
(2002) 10 JH CK 0006

In the Jharkhand High Court

Case No : Writ Petition (T) No. 2939 of 2002

Sub-divisional Engineering Microwave (MNTCE) Telephone
Exchange Bokaro Steel City

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Bihar Motor Vehicles Taxation Act, 1994 — Section 5

Citation : (2002) 10 JH CK 0006

Hon'ble Judges : Vinod Kumar Gupta, C.J.; Hari Shankar Prasad, J

Bench : Division Bench

Advocate : P.K. Prasad, for the Appellant; B.S. Lal, AAG, for the Respondent

Final Decision : Allowed

Judgement

1. A very short and simple point is involved for consideration and interpretation in this case and that revolves around the interpretation to be given to Schedule-II of the Bihar Motor Vehicles Taxation Act, 1994.

2. The writ petitioner is a functionary of the Bharat Sanchar Nigam Ltd. (B.S.N.L.). The vehicle, bearing Registration No. B.R.-13P 0452, was purchased by the petitioner vide a Sale Certificate dated 23.12.1977. The sale Certificate itself stated that the seating capacity of the vehicle (inclusive of driver) was one. As per the provisions of the Motor Vehicles Act, 1988 this vehicle was got registered and in Column 13 of the detailed description of the vehicle the Registering Authority mentioned the seating capacity of this vehicle as 23.

3. u/s 5 of the Bihar Motor Vehicles Taxation Act, 1994 (1994 Act for short) every owner of a registered vehicle is required to pay additional Motor Vehicles Tax on such a vehicle at the rate specified in Schedule II. For ready reference we reproduce Section 5 of the 1994 Act, which read thus :

"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 of commencement of this Act, every owner of a registered motor vehicle shall pay additional Motor Vehicle 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 per cent of the rate of taxes prescribed in the Schedules."

4. Schedule II of 1994 Act, in the Column of "Transport Vehicles excluding goods carriages and Motor Cabs," lays down that such a transport vehicle with a seating capacity of more than 6 but not exceeding 15 persons would attract the levy and imposition of additional motor vehicles tax at the rate of Rs. 240/- per year for every seat and such a vehicle with a seating capacity of more than 15 persons but not exceeding 32 persons, would attract the levy and imposition of such tax at the rate of 320/- per year per seat. We are saying so because in Column 3 of Schedule II what is mentioned is "Annual rate of Additional Motor Vehicles Tax". Relevant extract of Schedule II is reproduced hereinbelow :--

"SCHEDULE II

[Sub-section (2) of Section 5]

Additional Motor Vehicles Tax on Transport Vehicles.

Sl. No. Class of Vehicles Annual rate of Additional Motor Vehicles Tax

1.

2.

3. Transport Vehicles excluding good carriages and motor cabs

(a) with seating capacity more than 6 but not exceeding 15 persons exclusive of the driver,

Rs. 240.00 for every seat

(b) with seating capacity more than 15 persons but not exceeding 32 persons exclusive of driver and conductor

Rs. 320.00 per seat

(c)....."

5. The point for consideration which thus arises in this case is whether the seating capacity as is mentioned in the 2nd Column of Schedule-II relates to the installed seating capacity of the vehicle, or the actual seating capacity. There may be vehicles of two types, one where the seats are fitted in such a manner as are impossible to be altered, but there may be vehicles, and there can be

vehicles, where either no seats are fitted at all and the manufacturers only supply either the chassis or along with the chassis a body-shell and the fitment of the seats is left to be done by the individual customers according to their needs. In the first category of vehicles cars and motor cabs fall, in which the seats are fitted as per the original design and the seats are so much an integral part of the entire mechanism of the vehicle that it is almost impossible to change or alter the seating capacity or even the sitting positions. But as far as the second category of vehicles is concerned, where admittedly the seats are not fitted by the manufacturers and even if these are fitted (in some cases) these are removable, thus the individual owner is always at liberty to alter or change the seating plan or change or modify the seating plan or design.

6. In the present case, it is contention of the petitioner that the petitioner purchased the vehicle in question with only driver's seat and that the shell of the vehicle did not have any other seat fitted upon it. The petitioner's further contention is that it fitted just one seat on the vehicle, in addition to the existing driver's seat. If, therefore as per the Owner's Manual or as per the description contained in the Registration Certificate, the vehicle had been shown to have an installed seating capacity of 23 seats, but it did not actually have any seat fitted thereupon except the above mentioned two seats, would the owner still be liable to pay the additional tax as prescribed u/s 5 of 1994 Act, is a question which would beg for an answer. Our answer to this question has to be In the negative because we are very sure and firm in our opinion that on account of the stipulation with respect to the element of taxation on annual basis, linked with every seat every year, the owner of such vehicle has to pay tax as per the actual seating capacity and not as per the described, mentioned or installed seating capacity. As the Scheme of Schedule-II itself indicates, additional motor vehicles tax is not an one-time tax. The burden of the tax has to be borne annually. Therefore, the tax has to be charged on the basis of the actual seats fitted on the vehicle. Thus, it is the choice of the owner to reduce or increase the number of the seats in such a manner or in such a configuration as it might suit his requirements. Let us take an illustration. In a particular year, the vehicle may have "X" number of seats, but (on account of the owner's decision to increase the number of seats) in the subsequent year it may have seats in "X +" number, or "X-" number. Therefore, what is the actual capacity in that vehicle for a particular year would determine the tax liability which would be calculated on the basis of the actual seats in that year. Because the legislative intent is very clear that the tax liability would be incurred on the basis of the seats per year, we have no doubt in coming to the conclusion that the taxation liability would be determined on the basis of the actual seating capacity and not the installed, described or mentioned capacity.

7. In the case before us, it is the contention of the petitioner that the petitioner's vehicle in question had only one seat apart from the driver's seat. In any case, therefore, the actual seating capacity (notwithstanding the installed seating capacity) being less than "6" the vehicle went out of the purview of Sl. No. 3 of

Schedule-II of 1994 Act and therefore the petitioner was not liable to pay any additional Motor Vehicles Tax. In any event whether a vehicle has "X" number of seats, or less than "X", or more than "X", is always a question of fact. There are provisions in 1994 Act which deal with a contingency or eventuality or a fact situation where the authorities under the Act have power to deal with a registered owner if he makes a false or incorrect statement about the actual number of seats. If an owner makes a false statement on that account, such a registered owner shall always be liable to be dealt with in accordance with law and until that happens the tax has to be charged u/s 5(2) of 1994 Act on the basis of actual seating capacity, at the rate as prescribed per seat, per annum. The view taken by the respondents, therefore, does not commend to us. The impugned order dated 5.12.2001 is, accordingly, set aside.

8. The respondents are directed to inspect the vehicle of the petitioner and if the petitioner is liable to fill up any form or provide any information in writing the respondents may call upon it to do so. Depending upon the actual seating capacity of the vehicle, the respondents will de novo decide the question of petitioner's liability to pay the additional Motor Vehicles Tax in terms of Section 5(2) of 1994 Act.

9. This writ petition is, accordingly, allowed. No order as to costs.