

(2013) 04 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 18228 of 2012 and C.W.P. No. 3231 of 2013

Surinder Mohan and Others

APPELLANT

Vs

State of Punjab and Others
 Ankit Sharma and Another
Vs State of Punjab and Another

RESPONDENT

Date of Decision : 23-04-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(40), 2(43), 2(7), 22, 3

Citation : (2013) 04 P&H CK 0085

Hon'ble Judges : Ritu Bahri, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Sumeet Mahajan, in C.W.P. No. 18228 of 2012 with Mr. Amit Kohar in C.W.P. No. 18228 of 2012 and Mr. R.K. Kapoor in C.W.P. No. 3231 of 2013, for the Appellant; Radhika Suri, Addl. AG, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—This order shall dispose of aforesaid two writ petitions i.e. CWP No. 18228 of 2012 and CWP No. 3231 of 2013 wherein the challenge is to the notifications dated 22.11.2007 and 31.08.2012, whereby the motor vehicles having Contract Carriage Permits and All India Tourist Permits, registered in the States other than the State of Punjab inter-alia on the ground that tax imposed is prohibitive, expropriatory and discriminatory thus liable to be set aside. The petitioners are the owners of tourist vehicles registered in States other than in the State of Punjab. Some of the petitioners have Special Contract Carriage Permit, whereas some have All India Tourist Permits. It is pointed out that the vehicles owned by the petitioners pass through the State of Punjab for ferrying the tourists to other States and are liable to pay tax in terms of the Punjab Motor Vehicles Taxation Act, 1924 (for short "the Act"). It is pointed out that Section 3 of the Act was amended by the Punjab Motor Vehicles Taxation (Amendment) Ordinance, 2007 since replaced by the Punjab Motor Vehicles Taxation (Amendment) Act, 2007 (Punjab Act No. 7 of 2008). In exercise of the powers in respect of imposition of tax under the amended provisions of the Act, the State

has specified rate of motor vehicle tax w.e.f. 22.11.2007. As per Entry No. 13, the Tourist Permit Vehicles registered in the State of Punjab are liable to pay Motor Vehicles Tax per seat per annum @ Rs. 6000/- for ordinary & deluxe buses, Rs. 5000/- for Air Conditioned buses and Rs. 4000/- for integral coach. On the other hand, the vehicles registered in other States were liable to pay Motor Vehicles Tax per seat per annum @ Rs. 2000/- for ordinary buses, Rs. 3000/- for deluxe buses and Rs. 4000/- for Air Conditioned buses. Vide notification dated 31.08.2012, the amendments were carried out in the notification dated 22.11.2007. The impugned entries in the notifications dated 22.11.2007 and 31.08.2007 read as under:

2. Learned counsel for the petitioners have vehemently argued that the classification i.e. vehicles registered in the State of Punjab vis-?-vis a vehicle registered in the other States is discriminatory, arbitrary and without any reasonable nexus with the objective to be achieved and thus, different rates of tax based on such classification is violative of Article 14 of the Constitution of India. The higher tax on the vehicles registered in States other than in the State of Punjab also impinges upon the right of the petitioners of free trade and commerce guaranteed under Articles 301 & 304 of the Constitution. Therefore, such higher rate of tax on the vehicles only on the ground that the same are registered outside the State of Punjab is not sustainable. In support of such arguments, learned counsel for the petitioners relied upon *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, ; *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, *State of Mysore Vs. H. Sanjeeviah, S.K. Dutta, Income Tax Officer and Others Vs. Lawrence Singh Ingty.,* ; *Lakshman and Others Vs. State of Madhya Pradesh, Malwa Bus Service (Private) Limited and Others Vs. State of Punjab and Others*, ; *State of Gujarat and Others Vs. Kaushikbhai K. Patel and Another*, ; *Hardev Motor Transport Vs. State of M.P. and Others*, and *Aashirwad Films Vs. Union of India (UOI) and Others*, . It is further contended that the petitioners are ready to pay tax for whole of the year at par with the tax payable by the vehicle owners, whose vehicles are registered in the State of Punjab.

