

(1998) 07 PAT CK 0084

In the Patna High Court

Case No : C.W.J.C. No's. 3788 and 2708 of 1995 (R)

M/s Tata Engineering and Locomotive Co. Ltd.

APPELLANT

Vs

The State of Bihar and Another
 Chhotanagpur
Chamber of Commerce and Industry Vs The State of Bihar
and Another

RESPONDENT

Date of Decision : 03-07-1998

Acts Referred:

Bihar Motor Vehicles Taxation Act, 1994 — Section 6

Constitution of India, 1950 — Article 14

Motor Vehicles Act, 1988 — Section 39

Citation : (1998) 3 PLJR 457

Hon'ble Judges : B.P. Singh, J;B.P. Sharma, J

Bench : Division Bench

Advocate : M.L. Verma, Rana Pratap Singh and Arun Kumar Singh in 3788, M/s Ram Balak Mahto and Pawan Kumar in 2708 and 10453 and Mr. Pawan Kumar in 3195 and 10296, for the Appellant; Rameshwar Prasad, Veena Kumari and Jaiswal in 3788, 2708 and 3195, M/s V.N. Sinha and R.K. Sinha in 10296, M/s V.N. Sinha and S.C. Jha in 10453, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh, J.—In this batch of writ petitioners, the legal issues being common, the writ petitions have been heard together and are being disposed of by this common judgment. The writ petitioners have challenged the constitutional validity of the Bihar Motor Vehicles Taxation Act, 1994, particularly Section 6 thereof whereunder a tax at an annual rate has been levied on a manufacturer or a dealer in motor vehicles in respect of the motor vehicles in his possession, in the course of his business as such manufacturer or dealer under the authorisation of trade certificate granted under the Central Motor Vehicles Rules, 1989. The said Act shall be hereinafter referred to as "the impugned Taxation Act". The petitioners have also challenged the demands made u/s 6 of the impugned Taxation Act. The petitioner in CWJC No. 3788 of 1995 (R) is M/s Tata Engineering and Locomotive Company Ltd. a Company registered under the

Indian Companies Act. The aforesaid Company claims to carry on business of manufacturing chassis at its manufacturing Unit situated at Jamshedpur in the State of Bihar. CWJC No. 2708 of 1995 (R) has been filed by M/s Chotanagpur Chamber of Commerce and Industry espousing the cause of its members who have been called upon to pay the tax levied u/s 6 of the impugned Taxation Act. The petitioners in the remaining three writ petitions are dealers who deal in Scooters, Motorcycles and Autorickshaws etc. i.e. in two or three wheeler vehicles. Apart from the challenge to the constitutional validity of the impugned Taxation Act, some of the petitioners have also challenged the action of the taxing authority on other grounds, which shall be dealt with separately, since the facts in each case have to be considered having regard to the provisions of the impugned Taxation Act and the Rules framed thereunder.

I shall notice the basic facts stated in CWJC No. 3788 of 1995(R) which are relevant for a proper consideration of the challenge to the vires of the impugned Taxation Act.

The petitioner carries on business of manufacturing chassis at its manufacturing unit at Jamshedpur. It is averred that the manufacturing unit of the petitioner-Company is fenced with brick built boundary wall throughout. The roads inside and outside the manufacturing unit, and in the TELCO Colony, are private roads maintained by the Company at its own cost. The entry into the factory premises is regulated by issuance of entry pass and such entry is managed and controlled by the Personnel belonging to the security department of the petitioner-Company. Entry to the premises of the petitioner's manufacturing unit may be refused in the absence of proper authority. The maintenance of the roads is also done by the petitioner-Company since the roads within the establishment are not public roads of the State of Bihar. All the machines and the offices of the Company are located within one campus. The manufacture of Chassis is undertaken and completed inside the manufacturing unit/factory premises and after the chassis is fitted with tyres and other accessories, it remains inside the manufacturing unit and is not taken on the public road. After manufacture of chassis, and after the same is fitted with necessary accessories, the chassis is taken to the Company's test yard for testing purposes. The test yard is also located within the premises of the Company and the roads connecting the test yard to the place of manufacture is also within the factory premises maintained by the Company. Even such roads are not public roads.

Under Section 39 of the Motor Vehicles Act, 1988 enacted by the Parliament (hereinafter referred to as "the Central Act"), it is necessary to register a vehicle which is to be driven in any public place, but the proviso to Section 39 makes it clear that the said provision does not apply to a motor vehicle in possession of a "dealer", subject to such conditions as may be prescribed by the Central Government. The petitioner-Company being a "dealer" within the meaning of the Central Act obtains trade certificates under Rule 34 of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as the Central Rules) which have been

framed under the Central Act. Such trade certificates have been granted to it by the competent authority under rule 35 of the Central Rules. All manufactured chassis are not taken to public road or place on the basis of trade certificates, but only such chassis are covered by the trade certificates which are taken out for testing in public place and for the other purposes enumerated in Rule 41 of the Central Rules. The manufactured chassis are sent to different regional sales offices after obtaining temporary registration. The chassis after manufacture are kept inside the manufacturing unit and are not used on the public road except for the purposes enumerated in rule 41 of the Central Rules.

2. Mr. M.L. Verma, appearing on behalf of the petitioner-Company, has challenged the constitutional validity of the impugned Taxation Act on the ground of legislative competence, but left that point to be developed and argued by Sri Ram Balak Mahto, Senior advocate, appearing on behalf of petitioners in CWJC No. 10453 of 1995 and 2708 of 1995 (R). Sri Verma has urged before us the following main contentions.

(1) The imposition of tax on "manufacturer" or a "dealer" of motor vehicles u/s 6 of the impugned Taxation Act is beyond the legislative competence of the Bihar Legislature and therefore ultra vires.

(ii) The levy is totally arbitrary inasmuch as no procedure has been prescribed for the assessment to be made under the impugned Taxation Act, nor is there any provision for issuance of notices etc., nor is there any procedure under the impugned Taxation Act and the rules framed thereunder for recovery of taxes. The levy of tax is clearly hit by Article 14 of the Constitution of India being arbitrary.

(iii) The impugned Taxation Act in its application to a manufacturer is totally unworkable, and there is no mechanism or scheme for its applicability to a manufacturer.

(iv) Even if it is assumed that the impugned Taxation Act is not arbitrary and not beyond the legislative competence and the State Legislature, in its application to a manufacturer it must be limited to the levy of tax on vehicles which are possessed by a manufacturer under authority of trade certificate granted under rule 35 of the Central Rules.

(v) The construction put on the impugned Taxation by the State amounts to triple taxation. If it is not confined in its application to vehicles covered under trade certificates, the levy would in effect be a duty on manufacture i.e. an excise duty not referable to entry 57 of List II of the 7th Schedule, but referable only to entry 51 of List II which is limited in its application and does not authorise the State Legislature to levy duty of excise on motor vehicles.

(vi) The impugned letter of demand dated 25.11.1995 whereunder the District Transport Officer in purported exercise of authority u/s 6 of the impugned Taxation Act has commanded the petitioner to pay tax in their status as

manufacturer of chassis between the period from 26.11.1993 to 31.3.1995, calculating the taxes on the basis of production of 100 chassis per day, and holding out a threat of initiation of certificate proceeding in case of non-payment is also bad for several reasons.

3. Adopting the arguments urged by Sri Verma, counsel for the petitioners in CWJC No. 10453 of 1995 and 2708 of 1995(R) Sri Ram Balak Mahto urged the following additional submissions.

(i) Since the impugned Taxation Act in exercise of legislative power under entry 57, List II of the 7th Schedule, the tax being compensatory in nature must, in order to be valid, have nexus with the vehicle using the public road, which is absent in the instant case.

(ii) The State Legislature was not competent to enact a law for levy of tax on a manufacturer or dealer of motor vehicles which are in their possession for the purpose of trading, and are not kept by them for use on the road.

(iii) Section 6 of the impugned Taxation Act which levies such tax on manufacturer or dealer, is ultra vires Articles 246, 254, 302 and 304 of the Constitution of India. The said provision is also in conflict and repugnant to Section 39 of the Central Act and Rules 39, 40 to 43 and 81 of the Central Rules.

4. Before dealing with the submissions urged at the bar, it would be necessary to refer to the relevant provisions of the Central Act of 1988 and the rules framed thereunder, as also the provisions of the impugned Taxation Act and the Bihar Motor Vehicles Taxation Rules, 1994 (hereinafter referred to as "the State Taxation Rules") framed thereunder. The Central Act of 1988 has been enacted by the Parliament in exercise of concurrent legislative jurisdiction under entry 35 of List II of the 7th Schedule of the Constitution which reads as under.

Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.

Under Section 2(8) of the Central Act, the definition of "dealer" as it originally stood and which is relevant, was as follows.

"dealer" includes a person who is engaged?

(a) in the manufacture of motor vehicles; or

(b) in the building bodies for attachment to chassis; or

(c) in the repair of motor vehicles; or

(d) in the business of hypothecation, leasing or hire-purchase of motor vehicles.

It is not disputed that the said definition in the Central Act was amended on 14.11.1994 whereby the manufacturer of motor vehicles was taken out of the definition of "dealer" u/s 2(8) and the "manufacturer" was separately defined u/s 2(21) (a) of the Act. The "motor vehicle" or "vehicle" has been defined u/s 2(28)

as follows.

