

(2001) 04 KL CK 0033
In the High Court Of Kerala
Case No : O.P.No. 4224 of 1988

M/s. Chakkiat Agencies Pvt. Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-04-2001

Acts Referred:

Kerala Motor Vehicles Taxation Act, 1976 — Section 3, 5
Motor Vehicles Act, 1939 — Section 2(18)

Citation : (2001) 2 ACC 559 : AIR 2001 Ker 363 : (2001) 2 ILR (Ker) 497

Hon'ble Judges : T.M. Hassan Pillai, J; P.K. Balasubramanyan, J

Bench : Division Bench

Advocate : T.R. Ramachandran Nair, for the Appellant; Antony Dominic and A.G. Anitha, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, J.—These Original Petitions challenge the competence of the authorities under the Kerala Motor Vehicles Taxation Act to tax the vehicles owned by the petitioner and operated exclusively within the area of the Cochin Port Trust. These vehicles are essentially trailer chassises having four wheels to the rear and no wheels in front and intended to be loaded with containers disembarked for ships to be conveyed to the godowns located in the wharf itself. The period relevant for these Original Petitions is the period prior to 1987. In the year 1987 these vehicles were registered under the Motor Vehicles Act and become exigible to tax subject of course to seeking exemption under S.5 of the Kerala Motor Vehicles Taxation Act. In these Original Petitions we are not concerned with the period subsequent to the registration of these vehicles in the year 1987.

2. According to the petitioner these are imported trailer chassises intended only for mounting the unloaded containers on to them and to be pulled away to the godowns within the wharf in Cochin Port Trust. They were not intended to be used on the roads outside the Port Trust area. They were not motor vehicles as

defined in the Motor Vehicles Act, 1939. Since they were not using the roads of the State, they were not liable to tax under the Kerala Motor Vehicles Taxation Act. A vehicles could be taxed under that Act only if the vehicles Taxation Act. A vehicles could be taxed under that Act only if the vehicles used a road in the State and is a motor vehicle as defined in the Act. It is also submitted that even if the vehicles is registered as a motor vehicle under the Motor Vehicles Act, still the liability to tax does not automatically arises since the registration is one thing and the liability to tax under the Taxation Act, is another.

3. In the case of one of the petitioner, the question had come up before this Court on an earlier occasion. This court referred to the relevant aspects that would arise for decision before the authorities under the Kerala Motor Vehicles Taxation Act, hereinafter referred to as the Taxation Act and remitted the proceedings for a fresh decision on the question of liability to tax. Before proceeding further, it will be useful to refer to that decision of this Court reported as *United States Lines Agency v. State of Kerala* (1988 (1) KLT 259) It will be useful to set down the Head notes of that decision at this stage.

"When the definition of motor vehicle under S.2(18) of the Motor Vehicles Act mandates that the vehicle should be adapted for use upon roads, the meaning that should be assigned to the words "adapted for sue upon roads" in suitable for use on roads. When it is suitable for use on roads, it means, "suitable for use on roads in the normal circumstance and not on special or abnormal situation". To escape from the net of the definition of motor vehicle under the second part of the definition, the vehicle should be of a special type, adapted for use only in a factory or in any other enclosed premises. The emphasis is that the vehicle itself should be adapted for use only in an enclosed premises. The use of the vehicle in an enclosed premises alone will not be sufficient, but it has to be examined whether the vehicle itself is adapted for using it only in a factory or in any other enclosed premises. The question, what is an enclosed premises has to be decided on the basis of the peculiar features of the place where the vehicles are used. The authorities under the Act have to decided primarily the question whether the vehicle in question will come under the definition of S.2(18) of the M.V. Act and in that process the authorities have to consider whether the vehicles adapted for use upon roads should be understood as suitable for use on roads. The test that can be applied is whether a reasonable person looking at the vehicle would say that it is suitable for normal use on the roads. The definition of the word "motor vehicle" has to be understood to refer only to vehicle which are reasonably suitable for the road in the sense that an average man could think that the plying of the vehicles on the road would be one of the normal uses of the vehicle. That seems to be the test of suitability. Definitely, it cannot be read to mean "actually used on the roads". It if could be used as a vehicle that could be put on the roads in the normal course it is a motor vehicle. That it is not so used on the roads but is used only in certain factory premises makes no difference as it nevertheless has the potential to be used as a vehicle on the road. Further the authorities have to consider whether the vehicle in question are specially adapted

for use in an enclosed premises. In this context, it is also necessary to consider whether the premises in question is an enclosed premises. Certainly, it is also necessary to find out whether the vehicle are used on public roads or not. The fact that the vehicle are all registered under the M.V. Act is of no moment for the purpose of levy of tax, if the relevant aspects do not suggest that the vehicle in question are not motor vehicle liable to be taxed.

