relevant facts of Gurdial Singh's case (Civil Writ 1984 of 1969) alone are being noticed by me as both sides agree that there is no material factual difference between these two cases. Since 1965, the petitioner held a regular public carrier permit (permit No. 1857 of 1965) valid up to December 31, 1969, for the Jullundur-Ambala and Patiala regions of the

composite State of Punjab in respect of heavy transport vehicles No. HIM-9241. The Punjab Passengers and Goods Taxation Act (16 of 1952) authorising the levy of tax on passengers carried and goods transported by road was in force in the State since 1952. Section 3 therein was the charging section. Sub-section (3) of that section provided for levy of tax on goods transported on inter-State routes. Section 4 provides for the method of collection of the tax. The following proviso was added to S. 4 by S. 2 of the Punjab Passengers and Goods Taxation (Amendment) Act (21 of 1952) with retrospective effect from the inception of the principal Act:-

"Provided that in case of public carriers the Government may accept a lump sum in lieu of the tax chargeable on freight in the manner prescribed."

The manner for determining the lump sum payable by truck operators was prescribed by Rule 9 of the 1952 Rules. Relevant part of that rule as originally framed was in the following terms:-

"Methods of payment of tax-

(i) By stamping the ticket or receipt

(ii) Where the impressed, embossed, engraved or adhesive stamps are not available

Provided that a public carrier shall pay to the State Government the following lump sum tax in lieu of the tax chargeable on freight:-

(a) to (d) (Different lump sum rates of the tax were provided for vehicles plying on different routes):

Provided further that the said sum shall be deposited in cash by the owner into the Government treasury or paid by crossed cheque in favour of the appropriate Assessing Authority with due regard to the provisions of Note 4 under Rule 25 of the Subsidiary Treasury Rules. The said sum shall be payable in equal quarterly instalments within seven days of the close of the quarter to which the payment relates, subject to the following conditions:-

(Different conditions were laid down in Cls. (a) to (e) for payment of the tax in different contingencies)."

The abovementioned rule was amended from time to time. In the united Punjab, the latest amendment was made by the Punjab Passengers and Goods Taxation (First Amendment) Rules, 1966, published in the Punjab Government Gazette No. GSR 61/P.A. 16/52/S.22.Amd(7)66 dated March 28, 1966. The amendment of the first proviso to R. 9 amendment of the first proviso to R. 9 is alone relevant for our purposes and that amendment was made by Rule 2 of the amending Rules of 1966 in the following terms:-

"In the Punjab Passengers and Good Taxation Rules, 1952, in R. 9-

(1) for the first proviso, the following shall be substituted, namely:-

"Provided that the owner of a public carrier may pay to the State Government the following lump sum in lieu of the tax chargeable on freight:-

(a) Rs. 1,215 per annum per vehicle, other than one plying on hill routes or under countersignatures of the authorities in the adjoining States under the Motor Vehicles Act, 1939.

(b) Rs. 1,820 per annum per vehicle, plying on hill routes or under countersignatures of the authorities in the adjoining States under the Motor Vehicles Act, 1939.

(c) Rs. 200 per annum per vehicle, plying on Pathankot-Jammu-Srinagar route one.

(d) Rs. 450 per annum per tractor plying with public carrier permit.

(e) Rs. 610 per annum per tempo rickshaw plying with a public carrier permit."

3. With effect from November 1, 1966, the erstwhile composite State of Punjab was reorganised in pursuance of the provisions of Part II of the Punjab Reorganisation Act (31 of 1966) (hereinafter called the Reorganisation Act) so as to give birth to the present State of Punjab, the new State of Haryana, and the Union Territory of Chandigarh besides merging some territory of the old Punjab into the Union Territory of Himachal Pradesh. It is the common case of both sides that by operation of S. 74 of the Reorganisation Act, which provision is quoted below, the transport permit of the petitioner automatically continued to be operative and valid throughout the territories of the successor States of Punjab and Haryana, Union Territory of Chandigarh, and the merged territories of Himachal Pradesh, without the requirement of any countersignature on the permit which had been issued by the original Punjab authorities from Simla under the Motor Vehicles Act (4 of 1939) (hereinafter called the Motor Vehicles Act):-

"Temporary provisions as to continuance of certain existing road transport permits.-

(1) Notwithstanding anything contained in Section 63 of the Motor Vehicles Act, 1939 (4 of 1939), a permit granted by the State or a Regional Transport Authority in the existing State of Punjab shall, if such permit was immediately before the appointed day, valid and effective in any area therein, be deemed to continue to be valid and effective in that area after that day subject to the provisions of that Act as for the time being in force in that area and it shall not be necessary for any such permit to be countersigned by any State or Regional Transport Authority for the purpose of validating it for use in such area:-

Provided that the Central Government may, after consultation with the State Government or Governments concerned, add to, amend or vary the conditions attached to the permit by the authority by which the permit was granted.

