
(1996) 10 CAL CK 0009

In the Calcutta High Court

Case No : Appeal No. 6 of 1985 and Matter No. 1097 of 1983

State of West Bengal

APPELLANT

Vs

Hindusthan Motors Limited

RESPONDENT

Date of Decision : 15-10-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 22, 25
West Bengal Motor Vehicles Tax Act, 1979 — Section 3

Citation : (1997) 2 CALLT 171

Hon'ble Judges : Bhagabati Prosad Banerjee, J;Asok Kumar Chakravarty, J

Bench : Division Bench

Advocate : P.K. Roychowdhury and N.I. Khan, for the Appellant;S. Chakraborty and P.B. Das, for the Respondent

Final Decision : Dismissed

Judgement

Bhagabati Prosad Banerjee, J.—This is an appeal against the judgment dated November 23, 1984 passed by U.C. Banerjee, J., in Matter No. 1097 of 1983. The point involved in this appeal is whether the respondent Hindusthan Motors Limited is the owner of a registered motor vehicle or owns or keeps in its possession and control any motor vehicle which is liable to pay tax on such vehicles under the provisions of the West Bengal Motor Vehicles Tax Act, 1979.

2. The fact of this case, in short, is that the respondent/writ petitioners filed a writ application against three separate demand notices issued by the Taxing Officer (Motor Vehicles), District-Hooghly, bearing Nos. 835/ MV dated 30th June 1981, 1731 M.V. dated 16th October, 1981 and 1442 M.V. dated 6th November, 1982, for Rs. 6,08,341.38p., 4,19,552.15p. and 1,02,896.61p. respectively under the provision of West Bengal Motor Vehicles Tax Act, 1979 being the difference of road tax during the period from 1st June 1979 to 1st July, 1981.

3. The writ petitioner is a manufacturer of motor cars, trekkers and trucks only on chasis or with body, buses of big and small sizes, and heavy vehicles and

other engineering products. The motor cars, trekkers, buses and trucks when ready as per order and specification of the dealers are sent by road to different dealers in the country directly from the factory at Hind Motor, Hooghly. The dealers take over the motor cars and trekkers thus sent on road at their show rooms and/or warehouses. The dealers thereafter deliver the vehicles to the actual buyers and take the responsibility of registering the cars and trekkers before the State Authority and its Motor Vehicles Department as per the provisions of the Motor Vehicles Act, 1939, and the rules framed under the said Act by the respective State Governments within whose Jurisdiction the dealers are situated.

4. That for the purpose of contending facilities to such dealers in some of the States in India who are unable to arrange such warehouse or show room or any stockyard for taking delivery of numbers of motor cars or trekkers, has arranged at its own costs and expanses warehousing facilities in a more or less centrally located places in such States in India. Motor cars and trekkers are sent directly from the factory of the petitioner by road to such warehouses for delivery, to dealers in such cases.

5. That the said motor cars, trekkers and other vehicles almost daily move out of the factory premises in the form of convoys. Such convoys which occasionally consist of hundred of such motor cars, trekkers and other vehicles move to different directions as for instance on one such convoy may be bound for Delhi, Chandigarh, Srinagar, one may be bound for Bangalore, Madras, Trivandrum, one may be bound for Siliguri, Gauhati and the other may be bound for Nagpur, Indore, Secunderabad, Aurangabad, Bombay and Ahmedabad.

6. That the said convoys do not carry any passenger and are prohibited to carry any person who is not directly engaged in the convey movement. Each motor car and trekker and the said other vehicle is provided with a driver and each convoy moves under the command of a senior driver having experience with such extra drivers as may be thought to be proper. As the said motor cars, trekkers and the vehicles move out straight from the production line after completion of all kinds of technical test they are required to be serviced every five hundred kilometers of movement and the petitioner has fixed at proper points such servicing arrangement. These convoys of motor cars trekkers and other vehicles move on continuously subject to such necessary rest for men and machine and crossover the State of West Bengal and other different States as it comes on the way and the said vehicles are delivered while the convoy move on to diverse dealers who have placed orders till all the motor cars, trekkers and the said other vehicles are delivered to their respective dealers.

