(1993) 09 OHC CK 0020

In the Orissa High Court

Case No : Original Jurisdiction Case No. 3750 of 1993

I.D.L. Chemicals Limited APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 28-09-1993

Acts Referred:

Citation : (1993) 2 OLR 572

Hon'ble Judges : D.M. Patnaik, J;A. Pasayat, J

Bench : Division Bench

Advocate : D.M. Mishra, for the Appellant; S.K. Nayak (1), Standing Counsel (Transport), for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—Petitioner calls in question the legality of order passed by the Taxing Officer-cum-Regional Transport Officer, Rourkela rejecting its prayer to accept tax payable under the Orissa Motor Vehicles Taxation Act, 1975 (in short the ''Taxation Act'') under Item-6 of Schedule to the A C.F. instead of Item-4 as done earlier. Petitioner''s case in essence is that the vehicle is being used for carrying children of its employees to different schools and does not fit into definition of private service vehicle as mentioned in Clause 33 of Section 2 of the Motor Vehicles Act, 1988 (in short, the ''Act''). The prayer was rejected on the ground that the vehicle does not belong to an educational institution and nature of the case comes under the definition of "reward".

2. The Schedule to the Taxation Act classifies various categories of motor vehicles, and Item No. 6 deals with those motor vehicles which are not encompassed by Items 1 to 5 and in the nature of a residuary clause. The said item has application where motor vehicle in question is not liable to pay tax under any other provision of the Schedule. The determinative question is whether the vehicle which is used for carrying children can attract levy of tax as a contract carriage in terms of Item 4 (8) of the Schedule. A contract carriage is defined in Section 2(7) of the Act which reads as follows ;

"2. Definitions - In this Act, unless the context otherwise requires, -

xx xx (7) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum-

(a) on a time basis, whether or not with reference to any route or distance ; or

(b) from one point to another, and in either case without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes-

(i) a maxi-cab ; and

(ii) a motor-cab notwithstanding that separate fares are charged for its passengers ;"

To make a vehicle a contract carriage, its use must be as a whole at or for a fixed or agreed rate or sum under a contract expressed or implied without stopping to pick up any passenger not included in the contract. There must be only one contract and the use of the vehicle must also be as a whole. A single party must use the vehicle in its entirety.

3. A question may arise as to whether the school-going children can be treated to be passengers to attract application of Item 4 (8). The expression "passengers" means one who travels in a private or public conveyance as opposed to one who drives or operates the vehicle. But in order to make a vehicle contract carriage, the same must be for hire or reward. A definite conclusion has to be arrived at by the Taxing Authority that the carriage was for hire or reward. That aspect has not been considered by the Taxing Officer while rejecting the prayer. He has come to an abrupt conclusion that because the vehicle does not belong to art educational institution, nature of the case comes under the definition of reward,though it may not be for hire."Hire" is a bailment in which compensation is to be given for the use of a thing. (Bouviers "Law Dictionery"). It postulates an antecedent agreement for payment of money for services rendered and imports an enforceable obligation to pay the same. If a carriage is not for hire or reward, obviously definition of contract carriage can have no application to the vehicle concerned. The case of Taxing authority is not of hire. Obviously he has dealt with the case of petitioner as if carriage was for reward. It is not really material as for application of Item 4 the vehicle should be for hire, in the absence of any material to show that the vehicle was plying for hire conclusion that Item-4 was applicable is indefensible.

4. Accordingly, we quash the order of the Taxing Officer (Annexure 9) ane direct him to consider the matter afresh keeping in view the observation made above.

The writ application is allowed. No costs.

D.M. Patnaik, J.

5. I agree.

