**(2015) 12 RAJ CK 0022**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition Nos. 5373, 5375, 5377, 8647, 8648, 8851 and 8852/2015

Hindustan Zinc Limited APPELLANT

Vs

State of Raj. and Others RESPONDENT

**Date of Decision :** 15-12-2015

**Acts Referred:**
Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 2(28), 3

**Citation :** (2015) 12 RAJ CK 0022

**Hon'ble Judges :** Govind Mathur and Jaishree Thakur, JJ.

**Bench :** Division Bench

**Advocate :** Dinesh Mehta, for the Appellant; P.S. Bhati, Additional Advocate General, Sajjan Singh and Sanjay Raj Paliwal, for the Respondent

**Final Decision :** Dismissed

# Judgement

Jaishree Thakur, J.—The above mentioned writ petitions have been filed under Article 226 of the Constitution of India by the petitioner to challenge the Notification dated 1.1.2015 inserted as Rule 2(p) in Rajasthan Motor Vehicles Taxation Act 1951 and order dated 26.3.2015 passed by the District Transport Officer by which tax has been levied on equipment belonging to the petitioner and used for mining purposes by treating it to be a motor vehicle therefore attracting tax under the Rajasthan Motor Vehicles Taxation Act 1951 and the rules framed thereunder. For convenient disposal of all these writ petitions, facts of S.B. Civil Writ Petition No. 5373/2015 are taken.

2. The petitioner has its lead, zinc mines in District Rajsamand wherein lead and zinc ore are excavated from ore deposits available 400-500 meters underneath the surface. The equipment described as MULTIMEC 6600 GB 821 was purchased from Finland to be used only in underground mines and not on road network. After the import of the said equipment an officer of the RTO department visited the mining area and found that the equipment in question was working in the

 

underground mines without registration and payment of road tax. A Panchnama was prepared wherein it was observed that the equipment in question is in fact a motor vehicle and directed the petitioner-Company to appear and produce relevant documents. The petitioner-Company filed a short reply before the authorities concerned annexing copies of bills of entry, invoice, commissioning certificate, while stating therein that the said equipment is a mining equipment which falls within the definition of capital goods and is not a motor vehicle as contemplated under Motor Vehicles Act 1988, Central Motor Vehicles Rules 1989 and the Rajasthan Motor Vehicles Taxation Act 1951 therefore no registration was required and the imposition of road tax would not be justified. The impugned order dated 26.3.2015, relied upon a Notification dated 1.1.2015 as inserted as Rule 2(p) in Rajasthan Motor Vehicles Taxation Act 1951, came to hold that the equipment in question was a Purely Off-Highway Vehicle which is a motor vehicle, either used as a construction equipment or designed and adapted for use in any enclosed premises, factory or mine, equipped to travel on its own source of power. Respondent No. 2 imposed a tax of Rs. 10,19,278/- treating the equipment to be a vehicle, which would require registration and road tax. Aggrieved by the levy of tax and the impugned order dated 26.3.2015 treating the equipment in question to be purely off-Highway vehicle, the present writ petition has been filed.

3. Mr. Dinesh Mehta, learned counsel appearing on behalf of the petitioner-Company contends that the equipment in question is not a motor vehicle as defined under the Motor Vehicles Act 1988, the Central Motor Vehicles Rules 1989 and the Rajasthan Motor Vehicles Taxation Act 1951. It is contended that by inserting sub-rule (p) in Rule 2 of the Rajasthan Motor Vehicles Taxation Rules 1951, the State cannot bring mining equipment meant to be used in enclosed premises or in mining areas only, under the tax ambit by incorporating the term "Purely Off-Highway Vehicle". It is further contended that power to levy tax on motor vehicle is conferred upon the State, vide Entry No. 57 by List II of Schedule 7 of the Constitution of India, upon vehicles which "are suitable for use on roads" (emphasis supplied) and by the notification dated 1.1.2015 the State Government has exceeded its jurisdiction by introducing tax upon "Purely Off-Highway Vehicle". Great emphasis has been laid by counsel appearing on behalf of the petitioner that the equipment in question once introduced to the floor of the mines, is never brought out and used on the road nor has it ever been done. Relying on a judgment reported as State of Gujarat and Others Vs. Kaushikbhai K. Patel and Another, it is argued that since the said equipment is not used on public road thus no tax is payable.