7. That the movement of the said convoys are given on contract to certain firms who undertake to move the convoy in accordance as the briefing they get from the petitioner company in regard to the terms and conditions of delivery to the respective dealers. These convoy contractors engage their drivers as contract and undertake the entire responsibility of safety and timely movement of the

convoy and the successful completion of delivery of all vehicles.

8. The demand of tax under the provisions of West Bengal Motor Vehicles Tax Act, 1979, (referred to as the "said Act"), was issue on the allegation that the respondent/writ petitioner was an owner of a registered motor vehicle or a person who owns or keeps in his possession or control any motor vehicle.

9. Section 3 of the West Bengal Motor Vehicles Tax Act, 1979, (West Bengal Act IX of 1979), provides that every owner of a registered motor vehicle or every person who owns or keeps in his possession or control any motor vehicle shall pay tax on such vehicle at the rate specified in the schedule, Sub-section 2 of Section 3 provides that the State Government may by notification in the Official Gazette from time to time increase the rates of tax specified in the schedule. Provided however that such increase shall not exceed in the aggregate 50% of the rate specified in the schedule on the date of commencement of the said Act.

10. Section 22 of the Motor Vehicles Act 1939 (Act IV of 1939) provides that no person shall drive any motor vehicle and no owner of motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passenger or goods unless the vehicle is registered in accordance with the provisions laid down in Chapter-III of Act 1939 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.

11. Section 25 of the Act of 1939 provides that the owner of a motor vehicle may apply to any registering authority to have the vehicle temporarily registered in the prescribed manner and for the issue in the prescribed manner for temporary certificate of registration and temporary registration mark. Section 25 further provides that said registration shall be valid for a period of one month and shall not be renewable provided however that if the registered vehicle is only a chassis to which the body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body, the period of payment of said fees may be extended by further period or periods, but may not exceed in any case three months.

12. Rule 46 of the Bengal Motor Vehicles Rule 1940 framed by the Government of West Bengal (Home Transport) Department provides that Section 22 of the Act, 1939, shall not apply to a motor vehicle in possession of a manufacturer or dealer in motor vehicle in the course of the business of the manufacturer or dealer so long as it is used under the authorisation of a trade certificate granted by the registering authority within whose area the manufacturer or dealer has his place of business. Rule 46 thereafter goes on to deal with the formalities required for the purpose of issuance of the trade certificate.

13. The appellant/authority charged Rs. 33.00 for each car and a similar amount for trekker and the petitioner however paid the same without any demur or protest. Subsequently, however the respondent authority served a notice in which an additional sum of Rs. 26.17 was levied for cars and trekkers alike on

the ground that the writ petitioner comes under the sub-heading "A" in item 1(4) (Motor cars owned by companies registered under the Companies Act, 1956) in terms of the provisions of West Bengal Motor Vehicles Tax Act, 1979. By the aforesaid notice a demand to the extent of Rs. 6,08,341.38p. was raised being the amount said to have short paid for the year 1980-81. Another notice was sent on 16th October, 1981, and the demand made was to the extent of Rs. 4,19,552.19p. There was yet a further notice dated 6th November, 1982, wherein the demand has been made to the extent of Rs. 1,02,896.61 p. From the records, It appears that the petitioner has already paid total sum of Rs. 12,50,375.00p. On account of temporary registration and further sum of Rs. 43,06,315.71, on account of road tax during the periods 1978-79 to 1981-82.

14. The learned trial Judge by the order and judgment dated 23rd February 1984, made It absolute and the said demand notices were set aside and cancelled on the ground that the respondent/petitioners were not liable to pay the said taxes.

