(2016) 03 BOM CK 0178

In the Bombay High Court

Case No : Writ Petition No. 4098 of 2014

Royal Carrier & Courier Pvt. Ltd., Dewas (M.P.) APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:
Bombay Motor Vehicles (Taxation of Passengers) Act, 1958 — Section 3
Motor Vehicles Act, 1988 — Section 88(5)

Citation : (2016) MCR 1073

Hon'ble Judges : R.M. Borde and A.I.S. Cheema, JJ.

Bench : Division Bench

Advocate : Writ Petition No. 4098 of 2014.; Mr. P.F. Patni, Advocate, for the Petitioner; Mrs. A. V. Gondhalekar, AGP, for the State; Writ Petition No. 5835 of 2013; Mr. A.S. Deshpande, Advocate, for the Petitioner; Mr. B.V. Virdhe, AGP, for the State; Writ Petition

Final Decision : Disposed Off

Judgement

R. M. Borde, J.(Oral)—Heard.

2. Rule. Rule made returnable forthwith. With the consent of the parties, petitions are taken up for final disposal at admission stage.

3. Petitioners are transporters operating passenger vehicles on the routes prescribed under the Reciprocal Agreement entered into between the State of Maharashtra and the State of Madhya Pradesh. The Reciprocal Transport Agreement has been entered into between the two states on 1st March, 2007, primarily for prescribing the agreed routes in regard to operation of the stage carriage services. The agreement also prescribes tax on passengers leviable under the Bombay Motor Vehicles (Taxation of Passenger) Act, 1958, (hereinafter referred to as ''Act of 1958'') which will be on the basis of 70% load factor of seating capacity of the passenger vehicle. According to petitioners, it is not permissible for the State to levy and demand passenger tax at the rate of 70% of load factor of seating capacity of the passenger transport vehicle since imposition

of such tax is contrary to section 3 of the Act of 1958. Petitioners as such seek declaration that the respondents states shall have no authority to levy and demand passenger tax at the rate specified under the Reciprocal agreement i.e. on the basis of load factor of seating capacity of passenger vehicle and, hold such levy of demand contrary to section 3 of the Act of 1958 and ultra virus to Article 256 of the Constitution of India.

4. The State of Maharashtra has entered into Reciprocal Transport Agreement with the State of Madhya Pradesh and the agreement came into force with effect from 1st March, 2007. The agreement is in regard to the operation of the stage carriage service more fully specified in the agreement on inter-State routes between two states. The agreement was published as required under section 88(5) of the Motor Vehicles Act, 1988, and, on consideration of representations from the persons who have right to make representation, the same has been finalised. Clause 1 of the agreement provides for taxation which reads thus :

1. Taxation ? (a) There shall be single point Motor Vehicle Tax in the reciprocating State in respect of stage carriages covered by substantive permits or temporary permits issued during the pendency of renewals of substantive permits under Section 87(1)(d) of the Motor Vehicles Act, 1988, within the agreed route and countersigned by other State. There shall be tax on passenger leviable under Bombay Motor Vehicle (taxation of passengers) Act, 1958, which will be on the basis of 70% load factor of seating capacity of the passenger vehicle.

(b) Goods carriages plying on substantive permits or temporary permits issued during the pendency of renewal of substantive permits under Section 87(1)(d) of the Motor Vehicles Act, 1988 within the agreed quota and countersigned by other State, shall be exempted on single point tax basis in other State as under:-

(i) If the goods carriage belongs to the State of Madhya Pradesh, Motor Vehicles Tax of Maharashtra State shall be liable to pay for a period of one year in advance and the countersignature shall be valid for that period only:

(ii) If the goods carriage belongs to the State of Maharashtra Motor Vehicle Tax exemption is fixed from time to time by the Government of Madhya Pradesh shall be granted in Madhya Pradesh and the balance (i.e. M.V. Tax minus concessional exemption) amount of Motor Vehicle Tax shall be payable for a period of one year in advance and the countersignature shall be valid for that period only. The aforesaid exemption shall hereinafter be called "Reciprocal tax exemption".