(2) No tolls, entrance fees or other charges of a like nature shall be levied after the appointed day in respect of any transport vehicle for its operations in any of the successor States under any such permit, if such vehicle was immediately before that day exempt from the payment of any such toll, entrance fees or other charges for its operations within the existing State of Punjab:

Provided that the Central Government may, after consultation with the State Government or Governments concerned, authorise the levy of any such toll, entrance fees or other charges, as the case may be."

The Reorganisation Act did not, however, make any express provision for the rateable distribution amongst the successor States of the goods tax payable by operators after November 1, 1966, in respect of the vehicles running under pre-organisation permits. According to the respondents this resulted in multiplying the liability of the operators fourfold overnight after November 1, 1966. The successor States, therefore, set upon the path of direct as well as delegated legislation to divert as much as of the tax as possible to their own coffers.

The first proviso to Rule 9, as amended up to October, 1966, underwent further amendment at the hands of the Haryana State by the coming into force of Rule 2 of the Punjab Passengers and Goods Taxation (Haryana 1st Amendment) Rules, 1969, notified in the Haryana Government Gazette, dated April 21, 1969, to the following effect:-

"In the Punjab Passengers and Goods Taxation Rules, 1952, in R. 9 in the first proviso, for Cls. (a) and (b) the following clauses shall be substituted namely:-

(a) Rs. 810/- per annum per vehicle other than one plying under countersignatures of the authorities in the adjoining State under the Motor Vehicles Act, 1939.

(b) Rs. 1,215/- per annum per vehicle registered in the State of Haryana and plying under countersignatures of the authorities in any other State under Motor Vehicles Act, 1939.

(bb) Rs. 600/- per annum per vehicle registered in the State of Punjab and plying under countersignatures of the authorities in the State of Haryana under the Motor Vehicles Act, 1939.

(bbb) Rs. 1,215/- per annum per vehicle registered in the Union Territory or State other than the State of Punjab and plying under countersignatures of the authorities in the State of Haryana under the Motor Vehicles Act, 1939."

4. The Central Government made suitable modifications in the principal Act of 1952 by notification published in the Gazette of India Extraordinary, Part II, Section 3, sub-section (i), dated October 30, 1968, so as to adapt the Act to the Union Territory of Chandigarh. The Chandigarh Administration also issued notification, dated February 1, 1968, publishing the Punjab Passengers and Goods Taxation (Chandigarh First Amendment) Rules, 1968, substituting the

following for the first proviso to Rule 9 of the Punjab Rules:-

"Provided that the owner of a public carrier may pay to the State Government the following lump sum in lieu of the tax chargeable on freight:-

(a) Rs. 300 (three hundred) per annum per vehicle including one plying under circumstances of the authorities in the adjoining States under the Motor Vehicles Act, 1939.

(b) Rs. 450 (four hundred and fifty) per annum per tractor plying with a public carrier permit.

(c) Rs. 610 (six hundred and ten) per annum per tempo rikshaw plying with a public carrier permit."

We were told that the Punjab Government has not made any amendment to the relevant proviso to Rule 9 after issuing the Punjab Passengers and Goods Taxation (First Amendment) Rules, 1966, to which reference has already been made, and which came into force from April 1, 1966.

