(1997) 05 OHC CK 0010

In the Orissa High Court

Satyanarayan Kasanani APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 02-05-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(33)
Orissa Motor Vehicles Taxation Act, 1975 — Section 13(2)

Citation : (1998) 2 ACC 281 : (1997) 84 CLT 265

Hon'ble Judges : P.C. Naik, J;P. Ray, J

Bench : Division Bench

Judgement

P.C. Naik, J.—Though this matter was listed for admission, on the prayer of the learned Counsel for the petitioner and with the consent of the learned Counsel for the opposite parties, the matter is heard on merits.

2. This petitioner Managing Partner of M/s. Sushil Udyog, has approached this Court for quashing Annexure-3 issued by the Regional Transport Authority, Chandikhol requiring the petitioner to show cause as to why the penalty imposed u/s 13(2) of the Orissa Motor Vehicles Taxation Act, 1975 be not levied and why the demand as mentioned in the notice be not imposed on him in terms of the provisions contained in Section 13(1) of the Orissa Motor Vehicles Taxation Act, 1975 read with Rule-10 of the Orissa Motor Vehicles Taxation Rules, 1976.

3. The case of the petitioner is that the vehicle in question, namely, TATA Sumo was purchased by M/s. Sushil Udyog on 10.9.1996 and in terms of Circular No. 57/96, an affidavit was filed by the petitioner stating that as the said vehicle would be used for private purpose, the same may be registered as a private vehicle. Accordingly, it was registered as such. But subsequently Notice No. 4352 dated 27.12.1996 (Annexure-2) was served on the petitioner stating that as the sitting capacity of the said vehicle is ten, the vehicle was wrongly registered as a private vehicle, but in fact, it ought to have been registered either as a private service vehicle under category 5-A or as a contract carriage under category 5-B of the Schedule to the Motor Vehicles Taxation Act, 1975. Accordingly, the

petitioner was asked to show cause as to why the registration of the vehicle should not be allowed. But, as the petitioner failed to show cause, the impugned notice under Annexure-3 was served requiring the petitioner to pay the differential amount of tax and penalty. Hence this petition.

4. The contention of the learned Counsel for the petitioner is that as an affidavit had been filed in terms of the Circular No. 57/96 that the vehicle in question will be used solely for private purpose and the authority having registered the said vehicle (TATA Sumo) as a private vehicle, was not justified in issuing notice (Annexure 2) and demand notice (Annexure-3) requiring the petitioner to pay the differential amount of tax and penalty after altering the registration of the vehicle. According to the petitioner, since the vehicle is used for private purpose, the question of altering the registration from private and registering the vehicle as private service vehicle of contract carriage, does not arise. On the other hand, it is the contention of the opposite parties that as the said vehicle has a sitting capacity -of ten and is registered in the name of the firm, namely, M/s. Sushil Udyog, the authority was justified in issuing notices under Annexures-2 and 3 for altering the registration and demanding differential amount of tax and penalty.

5. Before proceeding further it will be worthwhile to make a reference to Subsections (26), (29) and (33) of Section 2 of the Motor Vehicles Act, 1988 which define ''Motor Car'', ''Omnibus'' and ''Private Service Vehicle'' respectively and read thus:

2. Definitions.

In this Act, unless the context otherwise requires :

(1) to (25) xxx xxx xxx xxx

(26) ''motor car'' means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage;

(27) to (28)xxx xxx xxx xxx

(29) ''Omnibus'' means any motor vehicle constructed or adapted to carry more than six persons excluding the driver.

(30) to (32) xxx xxx xxx xxx

(33) ''Private Service Vehicle'' means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with his trade or business otherwise than for hire on reward but does not include a motor vehicle used for public purposes;

(34) to (49) xxx xxx xxx xxx xxx xxx

6. The fact that the vehicle in question is construed to carry more than six persons--it has a sitting capacity of ten, is clear from Annexure-2 and as such, it comes within the definition of ''Omnibus'' and not ''Motor Car''. The question then

is whether the opposite parties are justified in calling upon the petitioner to reregister the vehicle as ''Private service vehicle'' in terms of Sub-section (33) of Section 2 of the Motor Vehicles Act. It is clear that a motor vehicle is constructed or adapted to carry more than six persons and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with his trade or business otherwise than for hire or reward, it would be a private service vehicle. Admittedly, the vehicle in question has a sitting capacity of ten and the registration certificate shows that M/s. Sushil Udyog of which the petitioner is a Managing Partner, is the registered owner of the vehicle. Thus, the said vehicle does not belong to the petitioner, but to the firm which had placed it at the disposal of the petitioner who happens to be its Managing Partner. It, therefore, follows that the petitioner is using the vehicle in connection with trade or business though he may be using it also for his private purpose. Even otherwise, if a vehicle like the one involved in this petition owned by a Company, firm or business concern is purchased by it and placed at the disposal of an official or partner or employee of the said concern for his use, the user thereof will be deemed to be for the purpose of its trade or business. Accordingly, the contention that as the vehicle in question had been used purely for the conveyance of the petitioner and his family members, therefore/it may be treated as a private vehicle, cannot be accepted. We, however, make it clear that in this case we are concerned with a vehicle that is construed or adapted to carry more than six passengers and not with a motor car as defined in the Act and as such, our order may be construed accordingly.

The writ petition is dismissed.

P. Ray, J.

I agree.