(c) Explanation - For the purpose of this agreement -

(1) the word "Single point Motor Vehicle Tax" in respect of a stage carriages covered with a duly countersigned permits means:-

(i) in the case of stage carriage of Madhya Pradesh, liability of payment of Motor Vehicle Tax in Home State but exemption from Motor Vehicle Tax in the State of Maharashtra. However passenger tax of Maharashtra shall be payable on the basis of 70% load factor of seating capacity of the passenger vehicle.

(ii) In the case of stage carriage of Maharashtra the liability of payment of Motor vehicle Tax (Road Tax) in Home State along with the liability of payment of Motor Vehicle Tax (Road Tax) in Home State along with the liability of payment of Motor Vehicle Tax Madhya Pradesh at concessional rate applicable to the stage carriage of other State plying under a reciprocal agreement as provided in the Madhya Pradesh Motoryan Karadhan Adiniyam, 1991.

(2) The words "Double Point Tax" Basis in respect of a Motor Vehicle means the liability of payment of all the taxes including Motor Vehicle Tax/Toll in both States.

The mode of payment of tax is provided under clause 2 of the agreement. The Reciprocal agreement is entered into between the State of Maharashtra and the State of Madhya Pradesh as provided under section 88(5) of the Motor Vehicles Act, 1988. The relevant provisions are as quoted below :

88. Validation of permits for use outside region in which granted- (5) Every proposal to enter into an agreement between the States to fix the number of permits which is proposed to be granted or countersigned in respect of each route or area, shall be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in regional language circulating in the area or route proposed to be covered by the agreement together with a notice of the date before which representations in connection therewith may be submitted, and the date not being less than thirty days from the date of publication in the Official Gazette, on which, and the authority by which, and the time and place at which the proposal and any representation received in connection therewith will be considered.

(6) Every agreement arrived at between the State shall, insofar as it relates to the grant of countersignature of permits, be published by each of the State Governments concerned in the Official Gazette and in any one or more of the newspapers in the regional language circulating in the area or route covered by the agreement and the State Transport Authority of the State and the Regional Transport Authority concerned shall give effect to it.

The Act of 1958 provides for levy of tax on passengers carried by stage carriage in the State. Section 3 of the Act relates to levy of tax on passengers carried by stage carriage which reads thus :

Section 3 : Levy of tax on passengers carried by stage carriage - (1) There shall be levied and paid to the State Government a tax on all 3[Passengers carried by road in stage carriages] 4[at such rate to be fixed by the State Government from time to time by order in the Official Gazette as would yield an amount not exceeding twenty per cent] of the inclusive amount of fares payable to the operator of a stage carriage.

(2) After calculating the total amount of tax payable under subsection (1) out of the total amount received by an operator during each month on account of inclusive fares in respect of the stage carriage or stage carriages held by him the

total amount of tax shall wherever necessary be rounded off to the nearest naya paisa, fractions of half a naya paisa and over being counted as one and less than held being disregarded.

Section 5 of the Act provides that tax shall be paid every month to the Tax Officer which reads thus :

Section 5 : Tax to be paid every month [to Tax Officer] : The tax payable during any month in accordance with the returns submitted under Section 4 shall be paid to the Tax Officer by the operator on or before such date or dates of the month immediately succeeding as may be prescribed in the case of fleet owners and other operators.

Provided that the tax payable by the operator, of a stage carriage which is registered, or in respect of which a permit is issued, by any Transport Authority other than the Transport Authority in the State of Maharashtra, plying such carriage as a contract carriage in the State of Maharashtra, shall be paid by him to the nearest Tax Officer while entering such contract carriage in the State of Maharashtra and such operator shall also file with the Tax Officer the return in respect of such tax in the form prescribed for daily return; and if the journey by such contract carriage terminates in the State of Maharashtra and thereafter the same contract carriage commences further or return journey with passengers the tax payable in respect thereof shall be paid to the Tax Officer of the nearest area from where the journey so commences Or if such journey commences on a public holiday to any other Tax Officer, before such contract carriage leaves the State: and such operator shall also file with such Tax Officer the return as aforesaid in respect of such tax.