5. Resuming the story of the petitioner, he had got his vehicle registered u/s 9 of the Act with the Excise and Taxation Officer, Simla, a functionary of the Punjab Government as Simla was the principal place of business of the petitioner for purposes of the Goods Act. The petitioner's vehicle had been operating before November, 1966, throughout the territory of composite Punjab for which he held the public carrier permit. After the issue of notification of April 21, 1969, by the Haryana Government the Haryana authorities started prosecuting the petitioner on his vehicle entering the State of Haryana on the ground that the petitioner had not obtained a certificate of registration u/s 9 of the Act from the Haryana authorities and had not paid the prescribed goods tax in lump sum to that State. The Haryana authorities demanded goods tax from the petitioner under clause (bbb) of the proviso to Rule 9. The claim of the petitioner to the effect that he was not liable to pay any goods tax to the State of Haryana during the period of the validity of his pre-organisation transport permit as his case was not covered by clause (bbb) of the proviso to Rule 9, and as the petitioner's vehicle was not registered in Haryana although it was being operated in the Haryana territory having been controverted, he filed this petition on August 7, 1969, for the issuance of an appropriate writ or order quashing the notification of the Haryana Government, dated April 21, 1969 (Annexure "A"), and for directing the respondents not to charge any tax from the petitioner without the authority of law, and for other appropriate directions.

Besides claiming that the petitioner's case was not covered by the impugned notification, it was also claimed, in the petitioner that according to Section 3 of the Goods Taxation Act, the State of Punjab, the State of Haryana, or the Union Territory of Chandigarh, may be entitled to the proportionate share of the amount which the petitioners was paying as goods tax before the reorganisation of the State of Punjab, but complained that though in the case of passenger tax

the share automatically went by affixation of the relevant adhesive stamps, it was not possible for the petitioner to divide the goods tax in respect of the public carrier as the same had to be in lump sum. On that basis it was stated in paragraph 15 of the petition that the petitioner could not possibly know as to what is the proportionate share to which the State of Punjab, the State of Haryana, the Union Territory of Chandigarh, or the Union Territory of Himachal Pradesh is entitled unless appropriate amendment is made in Rule 9.

6. In paragraph 14 of the return filed on behalf of the State of Punjab it was stated that every owner plying his vehicle in Punjab is under a legal obligation to get his vehicle registered and pay tax in Punjab under the Punjab Passengers and Goods Taxation Act, and the rules framed thereunder. In paragraph 15 it was averred that the Punjab Government was entitled under law to charge goods tax at the rates, according to the Punjab Passengers and Goods Taxation Rules, 1952, in respect of vehicles plying in the State of Punjab. The Punjab State has, however, not made any demand for lump sum goods tax from the petitioners in respect of the period ending on 31-12-1969.

7. In the written statement filed on behalf of the State of Haryana, it was pleaded, *inter alia*, that:-

(i) though the rate of goods tax fixed u/s 3 (i) of the Act had been enhanced from 25 per cent, to 35 per cent. of the value of the freight from July 21, 1967, and to 40 per cent. with effect from October 7, 1969, the Government had decided to accept from owners of public carriers lump sum tax in lieu of tax chargeable in accordance with provisions of Section 4 read with the first proviso to Rule 9:

(ii) since vehicle No. HIM-9241 had been plying in the State of Haryana, its owner was required to get it registered in the State of Haryana in accordance with the provisions of Sections 8 and 9 of the Punjab Passengers and Goods Taxation Act, and he was also liable to make payment of goods tax to the State of Haryana as distinct from the payment being made by him to the Union Territory of Himachal Pradesh; and

(iii) "the owners of the public carriers plying in Haryana are required to pay goods tax in accordance with the provisions of Section 4 read with first proviso to Rule 9 to the State of Haryana as distinct from the payment of similar taxes being made in the adjoining States. The provisions of Section 3 (3) relate to the payment of passenger tax only. The payment of goods tax by the owners of public carriers is governed by the first proviso to Section 4 read with first proviso to R. 9. These provisions are mandatory and the owner of a public carrier cannot opt to pay tax in any other manner. The suggestions to apportion the payment made in Himachal Pradesh is not tenable."

8. Learned counsel for the petitioner submitted that he had no quarrel with demand of Rs. 300/- per annum by the Chandigarh Administration as lump sum goods tax levied by it under Clause (a) of the proviso to Rule 9 as amended by

that Administration, in respect of transport vehicles plying in the Union Territory, but his grievance was that the said tax could not be claimed for any period prior to February 1, 1968, i.e., the date of the notification amending Rule 9. Mr. Anand Sarup, who appeared for the Chandigarh Administration, did not contest this proposition.

