(1978) 10 MAD CK 0024

In the Madras High Court

Case No : Writ Petition No''s. 2337, etc. of 1976

Indian Oil Corporation Ltd. APPELLANT

Vs

District Transport Officer and Another RESPONDENT

Date of Decision : 25-10-1978

Acts Referred:

Motor Vehicles Act, 1939 — Section 2(18)
Tamil Nadu Motor Vehicles Taxation Act, 1931 — Section 2(10), 3(1)
Tamil Nadu Motor Vehicles Taxation Act, 1974 — Section 3, 3(1), 3(2)

Citation : (1980) ILR (Mad) 117

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : S. Ramasubramanian, for King and Patridge, for the Appellant; V. Rama Jagadeesan, for Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Mohan, J.—These two writ petitions can be dealt with under a common judgment. The Stationery Superintendent, Indian Oil Corporation Limited, Sulur Aviation Fuel Station, Kangayam-palayam, Coimbatore District owns two private carrier lorries bearing Registration Numbers TNE 8296 and AAT 2148. These vehicles were exempted from payment of Motor vehicles tax under the Tamil Nadu Motor Vehicles Taxation, Act, 1931 (hereinafter referred to as the Act) as they were said to be used on private roads within the Air Port, Sulur and were not using public roads. Consequent to the enactment of the Tamil Nadu Motor Vehicles Taxation Act, 1974, the charging section came to be amended imposing a levy on the vehicles kept or used in Tamil Nadu requiring them payment of tax. According to this amended Act the Petitioner''s Corporation was directed to pay in respect of two vehicles above mentioned tax and penalty for the period 1st April 1975 to 31st March, 1976 by a memo of the Regional Transport Officer, Erode, dated 31st March 1975. The payment of tax and penalty was made under protest. It is this demand which is attacked in these two petitions.

2. The learned Counsel for the Petitioner submits that the motor vehicles tax being compensatory in nature, so long as public roads are not used, there will be no liability to pay tax. That would be so both under the 1931 Act and 1974 Act. Merely, because the words used in the charging section are kept or used the liability to tax is not in any way altered. The word kept must be understood as meaning kept for use the use being on public road. In support of this submission, learned Counsel relies upon the judgment of Ismail, J. in Writ petition No. 777 of 1974 batch and also the judgment of Ramanujam, J, in Writ Petition No. 7164 of 1975 batch Hindustan Steel Works Construction Ltd., Salem-3 v. The District Transport Officer Salem. Therefore, according to him, the impugned demands are illegal.

3. The learned Government Pleader fairly submits, on a perusal of the counter, that the vehicles in question did not use the public roads. Nevertheless, having regard to the enlarged scope of the charging section, in so far as it mentions the words kept or used if a vehicle is kept, the liability to tax is attracted irrespective of the fact whether it is put on use on public roads or private roads. Having regard to the above argument it is necessary for me to refer to Section 3 of the Tamil Nadu Motor Vehicle Taxation Act, 1974 (Tamil Nadu Act XIII of 1974), Section 3(1) is the charging section. That says:

3. Levy of tax--(1) Subject to the provisions of Sub-section (2) tax shall be levied on every motor vehicle kept or used in the State of Tamil Nadu at the rate specified for such vehicle in the Schedule.

(The other portions of the section, not being necessary, are omitted).

What exactly is the meaning of the words kept or used occurring in this Sub-section is the point that arises for consideration. Does it mean a vehicle once registered with the Registering Authority of the Tamil Nadu State, if kept in a idle fashion, would attract taxation is it necessary that it must be kept for use?

4. It is well-settled in law that motor vehicle tax is compensatory in nature. The State maintains the public roads and to compensate such maintenance tax is levied. Therefore, the nexus is the use of the public roads. In this case, it is not denied that public roads have not been used. It is precisely for this reason the State is obliged to take the stand that mere keeping would do without user. I am not able to accept this argument. My learned brother Ismail, J., in dealing with the meaning of the words kept or used, held in Writ Petition No. 777 of 1974 (Muthusami Gounder v. Secretary to Government, Home Department and Anr.):

