

(1992) 05 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : C.W.P. No's. 62 and 100 of 1982

M/s. Gupta Brothers

APPELLANT

Vs

The Excise and Taxation Commissioner and Others

Gupta Tobacco Company Vs State of Himachal Pradesh and
Others

RESPONDENT

Date of Decision : 06-05-1992

Acts Referred:

Himachal Pradesh Passengers and Goods Taxation Act, 1955 — Section 10, 3, 3(1), 8, 9
Motor Vehicles Act, 1939 — Section 2, 2(13), 42, 42(2), 42(3)

Citation : (1992) 2 ShimLC 1

Hon'ble Judges : Davinder Gupta, J;D.P. Sood, J

Bench : Division Bench

Advocate : Harish Behal and Om Parkash, in CWP No. 62 of 1982 and Anand Sharma and Chander Paul, in CWP No. 100 of 1982, for the Appellant; M.S. Chandel, Assistant A.G., for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—The question of law which arises for determination in these writ petitions is identical. The facts, however, are different but the same can be conveniently disposed of by a common judgment.

2. In Civil Writ Petition No. 62 of 1982, proceedings were initiated by Respondent No. 3 under the provisions of the Himachal Pradesh Passengers and Goods Taxation Act, 1955 (Act No. 15 of 1955)(herein-after to be referred as the Goods Taxation Act) and the Petitioner was held liable to pay tax at the rate of 625 per quarter from 1974 onwards with respect to his vehicle No. HPU 306. Petitioner carried the matter in appeal before Respondent No. 2, who on February 23, 1978, allowed the same vide his order Annexure PA. Feeling aggrieved, Respondent No. 3 preferred revision before Respondent No. 1, who on May 18, 1981, passed Annexure PB order, setting aside the order of Respondent No. 2 and upholding the order passed on January 2, 1978 by Respondent No. 3.

Petitioner preferred a review petition against this order before Respondent No. 1. On November 22, 1981, the review petition was dismissed vide order Annexure PC. Petitioner has now challenged the orders, Annexure PB and PC as also the proceedings for assessment finalized by Respondent No. 3 on January 2, 1978 and has sought direction restraining Respondents from realising the tax under the provisions of Goods Taxation Act.

3. It is the case of the Petitioner that the vehicle in question was a light vehicle with its laden capacity as 800 Kgs and the same did not require any route permit under the provisions of Section 42 of the Motor Vehicles Act, 1939 (Act No. 74 of 1939), which Act has now been replaced by the Motor Vehicles Act, 1988 (Act No. 59 of 1988). Since matter pertains to the period when 1939 Act was in force, therefore, that Act is being referred to as the Motor Vehicles Act. The vehicle was not being used by the Petitioner for hire or reward. The Petitioner, who is a manufacturer of Tobacco, sells its manufactured goods to its customers F.O.R. the place of delivery and carries the goods to the shops of retailers without any hire or reward, therefore, no tax was leviable or chargeable under the provisions of the Goods Taxation Act.

4. The petition has been contested by the Respondents by filing reply on the affidavit of Excise and Taxation Commissioner, Himachal Pradesh, wherein it has been contended that the delivery van No. HPU 306 is not a light motor vehicle as defined under the Motor Vehicles Act as its registered laden weight is 9070 Kgs. Although the un laden weight of the van is 4000 Kgs. and its laden capacity is 5070 Kgs. yet it is the registered laden weight which is material one and as the vehicle is used for commercial purpose for door-to-door delivery of manufactured tobacco, therefore, according to the nature of the vehicle and its utilisation, route permit was required to be obtained u/s 42 of the Motor Vehicles Act, as the case was not covered by explanation under Sub-clause (i) of Sub-section (3) of Section 42 thereof. It has further been contended that as goods are transported from one place to another F.O.R. irrespective of the fact as to whether any freight is charged or not, tax is payable under the Goods Taxation Act.

5. In Civil Writ Petition No. 100 of 1982, the Petitioner who is also a tobacco manufacturer and owner of two vehicles, namely, delivery van No. HPM 9061 and Jeep HPM 9035 was also assessed by Respondent No. 4 for tax under the provisions of the Goods Taxation Act vide orders Annexures PA and PA-I. The matter was carried in appeal before Respondent No. 3, who dismissed the same vide his orders, Annexure PB and PB-I, dated July 25, 1981 and May 5, 1981, respectively. Revision petitions preferred before Respondent No. 2 were disposed of on September 5, 1981 by a common order Annexure PC upholding the orders passed by Respondents No. 3 and 4 with respect to delivery van No. HPM 9061 but remanding the case to Respondent No. 4 for making further enquiry with respect to vehicle No. HPM 9035. The Petitioner in this case has challenged the orders Annexures PA, PA-I, PB, PB-I and PC on the grounds which are akin to those in Civil Writ Petition No. 62 of 1981. The Respondents have contested the

writ petition by filing reply on the affidavit of Under Secretary (Excise and Taxation) to the Government of Himachal Pradesh, wherein an objection has been taken that the writ petition in so far as levy of goods tax on vehicle HPM 9035 is concerned, the same is premature since the matter is pending before Respondent No. 4. Similar stand has been taken by the Respondents with respect to other vehicle HPM No. 9061 as taken in Civil Writ Petition No. 62 of 1982 by urging that the vehicle is not a light motor vehicle as its registered laden weight is 6,800 Kgs and does not answer to the requirements of Sub-section (13) of Section 2 of the Motor Vehicles Act, 1939.