9. Mr. Jagan Nath Kaushal, the learned Advocate-General for the State of Haryana, submitted that the position taken up by the State in paragraph 18 (iii) of its return (quoted as item No. (iii) amongst the pleas of the State of Haryana in an earlier part of this judgment) was legally not tenable, and that he admitted that no lump sum tax could be demanded from the petitioners in either of these two cases, because their vehicles were not covered by Clause (bbb) of the first proviso to Rule 9 as amended on April 21, 1969, inasmuch as the vehicles of the petitioners were not "plying under countersignatures of the authorities of the State of Haryana" but were plying in that State by virtue of the statutory guarantee contained in Section 74 of the Reorganisation Act. He, therefore, conceded that he has no legal defence to the claim of the petitioners for restraining the State of Haryana from claiming any goods tax from them under the proviso to Rule 9 of the Punjab Passengers and Goods Taxation Rules. He also conceded that the State of Haryana has no right to insist on the petitioners to register their vehicles in that State, and cannot in any way even penalise the petitioners in any manner for not registering their vehicles in that State.

Mr. Laxmi Grover, learned counsel for the petitioners, further submitted that it may be made clear that the petitioners having paid lump sum tax at Simla could not possibly be now called upon by the State of Haryana to pay tax on the basis of freight actually charged by them in respect of goods transported by them in the previous years, and that in fact according to the scheme of the Act and the rules and other contemporaneous legislation, the State has limited its right to recover goods tax under the Act to the lump sum on annual basis. The State of Haryana in its return (already quoted) is also to the effect that the goods tax could be claimed from the petitioners only under Clause (bbb) of the proviso to Rule 9 on lump sum basis, and that there is no question of recovering tax from them on mileage basis. Though the learned Advocate-General submitted that the State's stand to that effect was not legally tenable, the State is bound by the definite pleas taken up by it in these two writ petitions so far as the petitioners are concerned. All the respondent States admitted before us that the petitioners were not liable to register their vehicles with them under the Act up to 31-12-1969.

10. After the conclusion of the hearing of these cases and before the pronouncement of judgment therein, the State of Haryana has also filed an amended supplementary return on behalf of itself and the excise and Taxation Officer (Enforcement), Ambala, wherein it is stated that the case of the petitioners does not fall in Clause (b) or (bbb) of paragraph 2 of the notification, dated April 21, 1969 (Annexure "A") and that in fact their case does not fall

under any of the clauses of the proviso to Rule 9. In paragraph 2 of the supplementary affidavit, the Excise and Taxation Officer has stated that in the earlier affidavit filed by him by way of return to the writ petition it was stated that the petitioners' case fell within the purview of the notification because he was advised that the permit issued to the petitioners by the erstwhile State of Punjab and saved by Section 74 of the Reorganisation Act would be deemed to be countersigned by the Union Territory of Himachal Pradesh, the Union Territory of Himachal Pradesh, the Union Territory of Chandigarh and the present State of Punjab, which position seems to be untenable "in view of the advice now received by him". On that basis, the Excise and Taxation Officer has solemnly affirmed in paragraphs 3 of his affidavit that the petitioners would not be asked to pay any lump sum under notification Annexure "A", and it was not even proposed to prosecute the petitioners for not paying the lump sum tax.

11. The Excise and Taxation Officer has, however, stated in the last paragraph of his supplementary affidavit that the petitioners are liable to pay tax u/s 3 (3) of the Act as amended up to date and proceedings would be taken according to law to recover the tax due under that provision. At one stage even Mr. Jagan Nath Kaushal, the learned Advocate-General for the State of Haryana, attempted an argument of this type, but did not pursue the same to its logical conclusion because of the categorical and unequivocal stand which had been taken by the Excise and Taxation Officer (respondent No. 2) in his return to the effect that "the payment of goods tax by the owners of public carriers is governed by the first proviso to Rule 9" which "provisions are mandatory and the owner of a public carrier cannot opt to pay tax in any other manner." It was in reply to this attempted argument that Mr. Laxmi Grover wanted to show that in view of:

(i) the language of the second proviso to Rule 9 (as amended by the Punjab Passengers and Goods Taxation (First Amendment) Rules, 1964) requiring the quarterly lump sum goods tax being paid within thirty days of the commencement of the quarter to which the payment relates, and insisting on the obtaining of a clearance certificate in the prescribed form PTT.5-A in token of the tax having been paid;