15. Under the provisions of Section 2(2) of the said Act, it was provided that all words and expressions used in this Act, but not defined, shall have the same meaning as in the Motor Vehicles Act, 1939. As the said Act did not provide any definition of the word "owner", accordingly the meaning of the word "owner" as provided under the Motor Vehicles Act, has to be taken to be a part of this Act in view of the provisions of Section 2(2) of the said Act. The Motor Vehicles Act, 1939, which is replaced by the Act of 1988, provides the meaning of "Owner" as :

"Owner means a person in whose name a motor vehicle stands registered, and where such 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, the person in possession of the vehicle under that agreement."

16. Under the Motor Vehicles Rules, the word "dealer" has also been defined under the Motor Vehicles Act u/s 2(8), as below :

"(8) "dealer" includes a person who is engaged-

(a) in the manufacture of motor vehicles; or

(b) in 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 vehicle."

17. Under the West Bengal Motor Vehicles Rules, the provision for registration of motor vehicles, particularly Rules 33 and 34 are relevant in this connection, which are given below :

"33. Condition for exemption from registration-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 condition that he obtains a trade certificate from the registering authority having Jurisdiction in which the area in the dealer has his place of business in accordance with the provision of this Chapter.

34. Trade certificate-(1) An application for the grant or renewal of a trade certificate shall be made in Form 16 and shall be accompanied by appropriate fee as specified in Rule 81.

(2) Separate application shall be made for each of the following classes of vehicles, namely :-

- (a) motorcycle;
- (b) invalid carriage;
- (c) light motor vehicle;
- (d) medium passenger motor vehicle;
- (e) medium goods vehicle;
- (1) heavy passenger motor vehicle;
- (g) heavy goods vehicle;
- (h) any other motor vehicle of a specified description."

18. u/s 3 of the Act, the tax shall be payable at such rate as has been specified in the Schedule to the said Act. Different rates have been prescribed for different types of vehicles. The types of vehicles which were brought under the taxing net are as follows :

"I. Vehicles other than omnibuses-

- (1) Motor cycles kept for the personal use of owners not being companies registered under Companies Act, 1956.
- (2) Motor Cycle combinations kept for the personal use of owners not being companies registered under the Companies Act, 1956.
- (3) Motor cars kept for the personal use of owners not being companies registered under the Companies Act, 1956, and invalid carriages.
- (4) Motor cars owned by companies registered under the Companies Act, 1956 for carrying employees or other passengers.
- (5) Motor cycles owned by companies registered under the Companies Act, 1956 for carrying employees or other passengers.
- (6) Motor cycle combinations owned by companies registered under the Companies Act, 1956 for carrying employees or other passengers.

II. Omnibuses with seating capacity for-

(a) Not more than 8

(b) More than 8 but not more than 20

(c) More than 20."

19. On behalf of the appellant, Mr. Roy Choudhury submitted that the respondent is the owner of the vehicles in question and that the ownership of the vehicles after its manufacture could not be disputed by the Hindusthan Motors. Only after the sale of the motor cars, the Hindusthan Motors ceased to be the owner of the vehicles. So, as the owner of the vehicle, respondent/Hindusthan Motors was liable to pay taxes under the said Act. Secondly, it was submitted that at least the Hindusthan Motors can be said to be a person who owns or keeps in its possession of any motor vehicle and accordingly, the said Company was liable to pay taxes. Mr. Roy Choudhury further submitted that the scope and ambit of Section 3 of the said Act which is the charging section, could not be curtailed or abridged by the provisions of the schedule which prescribes the rate or rates at which taxes are payable.

20. It is submitted that once the liability is there under the charging section, whether or not the schedule prescribes the rate of taxes payable is immaterial and accordingly it was submitted that the learned trial Judge was wrong in holding that the respondent/writ petitioners were not liable to pay taxes under the said Act.

21. Dr. Chakraborty, learned Counsel appearing on behalf of the respondents, submitted that the charging section, namely Section 3 of the said Act provides that every owner of a registered vehicle or every person who owns or keeps in his possession or controls any motor vehicle shall pay tax on such vehicle at the rates specified in the Schedule and when the Schedule to the Act did not provide any provision for imposition of taxes on the manufacturer of the motor vehicle in that event the intention of the legislature was clear that the legislature never intended to bring the manufacturers of the motor vehicles under the taxing net. It was further submitted by Dr. Chakraborty that the Section 3 imposes a liability on the persons to pay tax on such vehicle at the rate specified in the schedule and unless the schedule prescribes the rate of taxes payable by the manufacturer, namely the Hindusthan Motors Limited, the liability is not there.