The procedure where no returns are submitted as well as fares escaping assessment, penalty for non-payment of tax, recovery of tax, restrictions on the use of stage carriages in certain cases and refund of excess payment has been provided under sections 6 to 10A of the Act which reads thus :

Section 06 : Procedure where no returns are submitted, etc. - In the following cases, that is to say, -

(a) Where no returns have been submitted by the operator in respect of any stage carriage for any months or portion thereof, or

(b) Where the returns submitted by the operator in respect of any stage carriage for any month or portion thereof appear to the Tax Officer to be incorrect or incomplete. 3[the Tax Officer shall, at any time] after giving the operator a reasonable opportunity, in case (a) of making his representation, if any, and in case (b) of establishing the correctness and completeness of the returns submitted by him, determine the sum payable to the State Government by the operator by way of tax during such month or portion thereof; Provided that the sum so determined shall not exceed the maximum tax which would have been payable to the State Government if the stage carriage had carried its full complement of passengers during such month or portion thereof.

Section 07 : Fares escaping assessment : If, for any reason, the whole or any portion of the tax leviable under this Act for any month has escaped assessment, the Tax Officer may, at any time within, but not beyond one year from the expiry of that month, assess the tax which has escaped assessment after issuing a notice to the operator and making such inquiry as the officer may consider necessary,

Section 08 : Penalty for non-payment of tax : Where the whole or any portion of the tax payable to the State Government in respect of any stage carriage for any month or portion thereof in pursuance of Sections 5, 6 and 7 has not been paid to it in time, the Tax Officer may, in his discretion, levy in addition to the tax so payable, a penalty not exceeding 25 per cent of the maximum tax which would have been payable to the State Government if the stage carriage had carried its full complement of passengers during such month or portion thereof.

Section 09 : Recovery of Tax, etc. (1) In the cases referred to in sections 6, 7 and 8 the Tax Officer shall serve the operator a notice of demand for the sums payable to the State Government and the sums specified in such notice may be recovered from the operator as arrears of land revenue.

(2) Where the sums specified in the notice of demand are not paid within fifteen days from the date on which the notice was served on the operator, the stage carriage in respect of which the tax is due and its accessories may be distrained and sold under the appropriate law relating to recovery of arrears of land revenue, whether or not such vehicle or accessories are in the possession or control of the operator: Provided that no distraint shall be made in pursuance of this subsection except at the instance or with the consent of the State Government or such officer as may be authorised by the State Government in this behalf.

(3) Distraints under sub-section (2) may also be made by such officers or class of officers as the State Government may, by general or special order, direct and the officer making any such distraint shall forward the proceedings thereof together within the distraint articles to the Collector for further action under sub-section (2).

Section 10 : Restrictions on the use of stage carriages in certain cases. No stage carriage shall be used for the carriage of passengers on any road in the State-

(a) in case any tax or penalty payable in respect thereof remains unpaid for more than fifteen days after the notice of demand referred to in Section 9 has been served on the operator, until such tax or penalty is paid, or

(b) in case the returns required by section 4 have not been submitted, if daily returns are required, for more than seven days, and if returns at less frequent intervals have been prescribed, for such number of times and during such period as may be prescribed, until the returns are submitted;

Provided that the Tax Officer may, if the operator proves to his satisfaction that the failure to submit the returns referred to in clause (b) was not deliberate, exempt the stage carriage from the operation of that clause.

Section 10A : Refund of excess payment. The Tax Officer shall refund to an operator in such manner as may be prescribed the amount of tax and penalty (if any) paid by such operator in excess of the amount due from him. The refund may be either by cash payment or, at the option of the operator, by deduction of such excess from the amount of tax and penalty (if any) due in respect of any other period:

Provided that, the Tax Officer shall first apply such excess towards the recovery of any amount due in respect of which a notice under subsection (1) of section 9 has been served on the operator, and shall then refund the balance (if any).