6. We have heard the learned Counsel for the parties. We would first advert to the provisions of Motor Vehicles Act, wherein the light motor vehicle has been defined under Sub-clause (13) of Section 2 to mean a transport vehicle, the registered laden weight of which does not exceed 4,009 Kgs. Private carrier has been defined in Sub-clause (22) of Section 2 as under:

(22) "private carrier" means an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport, or whose uses the vehicle for any of the purposes specified in Sub-section (2) of Section 42.

Sub-clause (27) of the said section defines registered laden weight in respect of any vehicle to mean total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle. Sub-clause (20) of this very section deals with the definition of permit to mean the document issued by the Commissioner or a State or Regional Transport Authority authorising the use of a transport vehicle as a contract carriage, or stage carriage or authorizing the owner of a private carrier or public carrier to use such vehicle.

7. Section 42 of the Act, occurring in Chapter IV of the Motor Vehicles Act, provides for the necessity for permits and it provides that no owner of a transport vehicle shall use and permit the use thereof in any public place save in accordance with the conditions of a permit. Sub-clause (a) of Sub-section (2) thereof provides that the delivery or collection by or on behalf of the owners of goods sold, used or let on hire or hire-purchase in the course of any trade or business carried on by him other than the trade or business of providing transport shall not be deemed to constitute carrying of the goods for hire or rewards. Sub-section (3) of Section 42 enumerates the circumstances under which a permit is not required for the use of the vehicle. Clause (i) thereof states that permit shall not be required for any goods vehicle which is a light motor vehicle and is not plied for hire or reward.

8. Reference to the aforementioned provisions of the Act has been made to highlight the arguments advanced on behalf of the Petitioners in each petition, since the delivery vans are light motor vehicles and as the delivery of goods is made by them as owner thereof in the course of the business carried out by

them, therefore, there is no necessity for any permit under the Motor Vehicles Act and since no permit is required under the provisions of Section 42 of the said Act, therefore, no tax could be imposed while the vehicles are used by them for carrying the goods for being supplied to the retailers.

9. When reference is made to the provisions of Goods Taxation Act, it will be seen that whether a permit is required for the vehicle or not under the provisions of Section 42 of the Motor vehicles Act is not at all relevant.

10. Section 3 of the Goods Taxation Act is the charging section, which, inter alia, provides as under:

3. (1) There shall be levied, charged and paid to the State Government a tax on all fares and freights in respect of all passengers carried and goods transported by motor vehicles at such rates not exceeding fifty per cent of the value of the fare or freight, as the case may be, and as the Government may, by notification, direct, subject to a minimum of five paise in any one case, the amount of tax being calculated to nearest multiple of five paise by ignoring two paise or less and counting more than two paise as five paise.

Explanation.- When passengers are carried and goods are transported by a motor vehicle, and no fare or freight whether chargeable or not has been charged the tax shall be levied and paid as if such passengers were carried or goods transported at the normal rate prevalent on the route.

(2) x x x x x x x x

Reading of the explanation added to Sub-section (1) of Section 3, makes it clear that irrespective of the fact whether freight has been charged or not or whether the same is chargeable or not, the tax is liable to be paid when goods are carried or transported by a motor vehicle. The true purport of explanation is that when goods are transported by a motor vehicle and no freight (whether chargeable or not) has been charged, tax shall be levied and paid at the normal rate prevalent on the route. Motor vehicle has been defined in sub-clause (e) of Section 2 to mean a public service vehicle or public carrier, or private carrier or a trailer when attached to any such vehicle. Sub-clause (j) of the said Section further says that all words and expressions used in the Act but not defined shall have the meanings assigned to them in the Motor Vehicles Act, 1939. It is not disputed that the two delivery vans in question are the private carriers as defined in the Motor Vehicles Act. As such, the same clearly falls within the definition of Motor Vehicle under the Goods Taxation Act. no distinction is made in the Goods Taxation Act while goods are carried in a vehicle as to whether in is a light motor vehicle or a heavy motor vehicle. There are no exemptions provided for under the Goods Taxation Act except the one which may be notified by the State Government u/s 10 thereof. Admittedly, the vehicles of the nature involved herein have not been exempted from the operation of the Goods Taxation Act. Section 8 of the Goods Taxation Act provides that no owner shall ply his motor vehicle in the State unless he is in possession of a valid registration certificate.

Section 9 makes provisions for the grant of registration certificate. Reading of the provisions of the Goods Taxation Act leaves no manner of doubt that irrespective of the fact whether a permit is required or not for plying of vehicle u/s 42 of the Motor Vehicles Act, a motor vehicle as defined in the Goods Taxation Act, if used for transporting goods from one place to the other, tax is payable.

11. Since it is not disputed by the Respondents also that the Petitioners are not charging any freight for carriage of the goods manufactured by them for being supplied to their retailers, tax is payable on the freight considering the same to have been charged at the normal rate prevalent on the route. Since it has not been disputed before us that the rate of tax which the Petitioners have been called upon to pay is in consonance with the provisions of Section 3 of the Goods Taxation Act, we need not go into the question as to whether the same was correctly assessed or not. The vehicles in question are covered by the definition of "Motor Vehicle" contained in Sub-clause (e) of Section 2 of the Goods Taxation Act and in view of the explanation to Sub-section (1) of Section 3 goods tax is payable for transportation of goods and the Petitioners, as such, were rightly held liable for payment of such tax.

12. In the result, the writ petitions are dismissed having no substance but leaving the parties to bear their respective costs.