22. Next, it was contended that by virtue of the provisions of Section 2(2) of the said Act, the definition of "owner" as provided under the Motor Vehicles Act should be taken to the definition of the word "owner". Accordingly, according to that definition, the manufacturer, the Hindusthan Motors Limited being the manufacturers would not be held to be the owners as owner means a person in whose name a motor vehicle stands registered and that it is not in dispute that the motor vehicles manufactured by Hindusthan Motors Limited stands registered in the name of Hindusthan Motors.

23. Secondly, according to Dr. Chakraborty, that unless at least the rates at

which the tax will be payable to provide in the Schedule, there can be no imposition of tax and that tax could not be imposed in the absence of rate prescribed.

24. It is well-settled principle of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalties; the subject is not to be taxed unless the language of the statute clearly imposes the obligation, and language must not be strained in order to tax a transaction which, had the legislature thought of it, would have been covered by appropriate words.

"In a taxing Act," said Rowlatt J., in *Cape Brandy Syndicate v. LR.C.* (1921) 1 K.B.64, "one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

25. In the *Member-secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution Vs. Andhra Pradesh Rayons Ltd. and Others*, , the Supreme Court held that the Act of fiscal nature such as one imposing liability for cess must be construed strictly, literally, reasonably and from a common sense point of view. The subject is not to be taxed without clear words for that purpose and also every Act of Parliament must be read according to its natural construction of words. In a taxing statute, there is no scope for giving any equitable construction as principles of equitable construction are irrelevant in interpreting the taxing statutes.

26. In *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, , the Supreme Court said that the statute provision must be so construed that absurdity and mischief may be avoided.

27. Further, in the case of *Income Tax Commissioner, Bangalore, v. J.H. Gestle*, , it has been held that where the plain and literal interpretation of a statutory provision produces a manifestly unjust result which would never have been intended by legislature, the court might modify the language used by the legislature, so as to achieve the intention of the legislature and peruse a rational construction. The task of interpretation of a statutory provision is the attempt to discover the intention of the legislature from the language used. It is necessary to remember that language is at the best an imperfect instrument for expression of human intention. It is well to remember the warning administered by Judge learned hand that one should remember that the statute always have some purpose or object to accomplish a systematic and imaginative discretion. It was further observed that if the purpose of a particular provision is easily discernible from the whole scheme of the Act, the court should find out the intention from the language used by the legislature. Applying the principles of interpretation, there is no scope for holding that the manufacturers of motor vehicles could not be taxed under the provisions of the said Act. From the language used in Section

3 of the said Act, it is crystal clear that the legislature never intended the manufacturer of motor vehicle who may be the owner of the vehicle in the ordinary sense of the term, but it never intended to tax such owner because the legislature adopted the definition of owner as provided in the Motor Vehicles Act and the manufacturer Hindusthan Motors Limited does not satisfy the requirement of the owner as provided under the Act.

28. Under these circumstances, it would lead to absurdity and the provisions of the Act would be wholly unworkable and contrary to the intention of the legislature to uphold the submissions made by Mr. Roy Choudhury. We are clearly of the view and we agree with the submission made by Dr. Chakraborty that on the plain meaning of the language used keeping in mind the object of the statute, no tax should be levied upon the respondents/Hindusthan Motors in the instant case. We do not find any reason to interfere with the order passed by the learned trial Judge because of the reasoning given by us in this judgment. The Respondent will be at liberty to file a suit for refund of the money paid under a mistake of law within three months.

Accordingly, we dismiss the appeal and affirm the Judgment of the learned trial Judge.

There will be no order as to costs.

Asok Kumar Chakravarty, J.

29. I agree