3. On the other hand, Ms. Suri relied upon *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, *The Malwa Bus Service (Pvt.) Ltd. case (supra)* and *State of Kerala Vs. Aravind Ramakant Modawdakar and Others*, to argue that the classification so as to impose higher rate of tax on the vehicles registered outside the State of Punjab is reasonable. Such classification has been made to curb the menace of unscrupulous bus operators, who operate their tourist vehicles on point to point basis and from outside the bus-stand, causing loss to the revenue of the State. It is contended that levy of tax is prerogative of the State and the permit holders have to abide/pay such tax as passed by the Legislatures. It is pointed out that the "tourist vehicle" as defined in Section 2(43) of the Motor Vehicle Act, 1988 (in the Act) means a contract carriage. The "contract carriage" as defined in Section 2(7) of the said Act means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, for

the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him.

4. It is pointed out that since the petitioners are contract carriage permit holders, they cannot operate in routine from point to point. Such use of vehicles would be against the grant of permit. The petitioners are not such permit holders as defined in Section 2 (40) of the Motor Vehicles Act, 1988. It is pointed out that the contract carriage permit is granted in terms of Section 74 of the Motor Vehicle Act and in respect of specified area or on specific route or routes. Chapter IV of the Central Motor Vehicles Rules, 1989 deals with control of transport vehicles including tourist permits. In terms of Rule 85, it is condition of every tourist permit holder to prepare in respect of "each trip" a list in triplicate of tourist passengers to be carried in the vehicle giving full particulars such as (a) name of the passenger, (b) address of the passenger (c) age of the passenger & (d) starting point and the point of destination. Sub Rule (3) contemplates that tourist vehicle shall either commence its journey, or end its journey, circular or otherwise, in the home State, subject to the condition that the vehicle shall not remain outside the home State for a period of more than three months. Sub Rule (10) contemplates that the permit holder shall maintain a day-to-day logbook indicating the name and address of the permit holder and the registration mark of the vehicle, name and address of the driver with the particulars of his driving licence and the starting and destination points of the journey with the time of departure and arrival and the name and address of the hirer. It is, thus, contended that the Rules framed under the Motor Vehicles Act enjoins a permit holder to maintain record of each trip and the tourist vehicles cannot remain outside the home State for three months. Thus, the home State is a classification recognized under the Rules. Therefore, the classification made by the State of Punjab imposing higher rate of tax on the tourist vehicles registered other than State of Punjab is valid and legal.

5. Before dealing with the respective contentions raised by the learned counsel for the parties, relevant provisions of the Statutes need to be extracted. The same are as under:

The Motor Vehicles Act, 1988

2. Definitions - In this Act, unless the context otherwise requires - xxx xxx

(7) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum -

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another,

And in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes -

(i) a maxicab; and

(ii) a motorcar notwithstanding the separate fares are charged for its passengers;

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(40) "stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

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(43) "tourist vehicle" means a contract carriage, constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf;

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The Central Motor Vehicles Rules, 1989

85. Additional conditions of tourist permit - The following shall be the additional conditions of every tourist permit granted to a tourist vehicle other than a motor-cab under sub-section (9) of section 88, namely -

(1) The permit holder shall cause to be prepared in respect of each trip a list in triplicate of tourist passengers to be carried in the vehicle giving full particulars as under:

(a) name of the passenger,

(b) address of the passenger,

(c) age of the passenger,

(d) starting point and the point of destination.

(2) One copy of the list referred to in sub-rule (1) shall be carried in the tourist vehicle and shall be produced on demand by the officers authorized to demand production of documents by or under the provisions of the Act and the rules, and the second copy shall be preserved by the permit holder.

(3) The tourist vehicle shall either commence its journey, or end its journey, circular or otherwise, in the home State, subject to the condition that the vehicle shall not remain outside the home State for a period of more than three months. The permit holder shall see that every return of the tourist vehicle to the home State is reported to the authority which issued the permit;

Provided that where the contracted journey ends outside the home State, the vehicle shall not be offered for hire within that State or from that State to any other State except for the return journey to any point in the home State.

(4) The tourist vehicle may operate circular tours of places lying exclusively in the home State or in the home State and outside the State if such circular tours are in the list approved by the Tourist Department of the home State to visit places of tourist, historical or religious importance and the tour is duly advertised beforehand.

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(9) The permit holder shall not operate the tourist vehicle as a stage carriage.