4. Per contra, Mr. P.S. Bhati, learned Additional Advocate General appearing on behalf of the State has argued that MULTIMEC 6600 GB 821 has been manufactured in such a manner that the said equipment mounted on rubber tyres, is a mechanically propelled vehicle and can to be taken on the road. Such type of vehicle can easily be used on the roads and can run with the maximum speed of 25 km per hours. It is further argued that the vehicle and motor vehicle

specification of the construction equipment falls within the meaning of the Motor Vehicles Act as provided under Section 2(28) of the Motor Vehicles Act of 1988 as well as rule 2(ca) of the Central Motor Vehicles Rules, 1989. This vehicle is self propelled vehicle which can run on road on its own power without any external support and the same can be used for carrying goods and persons. It is further argued that the State Government has issued a Notification dated 1.1.2015 wherein definition of 2(p) was inserted in the Rajasthan Motor Vehicle Taxation Act, 1951 introducing the term "Purely Off-Highway Vehicles" which are used as construction equipment or are used in closed premises, factory or mines and must capable of running on its own power, would be liable to tax and registration. It is argued that there is no infirmity with the order passed by respondent No. 2 and prayed that the writ petition be dismissed.

5. Heard learned counsel for the parties.

6. The question posed before this Court is whether the Notification dated 1.1.2015 is beyond the competence of the State Legislature in so far as the State is only competent to levy tax as per Entry No. 57 of List II of Schedule 7 of the Constitution of India on such vehicles as are suitable for use on roads and whether NORMET MULTIMEC 6600 S. No. GB 821 equipment is to be treated as a construction equipment or whether it is to be treated as off-roading vehicle, as described under Section 2(p) of the Rajasthan Motor Vehicles Taxation Act, 1951.

7. The term "Motor Vehicle" has been defined in Section 2(28) of the Motor Vehicle Act, 1988, which reads as under:-

""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 centimeters."

8. The term "construction equipment vehicle" has been defined in Rule 2(ca) of the Central Motor Vehicles Rules, 1989, which reads as under:-

"2(ca) "construction equipment vehicle" means rubber tyred (including pneumatic tyred), rubber padded or steel drum wheel mounted, self-propelled, excavator, loader, backhoe, compactor roller, dumper, motor grader, mobile crane, dozer, fork lift truck, self-loading concrete mixer or any other construction equipment vehicle or combination thereof designed for off highway operations in mining, industrial undertaking, irrigation and general construction but modified and manufactured with "on or off" or "on and off" highway capabilities.

Explanation.--A construction equipment vehicle shall be a non-transport vehicle the driving on the road of which is incidental to the main off-highway function and for a short duration at a speed not exceeding 50 kms per hour, but such vehicle does not include other purely off-highway construction equipment vehicle designed and adopted for use in any enclosed premises, factory or mine other than road network, not equipped to travel on public roads on their own power."

9. The contention raised by the counsel appearing on behalf of the petitioner that the Notification dated 1.1.2015 issued by the State Government including the term of purely Off-road vehicle is beyond the scope and ambit of the power conferred upon the State vide Entry No. 57 of List II of Schedule 7 of the Constitution of India since the State has been conferred power to impose tax only on such vehicles as are suitable for use on roads (emphasis supplied) and furthermore section 2(28) of the Motor Vehicle Act 1988 specifies that a vehicle of a special type adapted for use only in a factory or in any other enclosed premises will not be included in the definition of a vehicle. This argument is without merit. A Division bench of this court in Birla Cement Works and Another etc. Vs. State of Rajasthan and Others, while going into the question whether dumpers would be amenable to tax since the same were being used in factory premises, came to hold that simply because it is the special type of vehicle and that they have been used in the factory premises will not bring dumpers within the exemption provided under Section 2(28) . It is the user of the vehicle who determines its adaptability.

