
(1971) 04 PAT CK 0014
In the Patna High Court
Case No : Tax Case No. 76 of 1968

Messrs National Transport Company	Vs	APPELLANT
The State of Bihar		RESPONDENT

Date of Decision : 16-04-1971

Acts Referred:

Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961 — Section 2(d), 21(1)

Citation : (1971) PLJR 388

Hon'ble Judges : U.N. Sinha, C.J

Bench : Single Bench

Advocate : K.D. Chatterji and Chunni Lal, for the Appellant;

Judgement

U.N. Sinha, C.J.—The Commercial Taxes Tribunal, Bihar, has u/s 21(1) of the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961, (hereinafter called as the Act) referred the following question of law for the opinion of this Court, namely:--

Whether in the facts and circumstances of the case Tribunal has rightly held the applicant to be the "owner" of the vehicles within the meaning of Section 2(d) of the Act and whether the imposition of tax and levy of penalty was legal and justified?

Messrs National Transport Company had applied under the Act for a reference on certain questions of law arising from an order passed by the Commercial Taxes Tribunal, Bihar, on the 8th April, 1968 in Revision Case no. PGT 9 of 1967. The assessee-Company had framed six questions mentioned in this application, but the Tribunal has referred the question of law quoted above. The facts and circumstances mentioned in the revisional order of the Tribunal dated the 8th April, 1968 are as follows:

The Company was a transport contractor providing transport for the carriage of cement sold by a Cement Factory, known as Associated Cement Company, at

Sindri, to stockists located at various places in Bihar and West Bengal. The Company was not registered under the provisions of Section 4 of the Act. On 3rd September, 1966 the place of business of the Company was inspected by some officers of the Commercial Taxes Department, when certain books of account were seized. The examination of these books of account showed that the Company was engaged in the business of transporting goods from Sindri to various places and earning freight thereon. A notice was issued to the Company u/s 7(5) of the Act, with a view to assess the tax due from it. After examination of the books of account and on hearing the Company, the Assessing Officer held that the Company was liable to pay tax on the freight realised for transport within Bihar. Accordingly, on the basis of the statement furnished by the Company, the Assessing authority determined the total taxable amount at Rs. 11,32,946.92P. and imposed a tax at 12% per cent, amounting to Rs. 1,41,618.37P. A penalty of Rs. 5,000 was also imposed u/s 7(5) of the Act for the assessee's wilful failure to apply for registration in time. The assessee preferred an appeal against the order of assessment, contending that it was not liable to be assessed under the Act and it also urged that if it was held liable, the amounts realised as handling charges should be excluded. The imposition of penalty was also challenged as unjustified and excessive. All the contentions failed on appeal. An application in revision was filed before the Commercial Taxes Tribunal and the points raised in revision were: (1) whether the assessee was an owner and was liable for payment of tax under the Act, (2) whether the handling charges were to be deducted out of the receipts for which the assessee was held to be liable for payment of tax, and (3) whether the penalty imposed was justified or, at any rate, whether it was not highly excessive. The nature of the assessee's business was mentioned in the statement of facts filed by the assessee with his application in revision thus. The assessee was the sole transporting Company, by road, in respect of the cement manufactured by the Associated Cement Company at Sindri. In order to have some sort of uniformity in the price at different places, the manufacturing Company used to fix the transport charges according to a schedule. The assessee's contract had commenced on 12th October, 1963, but as the assessee did not have any motor vehicle of its own, it used to engage the services of different trucks (public service motor vehicles), at different times for transporting the cement. The assessee maintained two ledgers, one party-wise, that is, with respect to the charges realisable or realised from stockists of Bihar, and the other truck-wise, that is, with respect to the hire charges paid for the various trucks engaged. The assessee had produced a list of trucks showing their owners, with their respective places of residence and out of 36 trucks utilised, 24 were registered in Bihar and the rest in West Bengal. Agreement with the different truck owners had also been filed. It may be mentioned, at this stage, that the ledger kept truck-wise showed the hiring charges as well as deductions for the price paid for petrol and diesel oil used by the trucks. The contention that was raised by the assessee was whether it was an owner within the definition of the Act and was liable for payment of tax. For this purpose the charging section in the Act is

Section 3 which runs as follows:--

(1) On and from the date on which this Act is deemed to have come into force under Sub-section (3) of Section 1, there shall be levied and paid to the State Government a tax on all passengers and goods carried by a public service motor vehicle; such tax shall be levied and paid at the rate of twelve and a half per centum of the fares and freights payable to the owner of such vehicle;

Provided that with effect from the first day of August, 1961 no tax shall be levied on any mineral or mineral ore carried by such vehicle.