(10) The permit holder shall maintain a day-to-day logbook indicating the name and address of the permit holder and the registration mark of the vehicle, name and address of the driver with the particulars of his driving licence and the starting and destination points of the journey with the time of departure and arrival and the name and address of the hirer.

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Explanation - In this rule, "home State" means the State which has granted the permit under sub-section (9) of section 88.

6. The writ petition challenging the amendment carried in Section 3 of the Act by Punjab Act No. 7 of 2008 came up for consideration before this Court in CWP No. 17240 of 2011 titled "Bhagat Ravi Dass Transport Company Regd. Ludhiana & another Vs. The State of Punjab & another" decided on 01.02.2013, wherein it was held that the imposition of higher rate of tax on the omni buses as compared to mini buses and State Transport Undertakings does not suffer from the vice of discrimination and Article 14 of the Constitution of India.

7. In *Atiabari Tea Co. Ltd. case* (supra), the legality of the State Act levying tax on certain goods carried by Road or Inland Waterways in the State of Assam came up for consideration. The majority negated the argument that the tax laws are outside the purview of Part XIII of the Constitution. It was observed that the tax laws can and do amount to restrictions on freedom which is guaranteed under the Part XIII of the Constitution. The argument that all taxes should be governed by Article 301 whether or not their impact on trade is immediate or mediate, direct or remote, adopts an extreme approach, cannot be upheld. It was observed as under:

52.Our conclusion, therefore, is that when Article 301 provides that trade shall be free throughout the territory of India it means that the flow of trade shall run smooth and unhampered by any restriction either at the boundaries of the States or at any other points inside the States themselves. It is the free movement or the transport of goods from one part of the country to the other that is intended to be saved, and if any Act imposes any direct restrictions on the

very movement of such goods it attracts the provisions of Article 301, and its validity can be sustained only if it satisfies the requirements of Article 302 or Article 304 of Part XIII. At this stage, we think it is necessary to repeat that when it is said that the freedom of the movement of trade cannot be subject to any restrictions in the form of taxes imposed on the carriage of goods or their movement all that is meant is that the said restrictions can be imposed by the State Legislatures only after satisfying the requirements of Article 304(b). It is not as if no restrictions at all can be imposed on the free movement of trade.

8. In *Automobile Transport (Rajasthan) Ltd. case* (supra), the provisions of Rajasthan Motor Vehicles Taxation Act, 1951 came up for consideration. The Supreme Court observed that so long as the tax remains compensatory or regulatory, it cannot operate as a hindrance. The Court observed as under:

10. ...Such compensatory taxes are no hindrance to anybody's freedom so long as they remain reasonable; but they could of course be converted into a hindrance to the freedom of trade. If the authorities concerned really wanted to hamper anybody's trade, they could easily raise the amount of tax or toll to an amount which would be prohibitive or deterrent or create other impediments which instead of facilitating trade and commerce would hamper them. It is here that the contrast, between "freedom" (Article 301) and "restrictions" (Articles 302 and 304) clearly appears; that which in reality facilitates trade and commerce is not a restriction, and that which in reality hampers or burdens trade and commerce is a restriction. It is the reality or substance of the matter that has to be determined. It is not possible a priori to draw a dividing line between that which would really be a charge for a facility provided and that which would really be a deterrent to a trade but the distinction, if it has to be drawn, is real and clear. For the tax to become a prohibited tax it has to be a direct tax the effect of which is to hinder the movement part of trade. So long as a tax remains compensatory or regulatory it cannot operate as a hindrance.

11. ...In our view the concept of freedom of trade, commerce and intercourse postulated by Article 301 must be understood in the context of an orderly society and as part of a Constitution which envisages a distribution of powers between the States and the Union, and if so understood, the concept must recognize the need and the legitimacy of some degree of regulatory control, whether by the Union or the States; this is irrespective of the restrictions imposed by the other articles in Part XIII of the Constitution. We are, therefore, unable to accept the widest view as the correct interpretation of the relevant articles in Part XIII of the Constitution.

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14. After carefully considering the arguments advanced before us we have come to the conclusion that the narrow interpretation canvassed for on behalf of the majority of the states cannot be accepted, namely, that the relevant articles in Part XIII apply only to legislation in respect of the entries relating to trade and

commerce in any of the lists of the Seventy Schedule. But we must advert here to one exception which we have already indicated in an earlier part of this judgment. Such regulatory measures as do not impede the freedom of trade, commerce and intercourse and compensatory taxes for the use of trading facilities are not hit by the freedom declared by Article 301. They are excluded from the purview of the provisions of Part XIII of the Constitution for the simple reason that they do not hamper trade, commerce and intercourse but rather facilitate them.

