

(1996) 02 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 312, 385, 387 and 1422 of 1984

Sobhagmal Kataria and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 265

Contract Act, 1872 — Section 2

Motor Vehicles Act, 1988 — Section 7(2)

Rajasthan Motor Vehicles Taxation Act, 1951 — Section 14, 4

Citation : (1996) 2 ACC 452 : AIR 1997 Raj 7 : (1996) 3 RLW 249 : (1996) WLC 375 : (1996) 1 WLN 595

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : O.P. Sharma, for the Appellant; R.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

-ORDER

Arun Madan, J.—The question which arises in all the above 4 writ petitions is similar, therefore, all the writ petitions are being decided by this common order and for the sake of convenience I deem it appropriate to deal with the facts as stated in Civil Writ Petition No. 387/ 84 which shall be treated as the main petition since the facts as well as the question of law involved therein are identical.

2. The main question which arises for consideration of this Court is as to whether a goods vehicle which is registered as a tractor trailer i.e. an articulated vehicle as defined in Section 2 (IA) of the Motor Vehicles Act, 1939 and Clause 2 of Section 2 of the Motor Vehicles Act, 1988 (Central Act) (hereinafter to be referred as "the Act") repealing the old Act of 1939 wherein the articulated vehicle is defined under the Amended Act of 1988 as "articulated vehicle means a tractor to which a trailer is attached in such a manner that is superimposed on

and a part of the weight of the trailer is born by the tractor". Clause (2) of Section 2 of the Act defines an articulated vehicle as a vehicle to which a semi-trailer is attached.

3. It has been contended by the learned counsel for the petitioners that the respondent authority registered the aforesaid vehicle as one vehicle which is an articulated vehicle as aforesaid and, therefore, the registering authority was not competent to charge the tax on the vehicle twice over as it was registered as one vehicle only with permission to use trolley as an alternate vehicle only in the event of emergency. This fact is also borne out from the registration certificate issued by the registering authority which is annexed with the writ petition and in that certificate at the bottom there is a note appended to it which specifically indicates that "either a trailer (a) or (b) shall be used at a time and not both at a time". This position makes it very clear that the very object of the registering authority in issuing the said certificate in favour of the petitioner was to charge the tax only in respect of one vehicle and not for two vehicles as so contended by the learned counsel for the respondents.

4. The question of law which arises for consideration in this as well as in all other connected writ petitions are two-fold:--(a) as to whether tax can be charged twice over by the registering authority in respect of an articulated vehicle which is registered as one vehicle instead of charging the tax for two vehicles separately?; (b) Whether the registering authority was competent to charge the tax contrary to the registration certificate issued by it as referred to above ?

4A. The grievance of the petitioner is that on receipt of the impugned notice dated 22-9-83 (Annex-4) the petitioner appeared before the District Transport Officer and apprised him of the No Due Certificate issued to him by the respondents on 1-12-82 certifying that all taxes up to 31st December, 1982 stood paid. It was contended by the learned counsel that second trailer for which the taxes were being demanded was not an additional trailer but was an alternate trailer with a specific condition that one trailer at a time shall be used and not both the trailers at one and the same time. It was further contended by the learned counsel that even otherwise both the trailers could not be used at one and the same time and, therefore, the respondent-authority was not justified in charging the tax twice over for an articulated vehicle which was registered as one vehicle. It has been further contended by the learned counsel for the petitioners that before moving to this Court the petitioner had, by way of an abundant caution submitted an application before the transport Commissioner stating that no tax is chargeable on the basis of the objections of the Accountant General, Rajasthan, Jaipur for the second trailer because the said trailer was an alternate trailer and was allowed to be used as such with a specific condition that only one trailer at a time shall be used and hence the tax could not be charged twice over as referred to above. It has been further contended by the learned counsel for the petitioners in this regard that the taxes in respect of the goods vehicle are chargeable on the basis of the registered laden weight and accordingly the