(2) Every owner shall, in the manner prescribed in Section 9, pay to the State Government, the amount of tax due under this section.

(3) Every passenger carried by a public service motor vehicle and every person whose goods are carried by such vehicle shall be liable to pay to the owner the amount of tax payable under this section and every owner shall recover such tax from such passenger or person, as the case may be.

(4) Where any fare or freight charged is a lump sum paid by a person as a subscription or contribution for a season ticket or for any privilege, right or facility which is combined with the right of such person or his goods being carried by a public service motor vehicle without any further payment or at a reduced charge the tax shall be levied on the amount of such lump sum or on such amount as appears to the prescribed authority to be fair and equitable, having regard to the rate of fare or freight fixed by a competent authority under the Motor Vehicles Act, 1939 (IV of 1939).

(5) Where a motor vehicle other than a public service motor vehicle plies for hire or reward in contravention of the provisions of the Motor Vehicles Act, 1939 (IV of 1939), the owner of such vehicle shall, without prejudice to any action which is or may be taken under that Act, be liable to pay tax at the rate specified in Sub-section (1) on such amount of fares and freights as may be determined in the prescribed manner by the prescribed authority.

(6) Where passengers or goods are carried by a public service motor vehicle from any place outside the State to any place within the State, or from any place within the State to any place outside the State the tax shall be payable in respect of the distance covered within the State at the rate provided in Sub-section (1) and shall be calculated on such amount as bears the same proportion to the total fare or freight as the distance covered in the State bears to the total distance of the journey.

The liability for payment being on the owner, the definition of the word "owner" is to be found in Section 2(d) of the Act which reads as follows:

owner means the owner of a public service motor vehicle in respect of which a permit has been granted by a Regional or State Transport Authority under the provisions of the Motor Vehicles Act, 1939 (IV of 1939) and includes the holder of

a permit under the said Act in respect of a public service motor vehicle or any person for the time being in charge of such vehicle or responsible for the management of the place of business of such owner.

The contention of the assessee was that it was not an owner within the meaning of Section 2(d) of the Act, as none of the ingredients mentioned in that provision of law had any application to the assessee-Company. The assessee had also made reference to one of the agreements entered into with the owner of a truck, relying upon its provision to indicate that the assessee did not fall within the purview of the definition of an "owner". The Commercial Taxes Tribunal came to the conclusion, that, for the purpose of transporting cement of the manufacturing company, the assessee was for the time being in charge of the trucks which had carried the cement. The Tribunal also came to the conclusion that, the assessee was also responsible for the management of the place of business of the owner within the meaning of Section (2)(d) of the Act, read with Section 2(f). The Tribunal disallowed the assessee's claim for reduction on account of the handling charges received. The Tribunal also concluded, that, the penalty of Rs. 5,000/- imposed by the assessing officer was neither unjustified nor excessive. On those facts and circumstances this reference has been made.