"motor vehicle" or "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 or a vehicle having less than four wheels fitted with engine capacity of not exceeding thirty five cubic centimetres;

Section 2(30) defines the "owner" in the following terms.

"owner" means a person in whose name a motor vehicle stands registered, and where such a person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement or an agreement of lease or an agreement of hypothecation that agreement.

Section 39 of the Central Act provides as follows.

Necessity for registration. No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner :

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

5. The Central Rules framed under the Central Act contain Chapter III which relates to registration of motor vehicles. Section 33 provides that for the purpose of proviso to Section 39, a motor vehicle in possession of a dealer shall be exempted from the necessity of registration subject to the condition that he obtains a trade certificate from the registering authority having jurisdiction in the area in which the dealer has his place of business in accordance with the provisions of this Chapter.

Under Rule 34, an application for the grant or renewal of the trade certificate has to be made in form 16 and shall be accompanied with appropriate fee as prescribed in rule 81. Under Rule 35, if the registering Authority is satisfied on application being made for grant or renewal of a trade certificate, that the applicant is a bonafide dealer and requires the certificates specified in the application, issue to the applicant one or more certificates as the case may be in form 17 and shall assign in respect of each certificate a trade registration mark. Under Rule 37 such a trade certificate shall be in force for a period of 12 months from the date of issue, or renewal thereof, and shall be effective throughout India.

Rules 41 and 42 are of significance. They read as under.

41. Purposes for which motor vehicle with trade certificate may be used.?The holder of a trade certificate shall not use any vehicle in a public place under that certificate for any purpose other than the following;

- (a) for test, by or on behalf of the holder or a trade certificate during the course of, or after completion of, construction or repair; or
- (b) for proceeding to or returning from a weigh bridge for or after weighing, or to and from any place for its registration; or
- (c) for a reasonable trial or demonstration by or for the benefit of prospective purchaser and for proceeding to or returning from the place where such person intends to keep it; or
- (d) for proceeding to or returning from the premises of the dealer or of purchaser or of any other dealer for the purpose of delivery; or
- (e) for proceeding to or returning from a workshop with the objective of fitting a body to the vehicle or painting or for repairs; or
- (f) for proceeding to and returning from airport, railway station, wharf for or after being transported; or
- (g) for proceeding to or returning from an exhibition of motor vehicles or any place at which the vehicle is to be or has been offered for sale; or
- (h) for removing the vehicle after it has been taken possession of by or on behalf of the financier due to any default on the part of the other party under the provisions of an agreement of hire-purchase, lease or hypothecation.

42. Delivery of vehicle subject to registration. - No holder of a trade certificate shall deliver a motor vehicle to a purchaser without registration whether temporary or permanent.

Rule 47 of the Central Rules deals with an application for registration of Motor vehicles. The rules falling in the said chapter deal with matters relating to registration of motor vehicles, which are not relevant to the issues involved in these writ petitions.

6. The impugned Taxation Act has been enacted in exercise of the powers conferred on the State Legislature under entry 57 of List II of the 7th Schedule of the Constitution which is as follows.

Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III.

It may be noticed that the impugned Taxation Act was preceded by two Ordinances promulgated on 24.11.1993 and 2.2.1994. Under the impugned Taxation Act, "motor vehicle" or "dealer" or "manufacturer" has not been defined,

but in view of Section 2(c) of the impugned Taxation Act any expression not specifically defined in the impugned Taxation Act shall have the same meaning assigned to them respectively in the Motor Vehicles Act, 1988 (Act no. 59 of 1988). Therefore, one has to look to the definition of these expressions in the Central Act as it stood on the date on which the Bihar Motor Vehicles Taxation Act, 1994 (Bihar Act 8 of 1994) came into force. The Act came into force with immediate effect, and it is not in dispute that it was assented to by the Governor of 25.4.1994.

Under Section 3, the State Government has been authorised to appoint "Taxing Officers" by issuance of notification. Section 3 is as follows.

3. Appointment of taxing officers.?The State Government may by notification appoint any person as Taxing Officer to exercise and perform within such areas as may be specified in such notification, the powers and duties conferred and imposed on the Taxing Officer by this Act, or by Rules made thereunder.

Section 5 of the impugned Taxation Act provides for the payment of tax by every owner of a registered motor vehicle in the following term.

5. Levy of tax.?(1) Subject to other provisions of this Act, on and from the date of commencement of this Act, every owner of a registered motor vehicle shall pay tax on such vehicle at the rate specified in Schedule I.

(2) Subject to other provisions of this Act, on and from the date or commencement of this Act, every owner of a registered motor vehicle shall pay additional Motor Vehicles Tax on such vehicle at the rate specified in Schedule II.

(3) The State Government may by notification from time to time, increase the rate of tax specified in the Schedules;

Provided that no such increase shall during any year exceed fifty percent of the rate of taxes prescribed in the Schedules.

Section 6, the validity of which has been seriously challenged reads as follows.

Tax payable by a manufacturer or a dealer.?A tax at the annual rate specified in Schedule III in lieu of the rates specified in Schedule I shall be paid by a manufacturer of or a dealer in motor vehicles, in respect of the motor vehicles in his possession in the course of his business as such manufacturer or dealer under the authorisation of trade certificate granted under the Central Motor Vehicles Rules, 1989.

Section 7 of the Act provides for payment of one time tax on personalised vehicles for the whole life of the vehicle at the time of registration. It also provides for the payment of tax on vehicles, other than personalised vehicles, and such tax may be paid for one or more quarterly period at the annual rate of the tax payable for the quarter. It also provides for the rate of tax payable for the quarter. It also provides for the rate of tax payable in case of motor vehicles temporarily registered u/s 43 of the Central Act.

Section 9 provides as follows.

Tax where to be paid. - (1) For newly registered vehicles, the tax shall be paid to the taxing officer in whose jurisdiction the place of registration falls.

(2) For the vehicles which are already registered on or before the date of commencement of this Act, the tax shall be continued to be paid to the taxing officer to whom the tax was last paid just before the commencement of this Act.

(3) If an owner of a vehicle other than a personalised vehicle changes his place of business or residence and his new place of residence or business falls within the jurisdiction of another taxing officer, he can (a) either continue to pay the tax at the place where he previously paid tax, or (b) start the payment of the tax to the other taxing officer in whose jurisdiction his new residence or place of business falls :

Provided that the new taxing officer shall not accept the payment of tax till the owner presents before him a "No objection Certificate" from the previous taxing officer in the manner and the form prescribed.

Section 21 which provides for recovery of tax, penalty or fine as arrears of land revenue read as follows.

Any tax, penalty or fine may be recovered in the same manner as arrears of land revenue. The motor vehicle in respect of which the tax, penalty or fine is due, the motor vehicle or its accessories may be attached or sold whether or not such motor vehicle or accessories are in possession or control of the person liable to pay the tax, penalty or fine.

Section 23 provides as follows.

Liability to pay penalty for nonpayment of tax in time. If the tax payable in respect of a vehicle other than personalised vehicle has not been paid during prescribed period, the person liable to pay such tax together with the arrears of tax, a penalty at the rates prescribed by the State Government.

Under Section 22 a Taxing Officer or any officer of the Motor Vehicles Department not below the rank of Inspector of Vehicle or any other officer specially authorised by the Transport State Commissioner has been vested with the power of search and seizure for the purpose of satisfying himself that the amount of tax in respect of such vehicle has been paid and the tax token has been obtained. u/s 26 any person aggrieved by any order or direction of the Taxing Officer or by seizure under sub-section (2) of Section 22 may prefer an appeal to the prescribed authority on payment of such fees as may be prescribed. The order of the appellate authority passed u/s 26 is subject to the revisional jurisdiction of the revisional authority u/s 27 of the Act. Section 28 provides for the penalties that may be imposed. Schedule III to the impugned Taxation Act is relevant and the same is reproduced below for the sake of convenience.

SCHEDULE III (See Section 6) Rates of tax to be paid by dealer or manufacturer

Description of Vehicles in possession of a manufacturer or dealer.

Annual tax for first seven or less vehicles of a manufacturer or dealer.

Annual tax for additional 7 vehicles of a manufacturer or dealer.

Amount

Amount

Rs.

Rs.

1. Motor Cycles ...

400.00

400.00

2. Chassis of heavy motor vehicles.

600.00

600.00

3. Other Vehicles ...

500.00

500.00

7 The Bihar Motor Vehicles Taxation Rules, 1994 was published in the Bihar Gazette extraordinary dated 17.1.1994 when the Ordinance of 1993 was in force, but the same has continued to remain in force as if the same has been issued under the corresponding provision of the Ordinance of 1994 and thereafter under the impugned Taxation Act, by virtue of Section 32 of the aforesaid Act. Counsel for the parties have also made their submissions by reference to the aforesaid rules of 1994 published on 17.1.1994. Rules 4 and 5 of the State Rules provide as follows.

4. Due date of payment and penalty for non-payment of taxes in time. (1) For vehicles other than personalised vehicles the due date of payment of tax shall be the date of expiry of the period for which the tax has been last paid. In cases where no such tax had previously been paid, the date of acquisition of the vehicle or the date when such tax is imposed by law shall be due date for tax payment. For payment of differential taxes under the provision of Section 8, the due date shall be within Seven days from the date of alteration in the vehicle or the change in its use.