No tax can be imposed on a subject by an Act of the legislature without words which are clear and plain, showing and intention to lay the burden on him who has been asked to pay the tax. The simple stint of the Court, the limited job of the court, is to construe the provisions of the taxing enactment according to the ordinary and natural meaning of the words used and then to apply that meaning to the facts of the case. If when this process is put in action, the tax prayer is brought fairly within the Act; no escape him, otherwise he goes free."

4. Thereafter the authorities under the Taxation Act again took the stand that the vehicle were exigible to tax under the Taxation Act and that has lead to these Original Petition challenging the liability to tax under the Taxation Act for a period prior to 1987.

5. Before proceeding further, it will be useful to understood the scope of the Taxation Act as expounded by the Supreme Court. In Travancore Tea Estates Co. Ltd. and Others Vs. State of Kerala and Others, the Supreme Court after referring to the decision in Bolani Ores Ltd., , held that S.3 of the Taxation Act provides that a tax shall be levied on all motor vehicles used or kept for use in the State. The levy is within the competence of the State legislature as entry 57 is List II authorise levy on vehicle suitable for use on roads. Under Entry 57 of List II of the Seventh Schedule to the Constitution, the power of taxation cannot exceed compensatory nature which must have some nexus with the vehicle using the roads, ie., public roads. If the vehicle do no use the roads, notwithstanding that they are registered under the Act, they cannot be taxed.

6. During the relevant period, there is not much dispute that the vehicle were not used on the roads maintained by the State. The vehicles were used only within the Cochin Port to carry to containers from the ship to the godown in the wharf and vice versa. But the vehicle were adapted for use on the roads though trailers did not have wheels on the front and were intended to be hooked to a tractor for being pulled. Though an attempt was made to argue that the vehicle did not satisfy the definition of a motor vehicle as contained in S.2(18) of the Motor Vehicles Act, 1939 (relevant enactment here), the said argument cannot be accepted. The vehicle was obviously adapted for use upon roads and was intended to be mechanically propelled though the power of propulsion was to be transmitted from an external source. It has also to be noticed that a chassis is included in the definition of motor vehicle. There is no case that these chassis run on fixed rails or are designed to be adapted for use only in a factory or in any other enclosed premises. Therefore we have to proceed on the basis that these are motor vehicle and see whether in terms of S.3 of the Taxation Act the vehicle

are exigible to tax.

7. S.3 of the Act provides that a tax shall be levied on every motor vehicle used or kept for use in the State. There is no case that during the relevant period the vehicles were used in the State in that they were used only within the area of the Cochin Port Trust. No doubt as observed by the High Court of Bombay in *Pandurang Chimaji Agale and another Vs. New India Life Insurance Co. Ltd. and others*, , Port Trust may be a public place since the public has a right of access, though no access as or right, as the same is controlled by the Port Trust. But this would only enable the court to hold that these vehicles are motor vehicles. The question again would remain whether these vehicles are kept for use in the State of Kerala.

8. In *Harrisons & Cross Field v. State of Kerala* (1971 KLT 643) this court considering the definition of Motor Vehicle contained in S.2(18) of the 1939 Act held that the definition referred only to adapting the vehicle for use upon roads. What was therefore meant was that it must be fit and apt for use on the roads. S.3 of the Taxation Act would not mean that the liability is incurred only when the vehicle is actually used on the roads. If it could be used as a vehicle that could be put on the roads in the normal course it is a motor vehicle. That is not so used on the roads but is used only in certain factory premises makes no differences as it nevertheless had the potential to be used as a vehicle on the road. If one were to apply this test in understanding the scope of S.3 of the Taxation Act one has necessarily to hold that the trailer is a motor vehicle that would become taxable if it is possible to find that they were used on the roads or were kept for use on the roads in the State.

9. In *M/s. Central Coal Fields Ltd. v. State of Orissa* (1992 SC 1371) while interpreting S.2(b) of the Orissa Motor Vehicle Taxation Act the Supreme Court held that the very nature of Dumpers and Rockers run on rubber tyres made it clear that they are not manufactured or adapted for use only in factories or enclosed premises. The mere fact that the Dumpers or Rockers were heavy and could not move on the roads without damaging the roads was not to say that they were not suitable for use on the roads. The word "adapted" in relevant provision was to be read as "suitable".