Sri K.D. Chatterji appearing for the assessee has argued two main points which may be mentioned thus. The first argument is that the arguments between the assessee and the real owners of the trucks were merely continuing offers or standing offers, and under these agreements, the assessee had only a right in personam and hence the assessee was never in charge of the trucks, within the meaning of Section 2(d) of the Act. For this contention learned counsel has relied upon a decision of the Supreme Court, (1) *Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and Others*, . Learned counsel has also read out from Mulla's Contract Act on this point. Secondly, Sri K.D. Chatterji has argued that the assessee was merely in contractual control of the trucks and, therefore, it was not in charge of the vehicles, within the meaning of Section 2(d) of the Act. On both these points the learned counsel has referred to Paragraph 7 of the revisional order of the Tribunal dated the 8th April, 1968, where certain portions of one of the agreements are reproduced and he has also read out in Court some other portions of one of such agreements. Sri K.D. Chatterji has also argued that statutes imposing pecuniary burdens should be construed strictly and that all charges upon the subject must be imposed by clear and unambiguous language. For this purpose Sri K.D. Chatterji read out from page 256 of Maxwell on Interpretation of Statutes (12th Edition), and from page 113 of Craies on Statute Law (6th Edition). On the contentions raised by Sri Chatterji, mentioned above, I do not think that the assessee can escape its liability in this case. It was admitted by Sri K.D. Chatterji that actual contracts had come into existence when particular orders had been placed, with the real owner of the trucks, after which particular consignments had been carried to their destinations. The order of assessment has not been passed against the assessee, merely on the construction of the terms incorporated in the agreements, but upon the facts and

circumstances found by the Tribunal. The facts found by the Tribunal may be mentioned below:-- (a) the assessee was the sole transporting company of the cement of the manufacturing company, (b) it had engaged certain trucks for use in his transport work, (c) it was providing petrol and oil for the running of the trucks in the transport work, although the prices paid by the assessee were later on adjusted in the hiring charges, (d) it was obtaining receipts for delivery of the goods to the stockists (e) it was maintaining a complete record of the trucks used by it for the transport work, (f) it was keeping a complete record of the charges realisable and realised from the stockists on account of freight payable by them, (g) it was keeping a complete record of the charges actually paid to the real owners of the truck, and (h) the receipts given by the stockists indicated that they had received from the assessee certain quantities of cement by a particular vehicle. From all these items, the Tribunal has come to the conclusion, that the assessee was in charge of the trucks for the time being, within the meaning of Section 2(d) of the Act. In my opinion, the ultimate finding in this context should be taken to be a finding of fact upon the primary facts found by the Tribunal. According to Shri K.D. Chatterji, the primary facts found by the Tribunal may be findings of fact, but, the conclusion that the assessee was in charge of the trucks for the time being, is a question of law and learned counsel has referred to several decisions on the point. The first case on which reliance has been placed by the learned counsel is the case of (2) Bomford V. Osborne, reported in 1942 Appeal Cases 14. In my opinion, however, the decision is distinguishable. The case had gone to the House of Lords on a case stated by General Commissioners u/s 149 of the Income Tax Act, 1918 and the question was whether the conclusion of the Commissioners was a question of law or not. Viscount Simon stated at page 22 that by Sub-section (d) of Section 149 "the case is required to set forth the facts and the determination of the Commissioners". It was stated that the "determination" was a decision of law at which the Commissioners had arrived on the facts proved or admitted before them and only a determination on a question of law was liable to be corrected by the High Court. The Commissioners in that case had come to three conclusions and on that, Viscount Simon stated that the first conclusion was entirely unsupported by the facts found. On the other conclusions the learned Lord Chancellor stated that he could not discover how the facts found sustained the Commissioners' conclusion. In such circumstances the appeal to the House of Lords on the case stated was allowed. In the instant case, the primary facts found by the Tribunal cannot possibly lead to the conclusion that the assessee was incharge of the trucks for the time being, a question of law may have arisen. But it is not possible to hold that on the primary facts found, a conclusion could never be arrived at that the assessee was incharge of the trucks for the time being, in order to attract the definition of "owner", within the meaning of Section 2(d) of the Act. Shri K.D. Chatterji has referred to the case of (3) G. Venkataswami Naidu and Co. Vs. The Commissioner of Income Tax, , and to the case of (4) Commissioner of Income Tax, West Bengal II Vs. Rajasthan Mines Ltd., on the question as to the nature of a finding that an adventure was in the

nature of trade. These decisions are also distinguishable from the instant case, where the assessing authority had not found whether an assessee was in charge of the trucks for the time being or not. The word "charge" in this context must mean "control" for the time being. In any case, even if the conclusion that the assessee was in charge of the trucks, for the time being, be a conclusion in law, I do not think that any error in law has been committed by the Tribunal, in arriving at its conclusion against the contentions raised on behalf of the assessee. Relevant facts have been found and a relevant finding has been given on them, before saddling the assessee with liability.