38. Thus, we are of the view that the definition of the Motor Vehicles Act under Section 2(28) is quite comprehensive. The exemption incorporated therein relating to the vehicle "all special type adopted or used only in a factory or any other enclosed premises significantly has used word ''adapted'' and another word ''only''. The expression "adapted" for use on roads means that the vehicle should be fit and apt to use on roads. It does not mean "actually used on roads". By the use of rubber tyres it is evident that they have been adapted for use on roads, which means that they are suitable for being used on public roads. The dumpers can certainly be used for carrying loads even outside the factory premises. The dumpers are suitable for use on public or private roads. Simply because it is the special type of vehicle and that they have been used in the factory premises will not bring within the exemption provided under Section 2(28) . It is the user of the vehicle who determines its adaptability. The test is if the vehicle is reasonably suitable for being used along with the public roads the mere fact that the manufacturer have made or intended a particular vehicle for one purpose or the other or the dealers have sold it for a particular purpose or that a particular vehicle is described by a particular name or description is no criteria to decide whether the vehicle is adapted for use upon the roads within the meaning of definition of Motor Vehicles Act under Section 2(28) of the M.V. Act. 1998. Another word ''only'' is also of a great significance. It clearly shows that the exemption is confined to only those kinds of vehicles which are exclusively designed for use in a factory or any enclosed premises, the actual use for particular purpose is no criteria to decide whether the vehicle is a motor vehicle. Thus, if the dumpers are suitable for use on public roads, it is a motor vehicle despite the fact they may have been used only in factory premises. Thus, we

 

hold that the dumpers owned by the appellants/petitioners are motor vehicles within the meaning of Section 2(28) of the Motor Vehicles Act, 1988 as it does not fall in the exempted category in spite of being a special type of vehicle, being adaptable or suitable for being used on roads (by the use of rubber tyres) even though actually used only within the enclosed premises of the appellants/ petitioners'' factory. Hence they are liable to be taxed."

10. Similarly in the present case, the equipment imported by the petitioner is suitable for being used on public roads and the petitioner has not been able to demonstrate otherwise. The equipment in question, though used and adapted for mining purposes, is mounted on four rubber wheels. The description in the invoice itself describes it as a utility vehicle and as per the technical details of the equipment, it is shown as an underground carrier having its use for logistics underground mines for scissor lift, personnel carrier with a diesel tank. Furthermore, it is a three gear vehicle with a reverse gear and is a four wheel drive. There is nothing available on record which would indicate that the said vehicle cannot be used on roads, is not capable of being propelled mechanically, neither is it a vehicle running on fixed trails. Once it is a vehicle which is capable of being on the road, the State Government is competent to legislate and the notification dated 1.1.2015 is held to be valid.

11. The counsel appearing on behalf of the petitioner has argued that the tax can only be levied/imposed as regulatory and compensatory measure for the purposes of raising revenue to meet expenditure for making roads, maintained them and for regulation of traffic and once the equipment is to be used only in underground mining area, the levy of road tax is wholly unjustified. Reliance has been placed upon a judgment reported as State of Gujarat and Others Vs. Kaushikbhai K. Patel and Another, wherein it was held that:-

"8. We have considered submissions of the learned counsel for the parties. The facts that are not in dispute are; the Respondent No. 1 filed Form NT declaring non-use of the vehicle in question for the period 1.7.95 to 31.3.96; the report submitted by the motor vehicle Inspector regarding non-user of the vehicle for three months from 1st July, 1995 to 30th September, 1995 was accepted and refund of tax was ordered. For the remaining period refund was not granted as the Director of Transports was not satisfied of the non-user of the vehicle for reasons beyond the control of the respondents. It is well-settled in law that the tax imposed on vehicle under the Act is compensatory in nature for the purpose of raising revenue to meet the expenditure for making and maintaining the roads and regulation of traffic. To put it differently, the taxes are levied on the vehicles using the roads or in any way forming the part of the flow of traffic on the roads which is required to be regulated and not on the vehicles which do not use the roads at all. What is material and relevant is use of road by vehicles for levy of tax under the Act. The reasons for non-use of roads is immaterial and irrelevant when the nature of the tax itself is compensatory for use of roads. It follows from sub-section (2) Section 3 of the Act that where a motor vehicle is not using the roads no tax is levied thereon. If any tax has been paid in relation to such vehicle then the tax for the period during which it was not put on the road is refundable. In order to avoid evasion of tax the State can compel the owner to pay tax in advance. In fact sub-section 5(a)&(b) of Section 3-A speak of refund of tax that had been collected earlier."

12. The decisions rendered in State of Gujarat & Ors. vs. Kaushikbhai K. Patel & Anr. Supra is clearly distinguishable on the facts because in those cases the respondent bus operators had intimated the non-use of the vehicles to the authorities concerned or surrendered the registration certificate. In the case in hand the petitioner company raises the question as to term vehicle being applied upon the equipment.

13. Resultantly, we are unable to persuade our selves that the equipment in question is a vehicle which is incapable of being on the road.

14. The above noted writ petitions being devoid of any merits, are dismissed.

 