(ii) the mandatory requirements of Section 7-A (b) introduced into the Punjab Motor Vehicles Taxation Act (4 of 1924) by Section 2 of the Punjab Taxation Laws (Amendment) Act (5 of 1963) prohibiting the issue of token for the payment of motor vehicles tax under the 1924 Act unless the authority issuing the token is satisfied that such person has paid the tax under the Goods Act of 1952, in respect of such motor vehicles for such quarterly period; and

(iii) the penal consequences of plying a truck in violation of Rule 23 of the Punjab Motor Vehicles Taxation Rules, 1925, which states that no person shall drive or cause to be driven any motor vehicles unless a valid token is displayed thereon in the prescribed manner. No alternative was available to the petitioners in the matter of the manner in which the goods tax, if any, was to be paid by them to the State of Haryana, and that the Excise and Taxation Officer (Enforcement),

Ambala, was correct in deposing in paragraph 18 (iii) of the State's return that the payment of goods tax by the petitioners was governed by the first proviso to Section 4 read with the proviso to Rule 9 and those provisions requiring payment of any lump sum are mandatory and the petitioners, as owners of public carriers, could not opt to pay tax in any other manner.

It was during the course of arguments and counter-arguments on this issue that the learned Advocate-General stated that since the entire relief claimed by the petitioners in their respective writ petitions was being conceded by the State of Haryana, it was unnecessary to go into the question of any possible alternative claim which may be made by the State of Haryana contrary to its own stand taken in its return. In the circumstances of this case we do not appear to be called upon to decide this moot point as the State of Haryana must be pinned down to the stand taken by it against the petitioners during the relevant period ending December 31, 1969, as also in its written statement filed in reply to the writ petition. The State Cannot be allowed to blow hot and cold in the same breath. Having found its claim for lump sum tax against the petitioners being not tenable in any view of the matter, it is not open to the State to now turn round and seek tot claim from the petitioners what the State had itself led the petitioners to believe that it neither could claim nor was claiming.

Moreover, as compared with the categorical statement made in the original affidavit filed on behalf of the State of Haryana it has now been sated by the Excise and Taxation Officer in paragraph 2 of his supplementary affidavit, dated October 24, 1970 (filed after the conclusion of arguments of both sides) that he is taking up the changed position "in view of the advice now received" by him. In our opinion, the State is not to lead citizens into such traps by taking up one categorical position in the first instance and subsequently saying that the original position was taken under a mistaken legal advice, and that in accordance with fresh and better advice subsequently received the citizen should have acted in a different manner. Prima facie there appears to be substantial force in the argument of Mr. Laxmi Grover and the stand taken in the original affidavit of the Excise and Taxation Officer about the liability of any of the petitioners to pay goods tax only in lump sum under the proviso to Section 4 read with the proviso to Rule 9 does not appear to be unjustified. We, however, refrain from pronouncing finally on this point as the State cannot possibly claim goods tax from the petitioners calculated in any manner other than on lump sum basis-as the petitioners could not be expected to maintain the accounts etc. which are required to be maintained for purposes of assessment of mileage/freight basis under the purview of Rule 9. Having been given to understand throughout the relevant period that demand on lump sum basis alone was and could be made against them, they cannot now be asked to face a different situation. Nothing can, therefore, be claimed or recovered from the petitioners on account of goods tax in respect of their vehicles plied on the basis of the pre-organisation permits which remained valid and operative in the State of Haryana because of the provisions of Section 74 of the Reorganisation Act.

12. For the foregoing reasons, both these writ petitions are allowed, and the State of Haryana is restrained from claiming any goods tax from the petitioners for goods transported by them in or through the territories of that State in their trucks in question plied in that State under the transport permits granted to them by the composite State of Punjab which permits remained current in all the successor States up to December 31, 1969. The Union Territory of Chandigarh would be entitled to recover Rs. 300/- per annum on account of goods tax on lump sum basis from the petitioners for the period January 1, 1968, to December 31, 1969, in respect of the running of the abovementioned transport vehicles under the permits which expired on December 31, 1969. Costs of the petitioners shall be borne by respondents 1 and 2 as they had admittedly harassed the petitioners with claims for the tax which they themselves have not now supported. Counsel's fee Rs. 250/- in each case.

Harbans Singh, C.J.

13. I agree entirely.

P.C. Jain, J.

14. I also agree.

15. Petition allowed.