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17. We have, therefore, come to the conclusion that neither the widest interpretation nor the narrow interpretations canvassed before us are acceptable. The interpretation which was accepted by the majority in the *Atiabari Tea Co.* case, is correct, but subject to this clarification. Regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Article 301 and such measures need not comply with the requirements of the proviso to Article 304(b) of the Constitution.

9. Learned counsel for the petitioners have vehemently relied upon in *Aashirwad Films* case (*supra*), wherein different rate of entertainment tax on Telugu films and non Telugu films was found to be unjustified. Learned counsel for the petitioners relies upon the following quote:

14. It has been accepted without dispute that taxation laws must also pass the test of Article 14 of the Constitution of India. It has been laid down in a large number of decisions of this Court that a taxation statute for the reasons of functional expediency and even otherwise, can pick and choose to tax some. Importantly, there is a rider operating on this wide power to tax and even discriminate in taxation that the classification thus chosen must be reasonable. The extent of reasonability of any taxation statute lies in its efficiency to achieve the object sought to be achieved by the statute. Thus, the classification must bear a nexus with the object sought to be achieved. (See *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala* and *Another*, *East India Tobacco Co. Vs. State of Andhra Pradesh*, , *V. Venugopala Ravi Varma Rajah Vs. Union of India* and *Another*, *Assistant Director of Inspection Investigation Vs. Kum. A.B. Shanthi*, and *The Associated Cement Companies Ltd. Vs. Government of Andhra Pradesh* and *Another*,

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18. The fact of the matter remains that it is difficult to laud the objective of the taxation statute in the instant matter which differentiates on the basis of language alone. This is definitely derisive of social attributes of the polity and Article 14 in its basic form i.e. equality before law. If any classification seeks to take refuge of exception under reasonable differentia category under article 14, it must stay clear of the broad constitutional mandate as mentioned

hereinbefore. In the instant matter, the classification solely on the basis of language, fails in its initiative to be called reasonable. The classification thus is arbitrary and as such violative of Article 14 of the Constitution of India.

10. In S.K. Dutta's case (supra), it was observed that the State has a wide discretion in selecting persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some person or objects and not others, it is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of Article 14. The challenge under consideration in the said judgment was to the exemption of Income Tax given to the Scheduled Tribes due to their economic and social backwardness. It was held that for the purposes of valid classification what is required is not some imaginary difference but a reasonable and substantial distinction having regard to the purpose of the law.

11. Mr. Kapoor has vehemently argued that in H. Sanjeeviah's case (supra), under the guise of power to regulate right to transport various produce, the State has prohibited the movement of forest produce during the period between sunset and sun-rise, though permitted on payment of cash deposit as security. The Supreme Court has struck down such restriction for the reason that the power conferred is to restrict the transit of various produce and not to regulate it.

12. Mr. Kapoor has also relied upon Lakshman's case (supra), wherein the Government of Madhya Pradesh framed rules not to allow the grazing of cattle for more than specified period. The Supreme Court struck down the distinction between owners of cattle belonging to Madhya Pradesh and owners of cattle belonging to other States. The Court though observed that they are not holding that geographical classification is never permissible. It was observed as under:

3. We are unable to see any rational basis for the distinction made between owners of cattle belonging to Madhya Pradesh and owners of cattle belonging to other States (described as owners of "foreign cattle") and the levy of prohibitive grazing rates on owners of the so-called "foreign cattle". Forests of Madhya Pradesh are not grazing grounds reserved for cattle belonging to residents of Madhya Pradesh only, even as the towns and villages of Madhya Pradesh cannot be reserved for the residence of the original residents of Madhya Pradesh only. Accidents of birth and geography cannot furnish the credentials for such discrimination and authorize prejudicial treatment in matters of this nature. We do not say that geographical classification is never permissible....