5. Petitioners contend that the provisions contained in the agreement i.e. clause (1) prescribes levy of tax from passengers on the basis of 70% of the load factor of seating capacity of the passenger vehicle is contrary to section 3 of the Act of 1958. Section 3 of the Act provides that there shall be levied and paid to the State Government a tax on all passengers carried by road in stage carriages at such rate to be fixed by the State Government from time to time by order in the Official Gazette as would yield an amount not exceeding twenty per cent of the inclusive amount of fares payable to the operator of a stage carriages. Thus, levy of tax has nexus with the passengers carried by road in stage carriages and the amount of fare payable to the operator of stage carriage. The amount of tax is liable to be paid at the end of the month. In view of section 5 of the act there is a provision in respect of presentation of returns on or before such date or dates of the month immediately succeeding as may be prescribed in the case of fleet owners and other operators. In respect of stage carriage which is registered or in respect of which a permit is issued by any transport authority other than transport authority in the State of Maharashtra, tax shall be paid by him to the nearest Tax Officer while entering such contract carriage in the State of Maharashtra and such operator is also required to file with the Tax Officer return in respect of such tax in the form prescribed for daily returns; and if journey by such contract carriage terminates in the State of Maharashtra and thereafter the same contract carriage commences further or return journey with passengers the tax payable in respect thereof shall be paid to the Tax Officer of the nearest area from where the journey so commences or if such journey commences on a public holiday to any other Tax Officer, before such contract carriage leaves the State and such operator shall also file with such Tax Officer the return as aforesaid in respect of such tax. It is the contention of petitioners that the procedure provided under sections 3, 4 and 5 has been given go bye and the liability is prescribed on the transport operator to pay lump sum amount in advance on the basis of 70% of the passenger carrying capacity of the vehicle. According to petitioners, imposition of lump sum tax shall have to be construed as tax on the transporter and not on passenger. It is the contention of petitioners that Article

256 of the Constitution of India mandates that no tax shall be levied or collected except by authority of law. The levy and collection of tax in lump sum in pursuance to reciprocal agreement, according to petitioners, is in contravention of Article 256 of the Constitution of India read with provisions of the Act of 1958. It is further contended that entry 56 of List II i.e. State List of Seventh Schedule of the Constitution of India authorises the State to levy tax on goods and passengers carried by road or on inland waterways. It is permissible for the State to levy tax on passengers carried by road however, it is not permissible to levy tax on the transporter. Levy of tax on lump sum basis would bring the element of compulsion requiring recovery of tax from the bus operators or the transporters under the garb of levy of tax on passengers without having regard to the number of passengers actually travelling, would be in effect a tax on transporter and not on passengers which would be impermissible in terms of entry 56 of List II of the Seventh Schedule of the Constitution of India. Reliance is placed on the judgment in the matter of Gill Bus Service (Registered), Amritsar and others v. State of Punjab and another reported in AIR 1993 Punjab and Haryana 281. In paragraph no. 11 of the judgment, it is observed thus :

11. If the stand as taken by the State Government is accepted that after the amendment, a transporter is obliged to pay passenger tax on lump sum basis, it can straightway be concluded that there is an element of compulsion for the transporter to pay tax on lump sum basis and in our view this compulsion has rendered the provisions relating to the payment of tax on lump sum basis as invalid. In terms of Entry 56, as noticed above, the State Legislature has the power to levy and collect tax on passengers carried by road. The Legislature is, thus, competent to levy tax on passengers and nobody else. It could, however, devise a machinery for the recovery of said tax by requiring the bus operators or its owners to collect tax and pay to the State Government as it would otherwise be impossible for the State Government to collect tax from each passenger. It in the garb of levy of tax on passengers could not tax the operators by requiring them to pay tax on lump sum basis without having regard to the number of passengers actually travelled. Say, for example, if in a bus only 20 passengers have travelled, the operator would be required to pay tax in respect of 20 passengers only who actually travelled in the bus whereas if the operator is required to pay tax on lump sum basis he will have to pay for more passengers and for the entire journey of the route on the basis of formula as detailed in Rule 9 of the Rules, by taking the occupancy of the passengers at 65% which may not factually be there. In other words, it would be a tax on the transporter and not on the passengers or the goods. This is so discernible from the judgment of the Supreme Court in Rai Ramkrishna (AIR 1963 SC 1667) (supra). It is, however, a matter of common knowledge that the buses carrying passengers are over-loaded and carry more passengers than are permissible under the law and in any case are carrying more passengers than the percentage of occupancy taken for determination of payment of passenger tax on lump sum basis. But it is only for the transporter to decide for himself as to whether he would like to pay tax on