(2) Where the tax for any period in respect of a vehicle has not been paid as required under the provisions of sub-rule (1) and continues to remain unpaid thereafter, the taxing officer may impose penalty in respect of such vehicles at

the rate specified in the table below:-

TABLE

Period

Amount of penalty

(i) If paid within fifteen days from the due date of payment.

Nil. This will be treated as a grace period.

(ii) If paid after fifteen days but within 30 days of the due date of payment.

Penalty to be charged at the rate of 25 per cent of the tax.

(iii) If paid after 30 days but within 60 days of the due date of payment.

Penalty to be charged at the rate of 50 per cent of the taxes due.

(iv) If paid after 60 days but within 90 days of due date of tax payment.

Penalty to be charged equal to the taxes due.

(v) If paid beyond 90 days after the due date.

Penalty to be charged will be twice the taxes due.

(3) Where the composite fee in respect of vehicles plying under National Permit Scheme has not been paid within the due date as required under the provisions of the said Scheme, the Taxing Officer shall impose penalty at the rate provided in the said Scheme, in respect of such vehicle.

5. Procedure for payment of tax.?(1) The tax shall be paid by means of pay-in-slip in form A, appended hereunder, in triplicate to the branches of the Nationalised Banks or Central Co-operative Banks or post offices authorised in this behalf by the State Transport Commissioner. The tax can also be paid in cash or by means of bank draft or postal order to the Taxing Officer, in case of tax being paid by means of pay-in-slips the branch of the bank or the post office as the case may be shall hand over the original and duplicate copy of the pay-in-slip duly receipted to the depositor and send the statement of deposits to the Taxing Officer on the following day. The person making payment shall deliver to the Taxing Officer the cash, bank draft, postal order or the duplicate copy of the duly receipted pay-in-slip, as the case may be together with the last tax token as granted and the document referred to in sub-section (6) of Section:

Provided that the State Government may notify the districts, the categories of the vehicles or both for which payment of taxes will be made directly to the Taxing Officer either in cash or through Bank Draft.

(2) The declaration referred to in sub-section (6) of Section 7 shall be in form B1.

(3) A separate declaration shall be required for each vehicle.

(4) The declaration to be submitted by the dealer or the manufacturer of the vehicle under the Authorisation granted under the Central Motor Vehicles Rules, 1989 shall be in Form B2.

(5) The declaration to be filed when a Motor Vehicle is altered or is proposed to be used in a manner referred to in Section 8 so as to become a vehicle in respect of which differential Tax is to be paid shall be in Form B3.

Form B-2 has been prescribed for the manufacturer or dealer and the form shows that it has to be filed before the Taxing Officer and relates to vehicles under the authorisation granted under the Central Rules. Rule 21 provides that all applications made in connection with the purposes of the ordinance and rules shall be made at the office of the Taxing Officer on any working day during office hours unless a special place or time has been specified for this purpose.

8. It will thus appear that the Central Act provides for compulsory registration of all motor vehicles which are driven in any public place or any other place. It however, does not cast such an obligation on a "dealer" who is in possession of a motor vehicle, but such a dealer is governed by the conditions as may be prescribed by the Central Government. Under the Central Act, no tax has been levied on motor vehicles, and that is obviously because under entry 35 of List III of the 7th Schedule the legislation by Parliament can only lay down the principles on which taxes on such vehicles are to be levied. The power to impose taxes on vehicles is vested in the States legislature under entry 57 of List II. It would, however, be necessary to refer to the Central Rules, particularly, those which lay down the conditions subject to which a dealer may possess a motor vehicle without registration. It was submitted by Sri Verma that the impugned Taxation Act, if at all, is only applicable in respect of motor vehicles covered by trade certificate issued under the Central Rules, and it is not necessary for the manufacturer who is in possession of a motor vehicle to obtain a trade certificate in respect of all manufactured vehicles, unless the vehicle is to be used for any purpose enumerated under Rule 41 of the Central Rules.

9. In my view, the submission urged by Sri Verma cannot be accepted. Rule 43 of the Central Rules in terms provides that for the purpose of the proviso to Section 39, a motor vehicle in possession of a dealer shall be exempted from the necessity of registration subject to the conditions that he obtains a trade certificate from the registering authority having jurisdiction in the area in which the dealer has his place of business in accordance with the provisions of Chapter III. On a plain reading of the rule read with Section 39 of the Central Act there can be no doubt, that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place, unless the vehicle is registered. The main part of Section 39 prohibits in absolute terms the driving of a motor vehicle in any public place or in any other place unless the vehicle is registered. To this is an exception carved out by the proviso to Section 39 which absolves a dealer of the obligation to obtain a registration of a motor vehicle in his possession, but subject to the conditions as

may be prescribed by the Central Government. Rule 33 of the Central Rules prescribing such conditions clearly obliges a dealer to obtain a trade certificate in respect of all motor vehicles in his possession. Rule 41 permits a limited user of a vehicle covered by a trade certificate only for the purposes enumerated in Section 41. This only means that if a vehicle is covered by a trade certificate granted under Rule 35 it may be used for any of the purpose enumerated in Rule 41, and this may even permit the vehicle to be driven on a public road, if it is driven for any of the purposes mentioned in Rule 41. It would, therefore, not be correct to suggest that only if a vehicle is to be used for any of the purposes under Rule 41, is the dealer obliged to obtain a trade certificate in respect of that vehicle. In my view, Rule 33 obliges a dealer to obtain a trade certificate in respect of all motor vehicles in his possession which do not require registration. It is wholly irrelevant as to whether such vehicle will or will not be used for any of the purposes enumerated in Rule 41 of the Rules. Rule 41 only enables a dealer to use any vehicle in a public place for the purposes enumerated therein if the vehicle is covered by a trade certificate. The obligation to obtain a trade certificate in respect of a vehicle, arises the moment a dealer comes in possession of a motor vehicle in the course of his business, and is not dependent upon the user of such a vehicle. If such be the correct interpretation of Rule 33 of the Central Rules, it must follow that u/s 6 of the impugned Taxation Act, the tax levied must be paid in respect of all motor vehicles in possession of a manufacturer or a dealer as such for which the manufacturer or dealer was required to obtain a trade certificate under the Central Rules. The mere fact that a manufacturer or dealer did not obtain a trade certificate as required by law, will not absolve such manufacturer or dealer of the liability to pay the tax u/s 6 of the impugned Taxation Act in respect of all vehicles which are in possession of such manufacturer or dealer in respect of which such trade certificates ought to have been obtained under the Central Rules, but were actually not obtained. A manufacturer or dealer cannot take advantage of his own wrong and cannot insist that by reason of his failure to obtain trade certificates in respect of vehicles in his possession, which he was obliged to do, he is absolved of the liability to pay tax u/s 6 of the impugned Taxation Act in respect of all vehicles which were illegally possessed by such manufacturer or dealer without the authorisation of trade certificates.

10. From the scheme of the impugned Taxation Act, it is apparent that provision has been made in the Act for levy of tax payable by the owner of a registered motor vehicle, and levy of tax on motor vehicles possessed by a manufacturer or a dealer in the course of his business under the authorisation of trade certificate granted under the Central Rules. Since the provision relating to registration do not apply to motor vehicles possessed by a dealer Section 5 of the impugned Taxation Act levies a tax payable only by the owner of a registered motor vehicle. Section 6 of the impugned Taxation Act on the other hand levies a tax on motor vehicles in possession of manufacturer or dealer which do not require registration. The rate of tax payable are also different, and while the taxes

payable u/s 5 are payable at the rate specified in Schedules I and II, the tax payable u/s 6 is payable at the annual rate specified in Schedule III. The moot question is whether the tax imposed u/s 6 of the impugned Taxation Act is validly enacted by the legislature in exercise of its legislative power under entry 57 of List II of the 7th Schedule. It was submitted that a tax under the aforesaid entry must be compensatory in nature, and further the tax must have nexus with the vehicle using the public road.

11. Entry 57 of List II confers upon the State Legislature authority to impose taxes on vehicles "suitable for use on roads". On a plain reading of the entry, if it is found that the law levies the tax on vehicle, and such vehicle is suitable for use on roads, the power of the State Legislature to impose such a levy cannot be challenged. It is not in dispute in the instant cases that the chassis manufactured by the petitioner in CWJC No. 3788 of 1995 (R), and the motor vehicles of which the other petitioners are in possession and dealers are suitable for use on roads. They have, in fact, been manufactured for use on roads and any purchaser who purchases such vehicle does so for its use on roads. By their very nature, the vehicles in question are vehicles not only suitable for use on roads, but actually meant for use on roads. The tax is, therefore, imposed on vehicles which are suitable for use on roads including public roads and, therefore, the requisite nexus exists. Since the vehicles are meant to be used on roads maintained by the State at its cost, it cannot be contended that the tax does not have a compensatory character. The decisions cited at the bar by the parties support this view, and I shall now proceed to consider those decisions.