13. In Hardev Motor Transport case (supra), the appellants were holders of the Contract Carriage Permit, but their vehicles were detained on the allegation that they were using the vehicles as stage carriages. The Court held that tax cannot be imposed by way of penalty although penalty can be imposed for non-payment of tax or evasion of tax. If there is violation of conditions of permit, the permit holder can be proceeded accordingly, but the penalty cannot be imposed for violation of the permit conditions.

14. In G.K. Krishnan's case (supra), the issue examined was whether enhancement of motor vehicle tax on omnibuses is constitutionally valid, inter alia, for the reason that it imposes restrictions on the freedom of trade, commerce and intercourse. The tax was imposed with a view to avoid unhealthy competition between omnibuses and regular stage carriage buses. Examining the scope of Article 301 of the Constitution, it was held that each of the clauses of Article 304 operates as a proviso to Articles 301 and 303. It was held that the word "free" in Article 301 does not mean freedom from regulation and that there is a clear distinction between laws interfering with freedom to carry out the activities constituting trade and laws imposing on those engaged therein rules of proper conduct or other restraints directed to the due and orderly manner of carrying out the activities. It was held to the following effect:

15. Regulations like rules of traffic facilitate freedom of trade and commerce whereas restrictions impede that freedom. The collection of toll or tax for the use of roads, bridges, or aerodromes, etc. do not operate as barriers or hindrance to trade. For a tax to become a prohibited tax, it has to be a direct tax, the effect of which is to hinder the movement part of the trade. If the tax is compensatory or regulatory, it cannot operate as a restriction on the freedom of trade or commerce.

15. Later examining, whether such tax is a compensatory tax, it was held as under:

19. In the The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, , this Court said that it would not be right to say that a tax is not compensatory because the precise or specific amount collected is not actually used for providing any facilities and that a working test for deciding whether a tax is compensatory or not is to enquire whether the trades people are having the use of certain facilities for the better conduct of their business and paying not patently much more than what is required for providing the facilities, and that it would be impossible to judge the compensatory nature of a tax by a meticulous test and, in the nature of things, it could not be done.

20. It is well to remember the practical administrative difficulties in imposing a tax at a rate per mile. It is always difficult to evolve a formula which will in all cases ensure exact compensation for the use of the road by vehicles having regard to their type, weight and mileage. Rough approximation, rather than mathematical accuracy, is all that is required. In all such matters, it is well to remember the profound truth of the say: "it is the mark of an educated man to look for precision in each class of things just so far as the nature of the subject admits". See Basic Works of Aristotle, Ed. Richards Mekeon P. 936.

16. It also held that there is a presumption that a classification is valid, especially in a taxing statute and the burden lies to a person who challenges the reasonableness of a classification. The Court observed as under:

36. It cannot be said that a classification made on the basis of the capacity of the

contract carriages to run more miles is unreasonable because those carriages will be using the road more than the stage carriages which have got a time schedule, specified routes and minimum and maximum number of trips. A person who challenges a classification as unreasonable has the burden of proving it. There is always a presumption that a classification is valid, especially in a taxing statute. The ancient proposition that a person who challenges the reasonableness of a classification, and therefore, the constitutionality of the law making the classification has to prove it by relevant materials, has been reiterated by this Court recently.

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39. ...Therefore, when the Government, in the exercise of its power to tax, made a classification between stage carriages on the one hand and contract carriages on the other and fixed a higher rate of tax on the latter, the presumption is that the Government made that classification on the basis of its information that contract carriages are using the roads more than the stage carriages because they are running more miles. Therefore, this Court has to assume, in the absence of any materials placed by the appellants and petitioners, that the classification is reasonable....

17. In *Malwa Bus Service (Pvt.) Ltd. case* (supra), the constitutional validity of Section 3 of the Act as it existed prior to amendment by virtue of Punjab Act No. 7 of 2007 came up for consideration. In exercise of the provisions of said Section 3, the Schedule appended to the Act was also amended contemplating that every stage carriage plying for hire had to pay Rs. 500 per year per seat subject to maximum Rs. 35,000/-. The Court held that the levy in question is compensatory. It was held as under:

17. ...As mentioned earlier the mandate of the provisions in Part XIII of the Constitution is not that trade, commerce and intercourse should be "absolutely free" i.e. subject to no law and no taxes at all. Trade, commerce and intercourse should pay their way, that is, the price for the facilities provided by the State in the form of roads, bridges, check posts, the departmental organizations intended for regulation of transport, law and order etc. In modern communities the exercise of any trade and the conduct of any business must involve many kinds of fiscal liabilities. Merely because certain taxes are levied on them it cannot be said that trade or commerce has become unfree. Without the repair, upkeep, maintenance and provision for depreciation of roads, transportation would itself become impossible. Motor vehicles which stand in direct relation to such roads should, as held by this Court earlier, contribute towards the cost incurred for the aforesaid purposes. There is nothing inconsistent with the conception of freedom of trade and commerce if, in truth, what is collected by way of tax is a pecuniary charge which is compensatory in character. What is essential is that the burden should not disproportionately exceed the cost of the facilities provided by the State. It is not at all unreasonable to ask the owners of motor vehicles to contribute towards the cost of maintenance of roads etc. as they happen to

belong to a class having a special and direct benefit of the facilities so provided. When they are taxed, they are paying a price for some thing which makes their movement safer, easier and more convenient....

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21. ...There is no dispute that even a fiscal legislation is subject to Article 14 of the Constitution. But it is well settled that a legislature in order to tax some need, not tax all. It can adopt a reasonable classification of persons and things in imposing tax liabilities. A law of taxation cannot be termed as being discriminatory because different rates of taxation are prescribed in respect of different items, provided it is possible to hold that the said items belong to distinct and separate groups and that there is a reasonable nexus between the classification and the object to be achieved by the imposition of different rates of taxation. The mere fact that a tax falls more heavily on certain goods or persons may not result in its invalidity. As observed by this Court in *Khandige Sham Bhat and Others Vs. The Agricultural Income Tax Officer*, in respect of taxation laws, the power of legislature to classify goods, things or persons are necessarily wide and flexible so as to enable it to adjust its system of taxation in all proper and reasonable ways. The courts lean more readily in favour of upholding the constitutionality of a taxing law in view of the complexities involved in the social and economic life of the community. It is one of the duties of a modern legislature to utilize the measures of taxation introduced by it for the purpose of achieving maximum social good and one has to trust the wisdom of the legislature in this regard. Unless the fiscal law in question is manifestly discriminatory the court should refrain from striking it down on the ground of discrimination....

18. In *Aravind Ramakant Modawdakar's* case (supra), the Supreme Court examined different rate of taxation for similarly situated contract carriages plying on intra-State and inter-State routes. The learned Single Judge of Kerala High Court has dismissed the writ petition, but the Division Bench allowed the same. The order of the Division Bench was set aside by the Supreme Court. It was inter alia held that actual user of road by the vehicles which are covered by the requisite permits is not always a relevant factor. The Court observed as under:

9. ...Therefore, it is contended that the burden of road usage could be more in the case of intra-State permit holders and the tax in question being compensatory in nature, there is no justification for reducing the tax rate in favour of the intra-State contract carriages. We think this argument of long or short usage of road is purely hypothetical and would not be a sole guideline to test the validity of a taxing Statute, even if such Statute is a compensatory/regulatory taxation. The tax levied under the legislative power found in Entry 56 or 57 of List II of the 7th Schedule is primarily a tax, though it may be compensatory and/or regulatory in nature and, therefore, while testing the constitutional validity of a taxing Statute it may not be safe to rely upon the hypothetical factors as against the wisdom of the legislature. So long as this

classification is not arbitrary or unreasonable, the courts will not interfere with this classification which is the prerogative of the legislature. Now coming to the nexus of the classification with object of taxation, it should be noted that in the present cases the classification is made for the purpose of granting exemption u/s 22 of the Act. Grant of exemption/reduction under this Section is in "Public interest", therefore, nexus of this classification will have to be traced to "Public interest" which is again within the realm of legislative wisdom unless tainted by perversity or absurdity.

19. Examining the issues raised in the present writ petitions, in view of the judgments referred, we find that the Central Motor Vehicles Rules, 1989 framed under the Motor Vehicles Act, 1988 defining "home State" to mean the State, which has granted permit under sub-section (9) of Section 88. In terms of Rule 85 of the said Rules, the permit holder of a tourist vehicle has to prepare a chart in respect of each trip by giving particulars such as name, address and age of the passenger as well as starting and destination points. The tourist vehicle is to commence and end its journey in the home State with a further stipulation that vehicle shall not remain outside the home State for a period of more than 3 months. There is specific prohibition contained in sub Rule 9 of Rule 85 that a permit holder shall not operate the tourist vehicle as a stage carriage.