On behalf of the permit-holders whose motor vehicles are said to be off the road, the contention advanced is that, the tax being compensatory in nature, the same can be levied and collected only in respect of the vehicles in use and that, (in respect of the vehicles which are not in use, no tax can be levied or collected, because, if the vehicles are off the road, ex-facie public roads are not used by the vehicles, that consequently there is no question of any wear and tear and that therefore the State is not entitled to collect any tax. It is on the basis of this contention that the learned Counsel for the Petitioners in this group of writ petitions challenge the validity of Sub-Section 1 of Section 3 of the Act, in so far as it provided for the levy of tax on every motor vehicle kept in the state of Tamil Nadu. I have already referred to the fact that even the 1931 Act had originally used the expression "kept or used in the Presidency of Madras" and it was only the 1932 Act which replaced it by the expression "using any public road in the Presidency of Madras" and that the original expression was restored by the Tamil Nadu Act XXXIII of 1973. Thus it can be said that the impugned Act merely followed the provisions as originally contained in the 1931 Act, as restored by the Tamil Nadu Act XXXIII of 1973. However, the contention of the learned Counsel for the Petitioners is that the mere keeping of a motor vehicle in the State of Tamil Nadu cannot attract the levy in question, and that it is the use by the vehicles of public roads which will attract the levy, because then only the question of compensating the State for the wear and tear caused by the use of the Vehicles to the public roads provided and maintained by the State will arise. In this context, my attention was drawn to the provisions contained in the Rajasthan Act, as extracted in the judgment of the Supreme Court in The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, already referred to. In that Act, Sub-section (1) of Section 4 stated (at page 1412).

Save as otherwise provided by this Act or by rules made thereunder or by any other law for, the time being in force no motor vehicle shall be used in any public place or kept for use in Rajasthan unless the owner thereof has paid in respect of it, a tax at the appropriate rate specified in the Schedule to this Act within the time allowed by Section 5, and, save as hereinafter specified, such tax shall be payable annually notwithstanding that the motor vehicle may from time to time cease to be used.

5. The learned Counsel for the Petitioners pointed out that at least the Rajasthan Act used the expression kept for use in Rajasthan that the impugned Act did not even use such an expression, but merely used the expression kept in the State of Tamil Nadu and that the mere keeping of a motor vehicle could not attract the liability to pay tax under the Act. As against this, the argument of the learned Advocate-General on behalf of the Respondents was that the Government, when providing or maintaining roads and other facilities with reference thereto, could not actually take note of the fact whether a particular vehicle was actually in use or not, that all that the Government could take note of was the totality of the motor vehicles used in the State, that that could be decided only by the number of motor vehicles registered in this State and that, if so, the motor vehicles kept in this State would also have to share the cost of providing and maintaining public roads and the facilities connected therewith. The learned Advocate-General further contended that, even though the words for use have not been used after the word kept in Section 3(1) of the Act, still the word kept meant only kept for use in the State of Tamil Nadu. In my opinion, the contention of the learned Counsel for the Petitioners, that Section 3(1) is invalid in so far as it

provides for the levy and collection of tax in respect of mere keeping of a motor vehicle in the State of Tamil Nadu, will have to fail. Section 2(10) of the Act states that:

words and expressions used, but not defined in this Act, shall have the meanings assigned to them in the Motor Vehicles Act.

The Motor Vehicles Act, 1939, defines the expression motor vehicle in Section 2(18) as--

motor 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.

6. Thus the very definition of a motor vehicle involves a mechanically propelled vehicle adapted for use upon roads. Therefore when Section 3(1) of the impugned Act refers to a motor vehicle, it refers to such vehicles adapted for use upon the roads When such a vehicle is registered in the State of Tamil Nadu and is kept in the State of Tamil Nadu, it is obviously only for use in the State of Tamil Nadu. It is not the case of any of the Petitioners herein that their vehicles are kept in the State of Tamil Nadu for any purpose other than use in the State of Tamil Nadu. It is not as if the tax is levied or sought to be collected in respect of a motor vehicle kept in the show-room of a dealer in or manufacturer of motor vehicles or a motor vehicle kept by a person as a musem piece or an exhibit. In the case of every one of the Petitioners the motor vehicle concerned has been registered in the State of Tamil Nadu and had been actually in use in the State of Tamil Nadu. Under these circumstances, it is not the case of the Petitioners that the use of the word kept without the addition of the words for use, in Section 3(1) of the impugned Act, has in any way altered the taxable event, so as to enable them to contend that Section 3(1) of the Act is ultra vires in so far as the tax levied under that section in respect of vehicles kept in the State of Tamil Nadu is other than compensatory. Then again, my learned brother also in dealing with identical situation in Writ Petition No. 7164 to 7168 of 1975, Hindustan Steel Works Construction Limited, Salem-3 v. District Transport Officer, Salem, held, relying on Bolani Ores Ltd., that when a vehicle is not used on any public Road, no tax could be levied. Applying these judgments these writ petitions will stand allowed. No costs.