12. Considerable reliance was placed by the petitioner on the decision of the Supreme Court in *Bolani Ores Ltd. vs. State of Orissa & another* (A.I.R. 1975 Supreme Court 17). In the aforesaid case the question which arose for consideration before the Supreme Court was whether the Dumpers, Rockers and Tractors are "motor vehicles" taxable under the various States Motor Vehicles Taxation Acts. One of the Acts under consideration was the Bihar and Orissa Motor Vehicles Taxation Act (Act 2 of 1930). The appellant before the Supreme Court contended that the definition of "motor vehicles" in Section 2(18) of the Motor Vehicles Act, 1939 before its amendment by Act 100 of 1956, applied to the vehicle in question, and not the definition of Motor Vehicles after amendment by Act 100 of 1956. The State on the other hand contended that the definition of "motor vehicles" after its amendment was applicable, and therefore the appellant was liable to pay the tax. The definition of motor vehicles before its amendment excluded from the category of a motor vehicle running upon fixed rails or used solely upon the premises of the owner. After its amendment, what was excluded from the definition of a motor vehicle was 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. Thus under the unamended definition what otherwise fell within the definition of motor vehicle in the main part of the definition, was excluded from that definition if it was used solely upon the premises of the owner. A motor vehicle, therefore, used solely upon the premises of a owner was

outside the purview of the taxing provision in the Act. The amendment of 1956 brought about a significant change by excluding a vehicle of a special type adapted for use only in a factory or in any other enclosed premises. Thus after the amendment a vehicle used solely upon the premises of the owner came within the definition of a motor vehicle unless it was a vehicle of a special type adapted for use only in a factory or in any other enclosed premises, that is to say, it was not possible to use such a vehicle at any other place. The vehicles in question did not answer the definition of a motor vehicle under the un-amended definition, but came within the definition of motor vehicle as amended by Act 100 of 1956. It was, therefore, urged on behalf of the State that for the purpose of Taxation Act, the definition of motor vehicle as amended was applicable. The submission was negatived by the Court and it was held that the intention of the legislature could not have been anything but to incorporate only the definition in the Motor Vehicles Act as then existing, namely 1943, as if that definition was bodily written into Section 2(c) of the Taxation Act. Any subsequent amendment in the Motor Vehicles Act, or a total repeal of the Act under a fresh legislation on that topic, would not affect the definition of "motor vehicle" in Section 2(c) of the Taxation Act. The legislature intended to incorporate the definition under the Act as it then existed and not as it may exist from time to time. In the facts of that case, it was held that Dumpers and Rockers though registrable under the Act were not taxable under the Taxation Act as long as they were working solely within the premises of the respective owners. So far as tractors were concerned, they were held neither registrable under the Act nor taxable under the Taxation Act. It will, thus, be seen that the question of vires of the Taxation Act was not raised in the appeal before the Supreme Court. It was in this context that the following observations were made in the aforesaid decision.

The Taxation Act is a regulatory measure imposing, compensatory taxes for the purpose of raising revenue to meet the expenditure for making roads, maintaining them and for facilitating the movement and regulation of traffic. The validity of the taxing power under Entry 57, List II of the Seventh Schedule read with Art. 301 of the Constitution depends upon the regulatory and compensatory nature of the taxes. It is not the purpose of the Taxation Act to levy taxes on vehicles which do not use the roads or in any way form part of the flow of traffic on the roads which is required to be regulated. The regulations under the Motor Vehicles Act for registration and prohibition of certain categories of vehicles being driven by persons who have no driving licence, even though those vehicles are not plying on the roads, are designed to ensure the safety of passengers and goods etc. etc. and for that purpose it is enacted to keep control and check on the vehicles. Legislative power under Entry 35 List III (Concurrent List) does not bar such a provision. But Entry 57 of List II is subject to the limitations referred to above, namely, that the power of taxation thereunder cannot exceed the compensatory nature which must have some nexus with the vehicles using the roads, viz. public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Act, they cannot be taxed.

13. In Travancore Tea Estates Co. Ltd. and others vs. State of Kerala and others, (1980) 3 Supreme Court Cases 619 the decision of the Supreme Court in Bolani Ores was considered. It was found that the decision in Bolani Ores" case could not be of much assistance to the appellants because the definition of "motor vehicle" in Section 2(18) of the Motor Vehicles Act, 1939, as amended by Act 100 of 1956 was incorporated by reference in the Kerala Motor Vehicles Act, 1963, and therefore, the definition of "motor vehicle" after its amendment by Act 100 of 1956 applied. Another question that fell for consideration was whether on the assumption that the motor vehicles are used or kept for use within the State and not intended to be used on public roads of the State, the tax was leviable Referring to Entry 57 of List II, the court observed that the aforesaid entry related to taxes on vehicles whether mechanically propelled or not suitable for use on roads. This entry enabled the State Government to levy a tax on all vehicles whether mechanically propelled or not suitable for use on roads (emphasis supplied). Referring to Section 3 of the impugned Kerala Motor Vehicles Taxation Act, the court found that it provided that the taxes shall be levied on all motor vehicles used or kept for use in the State. The levy was, therefore, within the competence of the State legislature as Entry 57 in List II authorises levy on vehicles suitable for use on roads. The court observed:

If the words "used or kept for use in the State" are construed as used or kept for use on the public roads of the State, the Act would be in conformity with the powers conferred on the State legislature under Entry 57 of the List II if the vehicles are suitable for use on public roads they are liable to be taxed.

14. The other decision of the Supreme Court which requires to be considered in this connection is the one reported in AIR 1992 Supreme Court 1371 (M/s Central Coal Fields Ltd. vs. State of Orissa and others.) The appellants before the Supreme Court were engaged in mining activities and held large tracts of land for the purpose. They had earmarked and enclosed those areas by various means, and also constructed approach roads in those areas to facilitate their mining operations. No member of the public was allowed to enter those lease hold premises without prior permission. In order to carry out their activities, the appellants put to use machinery within their lease hold areas, of a variety including Dumpers" and "Rockers". These machines were used for carrying bulk goods, building materials, mining products etc. In the year 1961 the appellants were asked by the State of Orissa through its Officers to register their aforesaid machines as vehicles under the Motor Vehicles Act and to pay tax u/s 6 of the Bihar and Orissa Motor Vehicles Taxation Act, 1930 as amended up to date. The appellants and others from whom similar demands were made resisted the demands and ultimately the Supreme Court in Bolani Ores case ruled that "Dumpers" and "Rockers" though registrable under the Act were not taxable under the Taxation Act as long as they were working solely within the premises of the respective owners. Anticipating a spate of refund applications as a result of decision in Bolani Ores case, the Governor of the State of Orissa promulgated an Ordinance on 11.2.1975 known as the Orissa Motor Vehicles Taxation Laws

(Amendment) Ordinance, 1975 which amended Section 2(c) of the Taxation Act with retrospective effect defining "motor vehicle" virtually in the same term as the definition stood in the Central Act after the amendment by Act 100 of 1956. The object of the amendment was to legislate retrospectively on the subject directly, instead of by incorporation. After the amendment fresh demands of Tax were made from the appellants and prayer for refund of the tax involved in the earlier litigation were rejected. The appellants moved the High Court challenging the action and the Ordinance. In the meantime, the Orissa Motor Vehicles Taxation Act 39 of 1975 was passed, replacing the Ordinance. u/s 2 (b) of the Act, "motor vehicle" was defined which is identical with the post-amendment definition of "motor vehicle" in Section 2(18) of the Central Act. The High Court dismissed the writ petition as it was of the view that "Dumpers" and "Rockers" as long as they were working solely within the premises of the respective owner did not come within the grip of the Taxation Act. But if and when they would get to public roads, they would be taxable under the Taxation Act. The High Court took the view that the onus lay on the appellants to establish that Dumpers and Rockers in question were not suitable for use on the public roads. The High Court held that since no material had been placed before it to establish this and no claim had even been laid that these vehicles could not operate on public roads, the contention of the appellants, that the vehicles were not liable for taxation being not adapted or fit or suitable for use on the roads, was devoid of merit. The High Court upheld the constitutional validity of the Amending Taxation Act and held that it was within the legislative competence of the State Legislature which was empowered to impose taxes, regulatory and compensatory in nature on vehicles which are suitable for use on public roads.

15. The appeal preferred by the appellant before the Supreme Court was dismissed. The Supreme Court after considering the materials placed before it observed:

That material is suggestive of the fact that Dumpers in some States are granted permission to run on public roads at a speed not exceeding 16 Kms. per hour and on bridges and culverts at a speed not exceeding 8 Kms. per hour. From this it is suggested that they have a minimum weight and safe laden weight fixed on some principles. Pictures of various types of Dumpers have also been sent to us which indicate prominently one factor that these Dumpers run on tyres, in marked contrast to chain plates like cater pillar or military tanks. By the use of rubber tyres it is evident that they have been adapted for use on roads, which means they are suitable for being used on public roads. The mere fact that they are required at places to run at a particular speed is not to detract from the position otherwise clear that they are adapted for use on roads. The very nature of these vehicles make 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 as suggested are heavy and cannot move on the roads without damaging them is not to say that they are not suitable for use on roads. The word "adapted" in the provision was read as "suitable" in Bolani Ores case (AIR

1975 SC 17) by interpretation on the strength of the language in Entry 57, List II of the Constitution. Thus on that basis it was idle to contend on behalf of the appellants that Dumpers and Rockers were neither adaptable nor suitable for use on public roads. Thus on the fact situation, we have no hesitation in holding that the High Court was right in concluding that Dumpers and Rockers are vehicles adapted or suitable for use on roads and being motor vehicles per se, as held in Bolani Ores case, were liable to taxation on the footing of their use kept for use on public roads, the network of which, the State spreads, maintains it and keeps available for use of motor vehicles and hence entitled to a regulatory and compensatory tax.