20. A reading of the aforesaid Rules shows that different conditions are required to be satisfied by a tourist vehicle and a stage carriage. The tourist vehicle is meant for point to point destination and the same cannot be used for passengers, as in the case of stage carriage. Therefore, a classification has been created under the Rules itself between the vehicles registered in the home State or otherwise. Since a vehicle registered in the home State cannot remain outside the home State for a period of more than 3 months and had to start and end its journey from the home State, therefore, intra-State movement of tourist vehicles is contemplated to be different than inter-State movement of tourist vehicles.

21. The motor vehicle tax falls within the legislative competence of the State Legislature falling in Entry 56 of List II of the 7th Schedule. Thus the State Legislature is competent to levy such tax on the class of vehicles as it may carve out, but subject to the condition that the classification has to be based upon intelligible differentia having reasonable nexus with an objective to be achieved. The objective of the State in levying tax is to regulate the movement of tourist vehicles, so that such vehicles cannot be used as stage carriage vehicles and also to augment its resources. Therefore, the classification created in respect of tourist vehicles operating in the home State and the vehicles operating other than the home State is a reasonable classification having nexus with the objective to be achieved.

22. The taxation so imposed is regulatory and compensatory. It is regulatory when it intends to avoid use of tourist vehicles as stage carriages and compensatory when the higher rate is claimed from such tourist vehicles, as such vehicles use the infrastructure of the State. This Court in exercise of powers of

judicial review cannot judge the extent of compensatory nature of tax meticulously, as observed in G.K. Krishnan's case (supra). It is always difficult to evolve a formula which will in all cases ensure exact compensation for the use of the road by vehicles having regard to their type, weight and mileage. The Court has also held that there is a presumption that a classification is valid, especially in a taxing statute and the burden lies on the person, who challenges the classification of proving it. Therefore, we find that there is no illegality in the tax, which is compensatory and also regulatory in nature.

23. One of the judgments referred to by the learned counsel for the State, close to the facts of the present case, is Aravind Ramakant Modawdakar's case (supra). In the said case, the contract carriages plying on intra-State routes and inter-State routes were taxed differently. Such classification has been upheld. Therefore, the classification of tourist vehicles operating inter-State and intra-State is a valid classification in view of the said judgment.

24. The argument that the higher rate of tax on the tourist vehicles registered outside the State interferes in the right of freedom in trade, commerce and intercourse conferred under Article 301 of the Constitution is again not tenable. In Automobile Transport (Rajasthan) Ltd. case (supra), the Supreme Court held that Article 301 must be understood in the context of an orderly society and the regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Article 301. The judgments in Atiabari Tea Co. Ltd. and Automobile Transport (Rajasthan) Ltd. cases (supra), interpret the scope and ambit of Article 301. In Aashirwad Films case (supra), the differential levy of tax on films on the basis of language was struck down for the reason that differentiation on the basis of language is not permissible. Such classification cannot be called reasonable. As held in S.K. Dutta's case (supra), the classification cannot be imaginary, but there has to be reasonable and substantial distinction.

25. In Laxman's case (supra), the grazing of cattle other than of the State of Madhya Pradesh in the area of Madhya Pradesh was found to be unjustified. The Court though observed that it is not possible to hold that geographical classification is never permissible. The restriction of grazing of cattle in Laxman's case (supra), has no parity with the present case, as the cattle which may belong to Madhya Pradesh or otherwise have a right to seek fodder from all available natural resources. The grazing could not be curtailed for cattle from outside the State. Such artificial classification was rightly found to be unjustified.

26. In view of the above, we find that the tax on tourist vehicles registered in the State of Punjab, a home State and tourist vehicles registered outside state forms reasonable classification leading to different rates of taxation. Such classification gets support from Rule 85 of the Central Motor Vehicles Rules, 1989. Such classification is not only reasonable, but is also recognized by Central Motor Vehicles Rules, 1989. Such motor vehicle tax being compensatory and regulatory does not interfere in the freedom of trade, commerce and intercourse guaranteed

under Article 301 of the Constitution. Consequently, we do not find any merit in the present writ petitions. The same are accordingly dismissed.