lump sum basis or on the basis of affixation of passenger tax adhesive stamps by keeping accounts. The two situations where the operator may decide to pay tax on lump sum basis and where he is compelled to make payment of tax on lump sum basis in terms of the formula as detailed in Rule 9 of the Rules, are entirely different. In the first situation, there is an option with the operator to pay tax in lump sum or otherwise whereas in the latter, he is forced to pay tax on lump sum basis irrespective of the actual collection of passenger tax made by him. In a similar situation, the Himachal Pradesh High Court Civil Writ Petition No. 664 of 1991 (The Nurpur Pvt Bus Operators Union v. State) decided on October 1, 1992, has taken a view that confining payment of tax under the Act to the mode of payment by lump sum was invalid. We are entirely in agreement with the reasoning given in the said judgment.

Heavy reliance is placed by petitioners on the judgment delivered by five Judges Bench of the Supreme Court in the matter of State of H.P. And others etc. v. Nurpur Private Bus Operators Union and others etc. reported in AIR 1999 Supreme Court 3880. The judgment delivered by Himachal Pradesh High Court, quashing amendments made to the relevant provisions of Himachal Pradesh Passengers and Goods Tax Act, 1955, providing for mode of payment of tax by lump sum, was a matter of challenge before the Supreme Court. Section 3 of the Himachal Pradesh Act provides for levy of tax which reads thus :

"3 Levy of Tax ? (1) There shall be levied, charged and paid to the State Government a tax on all fares and freights in respect of all passengers carried and goods transported by motor vehicles at such rates not exceeding. as the Government may, by notification, direct."

(Emphasis supplied)

Section 4 which lays down method of collection of tax by the owner of the motor vehicle and paid to the State Government under the prescribed manner, which was a matter of challenge before the High Court, reads thus :

"Provided further that in case of motor vehicles (including the stage of contract carriages), other than those specified in the first proviso, in which the passengers are carried, the State Government may assess the tax. at lump sum in the manner prescribed, taking into consideration the registered capacity of the vehicle and the distance travelled or to be travelled by such motor vehicles under a permit issued to such vehicles.

(Emphasis supplied)

While dealing with the challenge, the Supreme Court has observed in paragraphs 7 and 8 of the judgment thus :

"7. Learned counsel for the appellant-State submitted that the said Section 4 and Rule had been so amended having regard to surveys made and data collected by the State Government and with a view to prevent tax evasion. This may be so, but there can be no generalisation of tax that can be levied under Section 3. It can only be levied with due regard to all fares in respect of all passengers carried by the particular operator. No hypothetical assumption can be made about how many passengers an operator has carried. The amendment of the said Section 4, by the inclusion of the proviso quoted above, is beyond the scope of the said Act. It is, therefore, unnecessary to consider Rule 9, as amended, whose terms also, in fact, leave the matter in no doubt.