16. u/s 6 of the impugned Taxation Act a manufacturer or a dealer in motor vehicles in his possession in the course of his business as such manufacturer or dealer under the authorisation of trade certificate granted under the Central Rules is liable to pay tax. The definition of "motor vehicle" as it existed on the date of coming into force of the impugned Taxation Act is relevant, which means any mechanically propelled vehicle adapted for use upon roads, including a chassis to which a body has not been attached. Having regard to definition of "motor vehicle" in Section 2(18) of the Central Act as amended by Act 100 of 1956, it cannot be said that a chassis is not a motor vehicle which is adapted for use upon roads. Similarly a two wheeler scooter or motorcycle or a three wheeler autorickshaw will also come within the definition of "motor vehicle" as they are adapted for use upon roads. In fact the vehicles with which we are concerned in the instant petitions are not only adapted for use upon roads, but are really meant for use upon roads. Having regard to the law as declared by the Supreme Court in M/s Central Coal Fields Ltd. it must be held that the very nature of these vehicles make it clear that they are not manufactured or adapted for use only in factories or enclosed premises and they are not suitable for use on road. The mere fact that the vehicles in question may be later used on roads after their sale, is not to say that they are not vehicles "suitable for use on roads", which are the words in Entry 57 of List II of the Seventh Schedule of the Constitution of India. The impugned Taxation Act, therefore, clearly falls within the legislative jurisdiction of the State legislature under Entry 57 of List II. The submission that the State Legislature lacked legislative competence must, therefore, be rejected. The fact that the motor vehicles in question are suitable for use on roads being motor vehicles per se, they are liable to pay tax on the footing of their use or kept for use on public roads. Such public roads are maintained by the State at its cost and are available for use of motor vehicles. Hence the State is entitled to a regulatory and compensatory tax. The first submission urged by Sri R.B. Mahto, must, therefore, be rejected.

17. There is considerable force in the submission urged on behalf of the State that the tax imposed under Entry 57 of List II of the 7th Schedule of the Constitution of India by the State Legislature need not be compensatory in all cases. The observation of the Supreme Court in Bolani Ores Case to the effect that the tax is compensatory in nature, must be understood in the context in

which the Court made the observations, namely, that the validity of the taxing power under Entry 57 of List II of the 7th Schedule read with Article 301 of the Constitution of India depends upon the regulatory and compensatory nature of the taxes. Obviously, the observation was made in the context of Article 301 of the Constitution of India which provides that trade, commerce and intercourse through out the territory of India shall be free. The restriction upon the legislative power of the Union and of the State with regard to trade and commerce under Articles 302 and 304 of the Constitution of India must be understood in the context of a law which impedes free flow of trade, commerce and intercourse throughout the territory of India. Though a tax may impede such free flow of trade commerce and intercourse guaranteed under Article 301 of the Constitution of India, in view of the Judgment of the Supreme Court in *Automobiles Transport Limited vs. State of Rajasthan and others* (AIR 1962 Supreme Court 1406) regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Article 301 of the Constitution of India and such measures need not comply with the requirements of the proviso to Article 304(b) of the Constitution. In the instant case, no one has challenged the levy of tax u/s 6 of the impugned Taxation Act on the ground that it impedes free flow of trade, commerce and intercourse through out the territory of India. In the absence of a challenge to the exercise of legislative power on the ground that it infringes Article 301 of the Constitution of India, it is not obligatory for the State to establish that the tax is of compensatory nature. If the legislative competence of the State legislature is established, the law cannot be struck down on the ground that it is not shown to be compensatory in nature. In the instant case, I have held that the State legislature has the necessary legislative competence, since it has imposed a tax on motor vehicles which are suitable for use on roads. The levy is, therefore, within the competence of the State Legislature since the tax levied has a rational nexus with the vehicles being suitable for use on roads. The plenary legislative power of the State legislature in respect of an Entry under List II of the 7th Schedule is not limited to regulatory and compensatory measures, unless it be shown that the exercise of legislative power adversely affects the free flows of inter-State trade and commerce, and is sought to be justified on the ground that the measure is either regulatory or compensatory.

18. The second submission urged by Mr. Mahto also has no merit. It was submitted that the State Legislature is not competent to enact a law for levy of tax on a manufacturer or dealer in respect of motor vehicles which are in their possession for the purpose of trade, and are not kept for use on the roads. The very fact that the motor vehicles are adapted for use upon roads which is the same as suitable for use upon roads, gives the State legislature the power to impose taxes on such vehicles under Entry 57 of List II of the Seventh Schedule. The manufacturer or the dealer may not himself use the motor vehicles on roads, but it cannot be denied that the vehicles are suitable for use on roads thereby falling within the legislative jurisdiction of the State legislature.

19. It was then submitted that Section 6 of the impugned Taxation Act is repugnant and is in conflict with Section 39 of the Central Act, 1988 and some of the rules framed thereunder. This argument need not detain us as it is squarely covered by a decision of the Supreme Court in *State of Assam vs. Labanya Probha Devi* (AIR 1967 SC 1575). The Supreme Court held :

The two entries deal with two different matters though allied ones—one deals with taxes on vehicles and the other with the principles on which such taxes are to be levied. When two entries in the Constitution, whether in the same List or different Lists, deal with two subjects, if possible, an attempt shall be made to harmonize them rather than to bring them into conflict. Taxes on vehicles in their ordinary meaning connote the liability to pay taxes at the rates at which the taxes are to be levied. On the other hand, the expression "principles of taxation" denotes rules of guidance in the matter of taxation. We, therefore, hold that the Amending Acts do not come into conflict with the existing law in respect of any principles of taxation, but only deal with a subject matter which is exclusively within the legislative competence of the State Legislature.

20. Sri Mahto faintly submitted that Section 6 of the impugned Taxation Act is ultra vires Articles 246 and 254 of the Constitution of India. He did not develop the argument in the course of his submission. It appears to me that so far as article 246 is concerned, there is nothing in that article which can lead this Court to hold that the impugned Taxation Act is in breach of Article 246 of the Constitution of India. The power to levy tax on motor vehicles under Entry 57 of List II of the Seventh Schedule is exclusively within the legislative competence of the State Legislature. Nothing has been pointed out to us to support the argument that there is any inconsistency between the Taxation Act enacted by the State Legislature and any law made by the Parliament. I have already held that the Central Act has been enacted by the Parliament in exercise of its Legislative power under Entry 57 (sic-35?) of List III of the 7th Schedule which does not include the power to levy a tax on vehicles. The Central Act and the impugned Taxation Act operate in two different fields, and there is no inconsistency between the two. It has not been demonstrated before us that any provision of the impugned Taxation Act comes into conflict with any existing law in respect of any principles of taxation laid down by Parliament. The submission must, therefore, be rejected. So far as the challenge to section 6 of the impugned Taxation Act on the ground of violation of Articles 302 and 304 of the Constitution of India is concerned, since the tax has a reasonable nexus with the vehicles being suitable for use upon roads, it is compensatory in (sic)ture as the tax is levied upon vehicles which are suitable for use on roads. It does not violate either Article 302 or Article 304 of the Constitution of India. Moreover, it is not even agreed (sic) before us that the levy under the impugned Taxation Act impedes the free flow of inter-State trade and commerce. Such being the fact situation, even if the levy be held not to be compensatory in nature, it will not affect the validity of the law which clearly falls within the legislative jurisdiction of the State legislature. No authority has been cited before us for the proposition

that in the exercise of its legislative power under Entry 57 of List II, the State can only levy a tax which is compensatory in nature, even if there is no challenge to the levy on the ground of breach of Article 301 of the Constitution of India.

21. It was then submitted by Sri Mahto that Section 6 of the impugned Taxation Act will only apply to a manufacturer or a dealer if the vehicle in his possession is registered under the provisions of the Central Act. Only a registered owner of the vehicle, even if the registration is temporary, is liable to pay the tax u/s 6. He submitted that without registration a vehicle cannot be driven in a public place and therefore cannot be used on public road. Once the vehicle is sold for being used on the public road, the owner of the vehicle is required to get the vehicle registered under the Central Act. Since Section 5 of the impugned Taxation Act refers to payment of tax by every owner of a registered motor vehicle, and Section 6 provides that the tax at the annual rate specified in Schedule III, in lieu of the rates specified in Schedule I shall be paid by a manufacturer, or a dealer in motor vehicles, the provisions must be given a meaning so that the persons in possession of the motor vehicles u/s 6 must mean the registered owner of the vehicle under the Central Act. The submission completely overlooks the scheme of the impugned Taxation Act as also the Central Act. Under the main part of Section 39 of the Central Act, there is a prohibition against any person driving any motor vehicle and any owner of a motor vehicle causing or permitting the vehicle to be driven in any public place or in any other place without the vehicle being registered. The main part of Section 39 therefore is not limited in its application to vehicles being used in a public place only, since it also prohibits unregistered vehicles being driven in "any other place". Thus under the main part of Section 39, every owner of a vehicle whether a registered owner, or the owner otherwise, is required to get the vehicle registered before permitting the vehicle to be driven in any public place or in any other place. This would also include a manufacturer or a dealer who is in possession of a motor vehicle. The proviso carves out an exception, and it is on account of the proviso that a dealer of a motor vehicle is not required to get the vehicle in his possession registered, but that is subject to the dealer fulfilling such conditions as the Central Government may prescribe. Under the Central Rules, conditions have been prescribed by the Central Government and in accordance with the rules such dealer must obtain a trade certificate in respect of all motor vehicles in his possession, if he claims exemption from the necessity of registration. The scheme under the Central Act and the rules is therefore, clear that every motor vehicle must be registered subject to an exception carved out in favour of dealers who may claim exemption from registration by obtaining trade certificates in respect of the vehicles in their possession. The scheme of the Central Act does not envisage a motor vehicle in possession of a dealer or owner which is neither registered nor covered by a trade certificate issued under rule 35 of the Central Rules.