10. In *Union of India and others, Vs. Chowgule and Co. Pvt. Ltd., etc. etc.*, the Supreme Court stated:-

"The mere fact that dumpers were used solely on the premises of the owner, or that they were in closed premises, or permission of the Authorities was needed to move them from one place to another, or that they are not intended to be used or are incapable of being used for general purposes, or that they have an unladen and laden capacity depending on their weight and size, is of no consequence for dumpers are vehicle used for transport of goods and thus liable to pay a compensatory tax for the availability of roads for them to run upon commission".

Thus what has been emphasised is that actual user is not necessary and what is material is whether the vehicle is adapted for use on the roads.

11. Going by the position thus emerging, it is clear that the trailers are adopted for use on the roads. They are also motor vehicle coming within the definition of the 1939 Act. There is no case that they have been used on the roads in the State. They have plied exclusively within the area under the control of the Port Trust. But still they would be exigible to tax under S.3 of the Taxation Act if they are found to be kept for use in the State. The case of the petitioners is that they were not kept for use in the State especially in view of the fact that they were never even got registered as motor vehicle under the Motor vehicles Act and they were kept for use only for the purpose of carrying the containers from the ships to the godowns within the wharf in the area of the Port Trust. Normally, a motor vehicle which is not registered under the Motor vehicles Act cannot be said to be kept for use in the State as a motor vehicle. This is the case of the petitioner as well. The order produced in O.P. 3504 of 1992 as Ext. P5 issued by the Joint Regional Transport Officer also suggests that the trailers are used only within the wharf area of Cochin Port Trust and on the roads maintained by the Cochin Port Trust. But this does not indicate that the vehicles are not kept for use in the State.

12. The question is how to decide whether the vehicle is kept for use in the State or not. According to the petitioner, they had no intention to use the trailer on the roads in the State and from the absence of such intention to use the roads in the State, it must be inferred that the motor vehicles are not kept for use in the State. They further submit that the fact that they have never used the vehicles on the roads during the relevant period also leads to the inference that the intention was not to use the vehicles in the State. It is therefore contended that this court can easily find that the vehicles were not kept for use in the State. As against this, learned Government Pleader submits that the alleged intention of the owners of the trailers as now put forward cannot be the governing factor. What the court has to consider is whether the vehicle is adapted for use in the roads in the State, whether they are capable of using the roads in the State if taken out of the Port Area in which they were generally kept and if those tests are applied, in the face of the fact that it is a motor vehicle, trailer would be exigible to tax.

13. In *Bose Abraham v. State of Kerala* AIR 2001 SC 466 the Supreme Court held that merely because a motor vehicle is put to a specific use such as being confined to an enclosed premises will not render the same to be a different kind of vehicle and it will be a motor vehicle as defined in the Act. No doubt their Lordships were dealing with the Motor vehicles Act, 1988 in relation to the Kerala Tax on Entry of Motor Vehicles in Local Areas Act, 1944. It is after referring to the various decisions including the one in *Bolani Ores Ltd.*, that their Lordships came to the conclusion that excavators and road rollers are motor vehicles for the purpose of the Motor Vehicles Act. Of course in that case the fact that the

vehicles were registered under the Motor Vehicles Act is also referred to. In our present case though for the period in question the vehicles were not registered under the Motor Vehicles Act, they were in fact got registered subsequently. It would therefore only mean that the vehicles were liable to be registered under the Motor Vehicles Act even when, as a matter of fact, the owners thereof did not get the vehicles registered. In this situation, we are of the view that merely because the trailers in question were generally kept in the area of the Port Trust and were used only for transport inside the Port area, would not enable the petitioners to contend that the vehicles are not exigible to tax under the Kerala Motor Vehicles Taxation Act. A motor vehicle adapted for use on the road and capable of being used on the road within the State, has to be held to be a motor vehicle kept for use in the State within the meaning of S.3 of the Taxation Act. In that view, we hold that the vehicles in question are exigible to tax under the Taxation Act.

In view of our conclusion as above, the petitioners are not entitled to any relief in these Original Petitions on the basis that no tax under the Taxation Act is leviable, Hence the prayer in the Original Petitions cannot be granted. The Original Petitions are liable to be dismissed. The Original Petitions are hence dismissed.