8. The State may now make assessment of passenger tax on the basis that is provided for in Section 3 of the Act.

6. Considering the ratio of the judgment of the Apex Court and considering the provisions of the Himachal Pradesh Act which are identical to the provisions of the Maharashtra Act, the principle laid down in the judgment shall squarely apply to the instant matter. As has been provided, the tax can only be levied with due regard to the fares in respect of all passengers carried by a particular operator and no hypothetical assumption can be made about how many passengers an operator has carried. The assumption made for levy and collection of tax i.e. 70% of the load factor as provided in the reciprocal agreement between the State of Maharashtra and the State of Madhya Pradesh is in contravention of the provisions of section 3 of the Act of 1958. It shall have to be reiterated that it would be open for the State to levy tax on the passengers only transported in the passenger vehicle and not on the basis of assumption otherwise, it would be a tax levied against the transporter which would be impermissible in view of entry 56, List II of Seventh Schedule of the Constitution of India.

7. In the matter of "Akhil Gujarat Pravasi Vahan Sanchalak Mahamandal, Ahmedabad and others v. State of Gujarat and others" reported in AIR 2002 Gujarat 121, validity of section 3A of Bombay Motor Vehicles Tax Rules, 1959, mandating payment of advance tax on passengers for one month irrespective of the fact of non-use of the vehicle, was a matter of challenge. While dealing with the matter, in paragraph no. 24 of the judgment, it is observed thus :

"24. Mere look at both the entries, makes it clear that neither of the entries 56 or 57 authorises the State to levy advance tax. The word used in entry 56 "passengers carried" presupposes use of bus on road, its capacity to carry passengers and its roadworthy condition. There is difference between ''passengers carried'' and capable of carrying passengers''. Carrying passengers depends on the use of bus and its roadworthy condition and availability of passengers while the capability of carrying passengers depends upon the seating capacity of the bus whether used or not used, whether it is in roadworthy condition or not etc. Thus, it is clear that demanding advance tax on passengers for one month is beyond the legislative Entry No. 56."

The Division Bench of the Gujarat High Court proceeded to set aside the provisions of Rules 3A(1), 3A(2) and 5 of the Bombay Motor Vehicles Rules holding the same as beyond legislative competence and therefore, illegal, bad and without authority of law. Thus, it would be permissible to levy tax on passengers and imposition of advance tax irrespective of the fact whether the transport vehicle was operated or not would be a tax on the transporter and not on passenger and as such beyond the legislative entry no. 56 of List II of Seventh Schedule of the Constitution of India. In the instant matter also, the requirement of payment of advance tax at the rate of 70% of the load factor shall have to be construed as contrary to the legislative entry 56 contained in List II of Seventh Schedule of the Constitution of India and, section 3 of the Act of 1958.

8. Learned AGP for the State contends that the Act of 1958 is held to be intra vires and as such, the action of the State Government which is in the interest of the revenue cannot be impeached. The Division Bench of this Court in the matter of Akhil Bharatiya Grahak Panchayat (Bombay Branch) and others v. State of Maharashtra and others reported in AIR 1985 Bombay 14, while upholding the validity of the Act of 1958, has observed that the Act is intra vires the Legislation since the tax is levied on the passengers and not on income of the operator. In the instant matter, contrary to the intention of the Legislation, it has to be construed that the directions to pay tax on the basis of 70% of the load factor is in effect tax on the transporter and not tax on passenger. It would be advantageous to refer to the observations of the Supreme Court in the matter of M/s Tata Engineering and Locomotive co. Ltd. v. The Sales Tax Officer and Regional Transport Officer, Poona and another reported in (1979) 1 Supreme Court Cases 208. In paragraphs 7 and 8 of the judgment, the Apex Court has observed thus :

"7. Rule 2(i) of the Bombay Motor Vehicles Rules, 1940 framed under the Bombay motor Vehicles Act, 1939 defines ''passenger'' thus - ''passenger'' for the purposes of the rules in Chapter IV means any person travelling in a public service vehicle other than the driver or the conductor or an employee of the permit holder while on duty.