22. When we analyse the scheme of the impugned Taxation Act, it is clear that Section 5 levies a tax payable by every owner of a registered motor vehicle and the rates specified are those contained in Schedules I and II. Section 6 refers to

motor vehicles in possession of a manufacturer or a dealer in the course of his business as such manufacturer or dealer. The words "in lieu of the rates specified" only mean that annual rate of tax payable by a manufacturer or a dealer is not the same as that payable by a registered owner. While the registered owner has to pay tax at the rates specified in Schedules I and II, the manufacturer or dealer has to pay at the rates specified in Schedule III. There can, therefore, be no scope for an argument that even u/s 6 of the impugned Taxation Act, the manufacturer or dealer contemplated is one who is a registered owner of the vehicle. There is nothing which prevents a manufacturer or a dealer from getting the vehicles in his possession registered u/s 39 of the Central Act, because it is always open to him not to claim the benefit of exemption under proviso to Section 39. If the manufacturer or a dealer chooses to be the registered owner of the vehicle by not claiming exemption, he will be governed by Section 5 of the impugned Taxation Act. Section 6 of the impugned Taxation Act must necessarily apply only to those manufacturers or dealers who claiming benefit of exemption under proviso to Section 39 of the Central Act, which is made abundantly clear by Section 6 which refers to possession of motor vehicles in the course of business by such manufacturer or dealer under the authorisation of trade certificate granted under the Central Rules. There is, therefore, no justification for reading Section 6 of the impugned Taxation Act to mean that the tax payable thereunder is payable only by a registered owner of the vehicle. In fact, it applies only to a manufacturer or a dealer who claims exemption from the necessity of registration under proviso to Section 39 of the Central Act.

23. I shall now consider the submissions urged by Sri M.L. Varma, Senior advocate. It was submitted by him that the impugned Taxation Act is wholly arbitrary. There is no procedure prescribed for the assessment of tax. There is nothing in the Act to provide for issuance of notices etc. nor is there any procedure prescribed for the recovery of taxes. There is in fact no charging section imposing the levy on a manufacturer or a dealer. He, therefore, submitted that the impugned Taxation Act was wholly arbitrary and hit by Article 14 of the Constitution of India. Learned Counsel cited several authorities in support of the submissions that a taxing statute is not immune from challenge on the ground of Article 14, in construing fiscal statutes and in determining the liability of a subject to tax, one must have regard to the strict letter of the law and not merely to the spirit of the statute, or the substance of the law. If the revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four (sic) of the provisions of the taxing statute (sic) tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature, and by considering what was the substance of the matter. The intention of the legislature is primarily to be gathered from the words used in the statute, because in taxing Act one has to look merely to what is clearly said. There is no room for any intendment. There is no equity about a tax. Nothing is to be read, nothing is to be implied. One can only look fairly at the language

used. These principles are well established and it is, therefore, not necessary to refer to all the decisions cited at the bar. I may only notice that reliance was placed upon judgments reported in AIR 1957, Supreme Court 657, AIR 1961 Supreme Court 552, AIR 1962 Supreme Court 1563, AIR 1971 Supreme Court 2410, 108 ITR 345 and 55 ITR 741. Keeping in mind these principles well established, I shall now proceed to deal with the submissions urged at the bar.

24. The submissions that though Section 5 is a charging section, Section 6 is not, does not appeal to me. A charging section imposes the levy, but there is no particular form or language prescribed for a charging section. If the intention of the legislature is clearly brought out by the language employed in a section to impose a levy, that section must be construed as a charging section. There is also no obligation in law to provide for only one charging section in a statute. While there may be one composite charging section in a taxing statute, the legislature in its wisdom may enact two charging sections in the same statute, levying the charge upon different classes or category of tax payers. There can be no dispute that Section 5 of the impugned Taxation Act is a charging Section. Section 6 of the impugned Taxation Act, provides that a tax at the annual rate specified in Schedule III shall be paid by a manufacturer of, or a dealer in, motor vehicles, in respect of the motor vehicles in his possession in the course of his business etc. Clear words have been used to give effect to the legislative intent, and there is no need to read into Section 6, words which are not used by the legislature, to make it a charging section. There is also no need to infer a legislative intent because the language employed by the legislature is clear and categorical. Section 6 says that a tax at the annual rate specified in Schedule III shall be paid by a manufacturer of or a dealer. Perhaps the section could be drafted more artistically, but that is not to say that words employed in Section 6 are ambiguous, or that the legislative intent to levy a charge is not clearly brought out by the words employed in the section. Reading the section as it is, without reading into it anything more, and without speculating about the intention of the legislature, one must hold that Section 6 levies a tax on manufacturers and dealers in respect of motor vehicles in their possession in the course of their business, and therefore, the section must be held to be a charging section. It does not merely fix the rate, but also obliges the manufacturer or a dealer to pay the tax at the rate specified. The submission therefore that so far as the manufacturers are concerned, there is no charge levied on them, and consequently they incurred no liability to pay tax, must be rejected.

25. The second limb of the submission is that even if a charge is created, since proper method of assessment of tax and its recovery is not provided under the impugned Taxation Act, the validity of the impugned Taxation Act is prone to attack on the ground of arbitrariness, since it leaves everything to the executive without providing for guidelines. This submission is also without force. u/s 3 of the impugned Taxation Act, the State Government is authorised to appoint Taxing Officers to exercise and perform, within such areas as may be specified in the

notification, the powers and duties conferred and imposed on the taxing officer. It is not necessary to provide an elaborate scheme for assessment of tax in all cases. The machinery of assessment has to be provided keeping in view the complexities involved. An elaborate assessment procedure need not be laid down where the assessment of tax, having regard to the provisions of the taxing statute, is a simple affair. Under the impugned Taxation Act, the rate of tax is specified in Schedule III. In the case of chassis of heavy motor vehicle, annual tax for the first seven or less vehicles of a manufacturer or a dealer is Rs. 600/-. The annual tax for additional seven vehicles of a manufacturer or dealer is Rs. 600/-. Thus the annual tax for the first seven vehicles is Rs. 600/- and thereafter for every seven vehicles it is Rs. 600/-. All that is required to be ascertained for the purpose of levy and payment of tax is the number of vehicles in possession of the manufacturer or the dealer in any year of assessment. Once that number is ascertained the rest is a matter of simple arithmetic. Sri Varma submitted that all that was necessary for the Taxing Officer was to ask for the number of trade certificates issued, and not the number of vehicles manufactured, because according to him tax was leviable only on vehicles covered by trade certificates. I have earlier rejected the submission that tax is leviable only on vehicles actually covered by trade certificates. I have held that tax is leviable not only on vehicles which are covered by trade certificates, but also on vehicles which ought to be covered by trade certificates, because neither the Central Act nor the impugned Taxation Act conceives of a motor vehicle which is neither required to be registered nor required to be covered by a trade certificate.

26. Rule 4 of the Taxation Rules in clear terms provides that the due date of payment of tax shall be the date of expiry of the period for which the tax had been last paid. In cases where no such tax had previously been paid, the date of acquisition of the vehicle, or the date when such tax is imposed by law, shall be due date for payment of tax. The date of acquisition of the vehicle must mean the date on which the manufacturer or the dealer comes in possession of a vehicle which answers the description of a "motor vehicle" as defined under the Central Act. It is, therefore, clear that as soon as a completed chassis suitable for use on roads comes into existence, the liability of the manufacturer arises. Similarly as soon as such a motor vehicle is received by the dealer for the purpose of his business, his liability u/s 6 of the impugned Taxation Act arises. There is no uncertainty about the due date of payment of the tax. Under the said rule if the tax is paid within 15 days from the due date of payment no penalty is levied. If it is delayed any further penalty is to be charged in accordance with the table which is part of rule-4.

27. Under rule 5, the procedure for payment of tax has been elaborated. The relevant declaration to be submitted by a dealer or a manufacturer has been prescribed in form-B2. The said form, as is apparent from the bare perusal thereof, is to be filed before the Taxing Officer concerned disclosing the name and address of the manufacturer or the dealer, number of trade certificates granted and other particulars. The manufacturer is also required to state the

amount of tax and penalty paid, and the details of payment made. On such declaration being filed, under Rule 6 the Taxing Officer shall satisfy himself that the declaration is complete in every respect and the amount tendered in the payment of tax is equal to the amount of tax which appears from such declaration to be payable. If he is satisfied he may accept the payment and grant receipt therefor in the form prescribed. The fact that the Taxing Officer has to satisfy himself about the correctness and completeness of the declaration made implies that he must make an inquiry in case he is not satisfied with the declaration delivered to him. To satisfy himself, he can obviously make inquiries from the manufacturer or the dealer filing the declaration before him. It is certainly within his jurisdiction to call upon the manufacturer to disclose number of vehicles manufactured in a financial year with a view to ascertain as to whether the tax has been correctly paid. If he is not satisfied, he may call upon the manufacturer or dealer to pay the balance, including penalty, if any. Under Rule 19, the appellate and the revisional authorities have been specified in respect of orders passed by the Taxing Officer and the other authorities.