2. The next question is whether the Tribunal rightly concluded that the assessee Company was responsible for the man management of the place of (sic) of such owners or not, within the meaning of those words used in Section 2(d) of the Act. Section 2(d) has been quoted above and Section 2(f), which has been taken into consideration is quoted below:

"Place of business" means any place where an owner carries on business and includes any place where, either usually or for the time being, he keeps his public service motor vehicle or the account of his business.

In this context, I am of the opinion that the conclusion of the Tribunal was erroneous in law. The Tribunal interpreted the expression "any person..... responsible for the management of the place of business of such owner", appearing in Section 2(d), by referring to Section 2(f) of the Act, which has defined "place of business". But, what omitted to be noticed was the relevancy of the word "such" in relation to an owner, mentioned in Section 2(d). It is difficult to uphold the reasoning given by the Tribunal in this context, when it held that the assessee was responsible for the management of its premises and, therefore, it must be deemed to be responsible for the management of the place of business of the owner, within the meaning of Section 2(d) of the Act. A person responsible for the management of his office premises cannot possibly be held to be a person responsible for the management of the place of business of "such owner", only because he was in charge of a vehicle for the time being, in respect of which a permit has been granted under the Motor Vehicles Act to another person. The expression "such owner" must refer to the first definition of "owner" given in Section 2(d) and not to the persons who will be deemed to be owners under the first two inclusive clauses. Hence, the second conclusion of the Tribunal was an erroneous one. But, this opinion of this Court cannot be of any benefit to the assessee, if it be held that no error was omitted by the Tribunal in arriving at a decision that the assessee was for the time being in charge of the trucks in question.

3. The last point to be determined is whether the levy of penalty on the assessee was legal and justified or not. The penalty had been imposed u/s 7(5) of the Act, which reads as follows:

If the prescribed authority is satisfied that any owner has been liable to pay the

tax in respect of any period, and has nevertheless failed, without reasonable cause, to apply for his registration u/s 4 or failed to furnish any particulars or information required for the purpose of the said section, the prescribed authority shall, after giving the owner a reasonable opportunity of being heard, assess, to the best of its judgment, the amount of tax, if any, due from the owner in respect of such period and all subsequent periods; and the prescribed authority may direct that the owner shall pay, by way of penalty, in addition to the amounts so assessed, a sum not exceeding one and a half times that amount.

On the finding that the assessee was an owner, within the meaning of Section 2(d) of the Act it must be held that it was the duty of the assessee to pay the tax to the State Government u/s 3(2) of the Act and when the assessee had not applied for registration u/s 4, there is no escape for the proposition that the assessee was liable to payment of penalty u/s 7(5), if the prescribed authority so directed. Sri K.D. Chatterji has referred to certain sections of the Motor Vehicles Act, 1939 and has contended that if the assessee in this case is an owner only because it was in charge of the trucks for the time being, then, it has various liabilities under the Motor Vehicles Act. Specific reference has been made to sections like 81 and 84 of the Motor Vehicles Act and it was argued that in this case such provisions could not possibly apply to this particular assessee. We are not, however, concerned with the provisions of the Motor Vehicles Act in this case. For the purpose of the Act under consideration, if the facts found lead to the conclusion that the assessee was for the time being in charge of certain trucks, which were public service motor vehicles, in respect of which permits have been granted by the Regional or State Transport Authority, under the provisions of the Motor Vehicles Act, the assessee cannot escape its liability for payment to tax under the Act on the freights payable to the owner of such vehicles. Therefore, it must be held that the levy of penalty was legal and justified.

In the result, the reference is answered to the effect that, in the facts and circumstances of the case the Tribunal has rightly held that the assessee was an owner of the vehicles in question, within the meaning of Section 2(d) of the Act and the imposition of tax and the levy of penalty were legal and justified. Thus, the reference is answered against the assessee. In view of the facts and circumstances of the case, the parties are directed to bear their own costs.

K.B.N. Singh, J.

I agree.