8. a combined reading, therefore, of Rule 2(i) and Section 2(7) of the Act clearly indicates that the tax would be leviable only if the passengers are carried on a public service vehicle. It is true that the term ''public service vehicle'' has not been defined either by the Act or by the Rules, but that however does not create any difficulty, because having regard to the Preamble of the Act we are of the opinion that the tax can be levied only on passengers who are carried by a stage carriage which is of the nature of a public service vehicle. The word ''public'' has got a well-known connotation and means a carriage to which any member of the public can have free access on payment of the usual charges. It cannot by any process of reasoning or stretch of imagination be deemed to include employees of a private company who are given facilities not as members of the public but as holding a special status, namely, the employees of that company. Thus, qua public the employees form a separate class and cannot be said to be public as contemplated by Rule 2(i).

9. There cannot be a duel opinion in respect of the preposition that no tax shall

be levied and collected except authorised by law meaning thereby unless there is Legislative sanction, tax cannot be levied and recovered. It shall also have to be borne in mind that tax is to be levied and collected in accordance with the provisions of law and not otherwise. In the instant matter, the provisions of section 3 of the Act of 1958 have been given go bye and different methodology is adopted under the terms of Reciprocal agreement arrived at between the State of Maharashtra and the State of Madhya Pradesh which methodology is obviously contrary to the provisions of law as well as opposed to the entry 56 of List II of Seventh Schedule of the Constitution of India. For the aforesaid preposition, reliance can be placed on the judgment in the matter of Commissioner Income Tax, Udaipur, Rajasthan v. Mcdowell and Company Limited reported in (2009)10 Supreme Court Cases 755. The Supreme Court has observed in paragraph no. 21 of the judgment thus:

"21. "Tax", "duty", "cess" or "fee" constituting a class denotes to various kinds of imposts by State in its sovereign power of taxation to raise revenue for the State. Within the expression of each specie each expression denotes different kind of impost depending on the purpose for which they are levied. This power can be exercised in any of its manifestation only under any law authorising levy and collection of tax as envisaged under Article 265 within uses only the expression that no "tax" shall be levied and collected except authroised by law. It in its elementary meaning conveys that to support a tax legislative action is essential, it cannot be levied and collected in the absence of any legislative sanction by exercise of executive power of State under Article 73 by the Union or Article 162 by the State.

10. It is contended by the State in the affidavit that in order to give some concession in tax and to avoid evasion of tax, clause 1(a) of the agreement provides for advance payment of passenger tax on the basis of 70% load factor of seating capacity of passenger vehicle. It is further contended that the passenger tax is being levied and collected as per the provisions of Taxation of Passengers Act. The admission on the part of the State Government that advance tax on consideration of 70% load factor of the seating capacity of the passenger vehicle is collected irrespective of the fact that whether the vehicle carried such number of passengers or whether the vehicle was on the road during the period for which the tax is levied, itself indicates that the tax that is imposed under the methodology evolved in the Reciprocal agreement is in fact tax on the transporter and not on the passengers who actually travelled in the vehicle on the prescribed route during the relevant period.

11. For the reasons recorded above, writ petitions deserve to be allowed and the same are accordingly allowed. Respondents have no authority in law to levy and demand passenger tax at the rate of 70% of the load factor of seating capacity of passenger transport vehicle since it is contrary to provisions of the Act of 1958, as well as impermissible for the reasons set out above. Respondents - State authorities shall not demand passenger tax on computation of 70% of load

factor of the seating capacity of the passenger transport vehicle and shall levy and collect tax strictly in accordance with the provisions of Bombay Motor Vehicles (Taxation of Passengers) Act, 1958.

12. Respective counsel for the petitioners, on instructions, state that in terms of the directions issued by this Court during the pendency of these petitions, petitioners continued to deposit 50% of the amount as claimed from them and, the amount so paid shall be appropriated by the State towards past liability in respect of demand of tax. Petitioners do not have any specific objection for appropriation of the amount which they have deposited during the pendency of the petitions towards tax and, in future, levy and recovery of tax shall be in accordance with the Act of 1958. State Government shall be entitled to the amount deposited/to be deposited in view of interim orders which were passed during pendency of these petitions and to take further appropriate decisions in respect of recovery of past liability/difference of the petitioners as per rules relied on by the petitioners themselves and referred above. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs.