taxes were assessed and charged and the same was duly paid by the petitioners and accepted by the respondent-authority as tax in respect of articulated vehicle in question and No Due Certificate was also issued in this regard. Since the Transport Commissioner did not deal with the petitioners' representation, the petitioners have been left with no other alternative remedy but to move this Court by way of these writ petitions for enforcement of their fundamental rights under Article 226 of the Constitution of India. It is under these circumstances as referred to above that the petitioners have assailed the impugned notice dated 26-9-83 (Annexure-4) issued by the District Transport Officer demanding the payment of tax from the petitioners as indicated therein whereby different amounts towards recovery of tax were demanded. It has been further contended in the writ petition that immediately on receipt of the said notice, a notice for demand of justice was served on the District Transport Officer as well as the Transport Commissioner but no need was paid to the said notice nor any recovery was stopped and under these circumstances the petitioners have filed the aforesaid writ petitions assailing the impugned notice on the grounds inter alia that the petitioner's vehicle has neither been registered as a tractor nor as a trailer but has been registered as a tractor trailer i.e. an articulated vehicle which is a goods vehicle on which the tax is chargeable on the basis of the registered laden weight and since the tax has already been paid since 1974 which was considered as having been properly paid by the respondents, the respondents were not justified in imposing the tax contrary to the registration certificate.

5. It has been further contended that the Accountant General, Rajasthan is neither the taxing authority nor the State is entitled to fix or determine or assess the tax in respect of any vehicle and hence the recovery of tax, on the basis of the said objection, is without jurisdiction and since the taxes have already been paid and accepted on the basis of the registered laden weight entered in the registration certificate of the vehicles in question, additional taxes beyond the registered laden weight cannot be charged and recovered.

6. The learned counsel for the respondents while controverting the contentions advanced by the learned counsel for the petitioners has raised a preliminary objection regarding maintainability of the writ petitions on the ground that the alternative remedy was available to the petitioners u/s 14 of the Rajasthan Motor Vehicles Taxation Act, 1951 (for short "the Act of 1951") against the assessment order which was not availed of by the petitioners and instead they have filed these writ petitions in this Court. In this regard, I am of the opinion that this objection of the respondents is wholly untenable in view of the fact that before moving this Court the petitioners had made a due representation to the Transport Commissioner and the Transport Commissioner had, in fact, not dealt with the representation when it was open to him to have raised the said objection at that stage hence in my opinion it will be travesty of justice if at this belated stage this objection is allowed to be taken into consideration.

7. I am fortified in my opinion from Article 265 of the Constitution of India which envisages that no taxes shall be levied or collected except by authority of law which evidently means (i) that there must be a law, (ii) the law must authorise the levy of tax; and (iii) the tax must be levied and collected according to law. Since the Taxation Act of 1951 does not provide for levy of tax on an articulated vehicle in respect of alternate trailer, in my opinion, the imposition of such levy is neither warranted nor justified in the eye of law as it is not within the competence of the respondents to do so. The learned counsel for the respondents has contended that taxation officer is very well entitled and competent to look into and consider the audit report and the objections raised therein before making the assessment. I am of the opinion that the Accountant General had no authority or jurisdiction in the matter in view of the privity of contract between the petitioners and the registering authority in respect of which the certificate of registration was issued and once the registering authority having foregone its right to claim the tax twice over the vehicle by reason of having issued the registration certificate for one vehicle only which is specific in its terms, it is not open to the respondents to take a contrary stand before this Court which per-se is illegal, without jurisdiction and contrary to law.

8. Similar would be the situation in respect of the contention of the learned counsel for the respondents that trailer itself is a motor vehicle and falls within the ambit of Clause (28) of Section 2 of the Act. Learned counsel for the respondents has next contended that notwithstanding the issuance of the registration certificate, as referred to above, Since the levy of tax in respect of second trailer had escaped the assessment of the registering authority, the Taxation Officer was competent to impose the tax afresh. In my opinion, this contention is wholly untenable and devoid of merit since it was very much within the knowledge of the Taxing Authority that it is authorised to impose the tax only in respect of one vehicle and not for the two vehicles as stated above.

9. As a result of the above discussion and after hearing the learned counsel for the parties and having examined their rival claims and contentions as well as the legal position on the subject, I am of the opinion that the petitioners deserves to succeed. Consequently, the writ petitions are allowed and the impugned notice of recovery dated 22nd September, 1983 (Annex.-4) is quashed and set aside. If any tax has been recovered under the impugned notice by the respondents, the respondents are directed to refund the same to the petitioners as and when they apply for the same. No order as to costs.