28. In my view the provisions of the impugned Taxation Act and the Taxation rules are clear and specific and provide the manner in which a manufacturer or a dealer is required to pay the tax, and the manner in which the same is to be assessed by the Taxing Officer. A very detailed procedure for assessment has not been prescribed because the assessment of tax u/s 6 of the impugned Taxation Act is a simple affair, since rates of tax are fixed having regard to number of motor vehicles in possession of a manufacturer or a dealer in the course of a financial year. There is no warrant in law for the proposition that the assessment procedure under a taxation statute must necessarily be a cumbersome one. The rules clearly provide for filing of declaration before the Taxing Officer and the manner in which the tax is required to be paid. The date on which a manufacturer or a dealer incurs the liability to pay the tax is also clear from Rule 4 read with Section 6 of the impugned Taxation Act, and the period within which the tax may be paid without penalty is also specified. The rate at which the penalty is to be charged for delayed payment is also clearly laid down. The question as to whether in the instant cases penalty was levied in accordance with law is a separate question, which I shall deal later.

29. It was then submitted that u/s 6 of the impugned Taxation Act a tax at the annual rate specified in Schedule III has been levied on a manufacturer or a dealer. Counsel sought to draw a distinction between levy of a tax at the annual rate and annual tax at rates specified. I shall deal with this submission later, but for the present the scheme of the taxing statute may be first appreciated. Section 6 says that a tax at the annual rate specified in Schedule III shall be paid by a manufacturer or a dealer. This takes us to Schedule III and the scheme of Schedule III is that a minimum of Rs. 600/- has to be paid by way of annual tax for the first seven or less vehicles. Thereafter for every seven vehicles, annual tax of Rs. 600/- is to be paid by a manufacturer or a dealer of chassis of heavy motor vehicles. There appears to be no apparent contradiction between Section 6

and Schedule III of the impugned Taxation Act, and the method of calculation of tax is so simple that it does not require elaboration.

30. Sri Ram Balak Mahto submitted that under Schedule III even if a manufacturer or a dealer has less than seven vehicles in his possession in a year, he has to pay the same amount of tax which he may have to pay if he has seven vehicles in his possession. The rate of tax is the same for every additional seven vehicles. He submitted that a smaller dealer who may deal in less than seven vehicles in a year is taxed at the same rate at which a bigger dealer is taxed. According to him, un-equals are treated as equals. I fail to understand how he is justified in submitting that by charging tax at the same rate there is discrimination. The mere fact that the volume of business of a manufacturer is less than that of another, does not necessarily cast an obligation upon a State to prescribe a lesser rate of tax for a smaller dealer. The tax is based not on the volume of business of a dealer, but on the number of motor vehicles in his possession. Moreover the quantum of tax is also nominal. In these circumstances, by prescribing the same rate of tax for small and big manufacturers and dealers, no discrimination results.

31. He also submitted that the tax is fixed at the annual rate, and therefore even if a dealer or a manufacturer has in his possession a vehicle only for a few days in a year, he has to pay the annual tax since there is no provision for proportionate reduction of tax. Where an annual rate of tax is prescribed, such events cannot be ruled out. The same can be said about the provisions of Wealth Tax Act, but for this reason, the Act has never been held to be unconstitutional. If the Act provides for an annual rate of tax, and the year means the financial year, the liability to pay the tax arises in a particular financial year even if the liability is incurred only a few days before the expiry of the said financial year. There is nothing arbitrary in this, and a taxing statute cannot be struck down on such consideration, even if some such hardship results.

32. I shall now consider the submission that Section 6 levies a tax at the annual rate specified in Schedule III, but so far as the levy of tax u/s 5 is concerned, as would be apparent from Schedules I and II, an annual rate of tax on motor vehicles has been prescribed. He submitted that there is distinction between "an annual tax" and "a tax calculated at the annual rate". Having regard to the scheme of the Act, there is no apparent contradiction as submitted by counsel. u/s 5, tax is levied on every owner of a registered motor vehicle which is payable at the annual rate of the tax prescribed under the relevant schedule. The owner of a registered motor vehicle, other than personalised vehicle, may pay tax for one or more quarterly period at the annual rate of tax payable for the quarter. He may also pay tax for any period less than a quarterly period, but in that event tax paid by him shall not be less than 1/12th of the annual rate of tax for every month or part of a month comprising such period. This is quite evident from Section 7(3) of the Act. Thus an annual rate of tax has been prescribed, meaning thereby the tax has to be paid at the rate specified under the relevant schedules

for the whole year. Since the owners of registered vehicles may pay tax for one or more quarterly periods, their tax liability is to be calculated having regard to the annual rate of tax payable under the relevant schedules. It is for this reason that the words used are "annual rate of tax on motor vehicles". In the case of a manufacturer or a dealer upon whom a charge is levied u/s 6 to pay a tax at the annual rate specified in Schedule III, the tax being payable once in every financial year in respect of a motor vehicle, it was not necessary to use the words "annual rate of tax"; because there is no provision in the Act for payment of tax u/s 6 for any quarterly period or lesser period. The tax is an annual tax and has to be paid once in a financial year in respect of a motor vehicle. The use of words "a tax at the annual rate" in Section 6 must be understood in the light of the scheme of the Act which really provides for a one time payment of annual tax by a manufacturer or a dealer. So understood, there is no apparent contradiction between Section 6 and Schedule III of the impugned Taxation Act. It is well settled that if possible, the provisions of the Act must be read harmoniously, and where they can be so read, the law cannot be held to be bad on the ground of uncertainty. It cannot also be disputed that Schedule III of the Act is a part of the impugned Taxation Act.

33. It was then submitted that Section 7 of the impugned Taxation Act read with Rule 3 of the Taxation Rules may not apply to the case of a manufacturer or a dealer, and therefore the impugned Taxation Act does not make any provision as to when liability u/s 6 is incurred. It is true that Section 7 of the Act will apply only to the case of a registered owner of the motor vehicle. The said provision provides for payment of one time tax on personalised vehicles, and payment of tax for one or more quarterly periods or lesser period. This has no application to a manufacturer or a dealer who is required to pay an annual tax which is valid for the entire financial year. As I have held earlier, rule 4 of the Taxation Rules prescribes that the due date of payment of tax shall be the date of acquisition of the vehicle, or the date where such tax is imposed by law. In the case of a vehicle manufactured by a manufacturer which answers the description of a "motor vehicle" suitable for use on roads, and in the case of a dealer the date on which he receives a motor vehicle for purpose of his business as such dealer, is the date on which the liability accrues and must be paid within 15 days from the due date without payment of penalty. Once the liability arises for payment of tax, the manner in which it has to be paid is prescribed under rule 5 of the Taxation Rules. The tax is calculated in the manner prescribed under Schedule III. In the case of chassis of heavy motor vehicles a tax of 600/- is payable as annual tax for first seven or less vehicles of a manufacturer or a dealer. For every additional seven vehicles, he is required to pay annual tax of Rs. 600/-. This means that as soon as a manufacturer or a dealer acquires a vehicle, or comes in possession of a vehicle he must pay the tax within the grace period to avoid penalty. The annual tax payable by him is Rs. 600/- but the tax so paid is valid for six other vehicles which he acquires within the financial year. This means that once the annual tax of Rs. 600/- is paid, that covers the tax payable on six more vehicles

which the dealer or the manufacturer may acquire within the financial year. Thereafter for every seven vehicles he must pay a tax of Rs. 600/-. It is open to the dealer or a manufacturer to pay the tax as soon as he acquires the first vehicle and the tax so paid is valid for the next six vehicles. It is equally open to him to calculate the tax and pay the same every fortnightly since grace period of 15 days is provided under the rules so that the tax on all motor vehicles acquired by a dealer or a manufacturer is paid. At the end of the financial year, he is required to file a declaration in Form-B2. Stating all particulars and giving details of payment made to enable the Taxing Officer to satisfy himself that the tax dues have been paid on all vehicles which have come in possession of the manufacturer or dealer during the relevant financial year. It is true that no time has been prescribed for filing of the declaration under Rule 5 of the Taxation Rules, but that should not make any difference to a manufacturer or a dealer because no penalty is provided for delayed filing of a declaration. A manufacturer or a dealer may file the required declaration at the end of the financial year or may do so when called upon the taxing officer to furnish the declaration. What is important is that the tax must be paid within the prescribed period. If he delays payment of the tax, he may incur the liability for payment of penalty at the rates prescribed under the Taxation Rules as also other penalties prescribed u/s 2B of the impugned Taxation Act.

34. It was further submitted that u/s 23 of the impugned Taxation Act a person liable to pay the tax may incur the liability to pay penalty at the rate specified if the tax is not paid during the prescribed period. It is not clear as to what is meant by "prescribed period". In my view, rule 4 of the Taxation Rules answers the question by providing that the due date for payment of tax is the date of acquisition of vehicle, or the date when such tax is imposed by law. The period during which this tax must be paid without incurring liability for penalty is the period of 15 days from the due date of payment. If the tax is paid beyond the grace period of 15 days, the manufacturer or the dealer incurs the liability to pay penalty.

35. It was submitted that Section 23 imposes a liability to pay penalty for nonpayment of tax in time at the rates prescribed by the State Government. The rates have been prescribed under Rule 4. However Rule 4(2) provides that in case of delayed payment, the Taxing Officer "may" impose penalty in respect of such vehicles at the rate specified. This means the imposition of penalty is not mandatory. The Taxing Officer has a discretion to impose or not to impose a penalty having regard to the facts of the case. For this purpose he must afford to the person concerned an opportunity of being heard in the matter. I have no difficulty in accepting this submission having regard to the language of Rule 4(2) of the Taxation Rules. The Taxing Officer may or may not impose a penalty having regard to the facts of the case, but in case he chooses to impose a penalty, the same shall be imposed at the rate specified in the table which is part of Rule 4.

The other due date for tax payment under Rule 4 is the date when such tax is imposed by law. This also does not give rise to uncertainty, because the date on which the Act came into force is known and therefore the tax on all motor vehicles in possession of the manufacturer or the dealer on that day and thereafter has to be paid at the rates specified in Schedule III.

36. It was faintly submitted that if Rule 3 does not apply to the case of a manufacturer or a dealer Rule 4 also may have no application to a manufacturer or a dealer. The submission is without force because Rule 3 obviously deals with payment of tax for quarterly periods which is permissible only in the case of the tax levied u/s 5. On the other hand, Rule 4 deals with tax payable on vehicles other than personalised vehicles which includes the motor vehicles which are not covered by certificate of registration or temporary registration and which are in possession of a manufacturer or dealer in course of his business. Rule 3 is confined in its application to motor vehicles in respect of which tax for quarterly period may be paid, while Rule 4 deals with other vehicle, other than personalised vehicles, in respect of which tax has either not been paid at all, or not been paid after the date of expiry of the period for which the tax has been last paid.

37. Having considered all aspects of the matter. I have no doubt in coming to the conclusion that the impugned Taxation Act has been enacted by the State Legislature under Entry 57 of List II of the Seventh Schedule and the legislative competence of the State Legislature cannot be disputed. The impugned Taxation Act also is not bad for the reason that it is not workable. Section 6 of the Act is also a charging section so far as manufacturers and dealers are concerned. The impugned Taxation Act provides for an assessment to be made by the Taxing Officer and also lays down the manner in which such tax shall be paid and recovered. The liability to pay the tax accrues as soon as a manufacturer or a dealer acquires a motor vehicle suitable for use on road for the purpose of its trade or business. The tax levied cannot be characterised as arbitrary since the impugned Taxation Act and the Taxation Rules lay down the guidelines for the exercise of power under the impugned Taxation Act by the concerned authorities.

38. It was then submitted on behalf of the petitioner in CWJC No. 3788 (R) that the manner in which tax and penalty has been levied is illegal. Referring to Annexure-1 the notice of demand dated 25.11.1995, it was submitted that though the petitioner had been informed by letter dated 6.11.1995 that it had to pay the tax u/s 6 at the rate prescribed under Schedule III with effect from the date the Act came into effect, the petitioner had failed to file its declaration under Form B-2. Under these circumstances, the tax was being levied on the basis of manufacture of 100 chassis every day from 26.11.1993 to 31.3.1995. So calculated, the tax was assessed at Rs. 42,09,000/- and penalty Rs. 84,18,000/- total Rs. 1,26,27,000/- (Rupees One crore, twenty six lacs and twenty seven thousand). Counsel submitted that the tax has been assessed in an arbitrary manner. The tax could be levied and assessed only on the basis of the trade

certificates issued, and not on the basis of the number of vehicles manufactured. The assessment made on the basis of average daily production is bad because there is no basis for the assumption that 100 chassis are produced by the petitioner every day. A notice had been issued to the petitioner by the District Transport Officer on 6.9.1995 requiring it to take trade certificates for all vehicles. To this, the petitioner had replied on 5.10.1995 saying that it was not obligatory for the petitioner to take out trade certificates in respect of all vehicles manufactured. The petitioner had obtained 12 trade certificates only in respect of vehicles which were required for any of the purposes under Rule 41 of the Central Rules. Thereafter a notice was issued on 6.11.1995 requiring the petitioner to file declaration under Rule 5(4) to which the petitioner replied on 25.11.1995 reiterating its earlier stand. Without any inquiry and without hearing the petitioner impugned demand notice was issued on 25.11.1995 making a comprehensive assessment for several years. Since the assessment is based on no material whatsoever, even the so called base judgment smacked of arbitrariness. A huge liability has been imposed upon the petitioner without even hearing the petitioner.

The learned Advocate General appearing on behalf of the State fairly submitted that he would not stand on technicalities and the Taxing Officer may be directed to hear the petitioner and pass an order in accordance with law.

39. Having regard to the fact that the impugned Taxation Act for the first time levied a tax on motor vehicles in possession of manufacturers and dealers, and the petitioner entertained a serious doubt as to its liability, as also having regard to the fact that the Taxing Officer did not give to the petitioner an opportunity of hearing both on the question of assessment of tax and imposition of penalty, it would only be fair to give to the petitioner an opportunity of placing its case before the Taxing Officer, Counsel for the petitioner submitted that no penalty ought to be levied in this case, and reliance was placed upon several decisions of the Supreme Court including the decisions reported in AIR 1970 Supreme Court 253 and 211 ITR 472. On the other hand, learned Advocate General placed considerable reliance on the decisions of the Supreme Court in AIR 1992 Supreme Court 1862 and AIR 1996 Supreme Court 1100. I have already held that under the impugned Taxation Act. the Taxing Officer has the power to impose a penalty in case of late payment of tax. I have also held, that he has a discretion in the matter. Since it is within the discretionary jurisdiction of the Taxing Officer to levy a penalty, it will not be proper for this Court to express any opinion on the question as to whether in the facts and circumstances of the case, a penalty ought to be levied. Needless to say that the Taxing Officer will keep in mind the law enunciated on the subject in binding precedents, and pass an appropriate order having regard to the submissions urged before him by the petitioner. It will be open to the petitioner to urge all contentions before him in relation to the assessment of tax and imposition of penalty. The Taxing Officer will proceed to pass an order having regard to the principles laid down in this judgment.

40. CWJC No. 3788 of 1995(R) is therefore, partly allowed only to the extent that the petitioner may file a comprehensive petition before the Taxing Officer within six weeks from today annexing all necessary documents which may facilitate the Taxing Officer to pass an order assessing the tax payable by the petitioner and the penalty, if any. It will be open to the Taxing Officer to ask for such other material as may be considered necessary by him for completing the assessment Annexure-1, the impugned notice of demand dated 25.11.1995 is quashed only for the purpose of enabling the Taxing Officer to pass a fresh order in accordance with law, and it is made clear that the quashing of the demand notice, Annexure-1 shall not in any manner affect the rights of the parties nor in any manner, affect the liability of the petitioner to pay penalty if imposed. The Taxing Officer shall pass an order after giving a reasonable opportunity of hearing to the petitioner.

41. Mr. Pawan Kumar, Senior Advocate appearing on behalf of the petitioners in CWJC Nos. 2708 of 1995(R), 3195 of 1995(R) and 10296 of 1995 adopted the arguments advanced by Sri M.N. Varma and Sri R.B. Mahto, Senior Advocate. He, however, urged an additional submission on behalf of the dealers who deal in two wheeler or three wheeler vehicles. It was submitted by him that the definition of a "motor vehicle" under the Central Act must be confined to four wheeler vehicles. The demand of tax from the petitioners who are dealers in motor cycles and scooters etc. was not justified. He also faintly submitted that since the vehicles in which the petitioners deal, such as scooters have less than 35 c.c. capacity they cannot be treated as "motor vehicles". There is no pleading to the effect that the vehicles in which the petitioners deal have a capacity of less than 35 c.c. and therefore, it is not necessary for this court to express any opinion on this aspect of the matter. Under the Central Act "other vehicle" or "vehicle" has been defined u/s 2(28). u/s 2, "motor cab" "motor car", "motor cycle", "omnibus" and "maxi car", have also been defined and from the definition, it appears that each one of them is also a motor vehicle answering the description contained in the definition clause. It would, therefore, not be correct to hold that a motor vehicle can only be a four wheeler vehicle, and not two wheeler or three wheeler vehicle. Under the IIIrd Schedule to the impugned Taxation Act, motor cycle has been clearly mentioned and the annual tax payable thereon has also been specified. It is therefore, futile to contend that the tax imposed under Schedule III of the impugned Taxation Act is not payable in respect of two wheeler or three wheeler vehicles which answer the description of a motorcycle under the Central Act. It would be seen that a motorcycle has been defined to mean a two wheeled motor vehicle, inclusive of any detachable side car having an extra wheel, attached to the motor vehicle. Whether the vehicles in which the petitioners deal come within the definition of a motor cycle under the Central Act, is a matter for the Taxing Officer to consider, having regard to facts of the case. In the result, I hold that the impugned Taxation Act is a valid piece of legislation. The petitioners cannot deny their liability to pay annual tax at the rates specified. However CWJC No. 3788 of 1995(R) is partly allowed inasmuch as the Taxing

Officer is directed to hear the petitioners on the question of assessment of tax and imposition of penalty and to pass fresh orders in accordance with law having regard to the directions contained in paragraphs 40 and 41 of the judgment. The remaining writ petitions are dismissed. There will be no order as to cost.

B.P. Sharma, J.

I agree.