
(2002) 10 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 318, 746, 1492 and 2529 of 2002 and 3890, 4517, 4610 and 4724 of 2001

Tapan Purohit and

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 30-10-2002

Acts Referred:

Constitution of India, 1950 — Article 265
Rajasthan Motor Vehicles Taxation Act, 1951 — Section 4(1)

Citation : AIR 2003 Raj 124 : (2003) 1 WLC 645 : (2003) 1 WLN 537

Hon'ble Judges : N.N. Mathur, J;H.R. Panwar, J

Bench : Division Bench

Advocate : Gajendra Maheshwari, for the Appellant; Sagar Mal Mehta, General and Vineet Kothari, for the Respondent

Final Decision : Allowed

Judgement

Mathur, J.—In this group of writ petitions under Article 226 of the Constitution of India, constitutional validity of second proviso to Section 4(1)(b) of the Rajasthan Motor Vehicle Taxation Act, 1951, hereinafter referred to as "the Act of 195V, has been challenged.

2. The Writ Petition No. 2529/2002 is quite comprehensive, as such, it is regarded as representative of the contentions urged in support of the challenge. Petitioner purchased a motor vehicle being Maruti Car. hereinafter referred to as "the vehicle", bearing Registration No. RJ-22/C-2866 from Smt. Laxmi Kanwar, hereinafter referred to as "the vendor" on 9-11-2001 after payment, of consideration agreed for. The vendor got the vehicle registered in her name on 28-6-2001 after completing necessary formalities in this regard and after payment of "One Time Tax" (in short "the OTT") as per the provisions of the Act. The payment of OTT was accepted by the transport Authorities. The entry for payment of the OTT of Rs. 5,440/- was made in the Certificate of Registration. Petitioner after purchase of the said vehicle applied for transfer of registration of

vehicle in this name. The second respondent asked the petitioner to deposit the fifty percent of the OTT for transfer of vehicle in view of the second proviso to Section 4(1)(b) of the Act, inserted by the Finance Act, 2001. The provision provides that on every transfer of ownership of motor vehicle mentioned in Section 4, an additional one time tax shall be payable at such rate as may be notified by the State Government in the official Gazette. Petitioner has challenged the validity of the said provision mainly on the ground of lack of legislative competence insuch as Entry 57 of List II of Seventh Schedule of the Constitution of India permits the State Government to impose a tax on vehicle only, where as the impugned provision provides levy to tax on person.

3. Is contended by Mr. Gajendra Maheshwari, learned counsel appearing for the petitioner, that Section 4(1)(b) of the Taxation Act provides for payment of OTT with a view to give relief to the tax payer, who could discharge liability of paying tax under the Act by depositing the OTT once and for all. Once such OTT is paid, the vehicle gets out of the purview of the Taxation Act and the same cannot be subjected to any further tax liability. It is, thus, submitted that liability to pay the tax is on the vehicle and not on the owner and, therefore, if the OTT is paid in respect of a vehicle then there cannot be any liability to pay the tax in respect of such vehicle even on transfer. It is further submitted that imposition of additional tax on transfer of ownership is nothing but the tax on incidence of transfer in which the State is not competent being beyond the scope of Entry 57 of List II of Schedule VII. Learned counsel has heavily relied upon a Division Bench judgment of this Court in East India Hotels Ltd. and Another Vs. State of Rajasthan and Others, wherein it is held that the property on which OTT has been paid, cannot be subjected to tax again on transfer of ownership. It was a case under the Rajasthan Land and Building Tax. It is submitted that the tax on land and building is akin to tax on vehicle under the Act of 1951.

4. On the other hand, it is submitted by Mr. Sagar Mal Mehta, learned Advocate General for the State that the tax under the Rajasthan Motor Vehicle Taxation Act, 1951 is a regulatory and compensatory tax levied under the Entry 57 of List II of Schedule VII of the Constitution of India. Therefore, it is a tax for user of the public roads by any motor vehicle and, as such the concept of OTT is rightly related to the owner and the State is entitled to charge OTT upon every transfer of motor vehicle in question. The payment of OTT in respect of the motor vehicle is only mode of payment of tax and the owner in particular, who has paid OTT in respect of motor vehicle, is not required to pay the tax again and again but the same does not preclude the State from charging OTT at reduced rate or otherwise from transferee upon transfer of motor vehicle to him and the motor vehicle in his hand can be treated as "not tax paid character" because the fact remains that such transferee has never paid the tax under the Act earlier.

5. Mr. Vineet Kothari, learned counsel appearing for the Department, while supporting the submissions of the learned Advocate General has raised preliminary objection as to the maintainability of the writ petition being

premature. It is also submitted by Mr. Kothari that simply by asking to pay fifty percent of the OTT the vehicle does not come out of the tax net. Distinguishing the Division Bench judgment in *East India Hotels Ltd. and Another Vs. State of Rajasthan and Others*, it is submitted that the tax under the Act of 1951 is for the user of public roads by any motor vehicle, whereas the tax on land and building is on property only.

6. Thus, the question which falls for consideration is whether imposition of additional tax on transfer of ownership of a vehicle under the second proviso to Section 4(1)(b) of the Act of 1951 is beyond the legislative competence of the State being outside the scope of Entry 57 of List II of Schedule VII of the Constitution of India?

7. In order to consider the point germane to the controversy, it will be apposite to refer to the relevant provisions of the Act of 1951.

Section 4 of the Act of 1951 is the charging section for imposition of road tax. The relevant part of Section 4, as amended by the Rajasthan Finance Act, 2000 is extracted as follows :

"4. Imposition of Tax.-- (1) Save as otherwise provided by this Act or by the Rules made thereunder or any other law for the time being in force, there shall be levied and collected on all motor vehicles used or kept for use in the State,--

(a) a tax, in respect of such vehicles, which are not covered by Clause (b), (c) or (d), at such rates as may be specified by the State Government by notification in Official Gazette which shall not exceed 10% of the cost of the chassis/vehicle per annum:

Provided that where the rates are not specified, on quarterly or monthly basis, by the State Government, by notification in the Official Gazette, and if the tax is permissible to be paid quarterly or monthly, the amount payable shall be equivalent to the one fourth or one twelfth respectively of the annual rate of tax;

(b) a one time tax in the case of non-transport vehicles at such rates as may be notified by the State Government by notification in the Official Gazette which shall not exceed 10% of the cost of the vehicle:

Provided that in addition to one time tax there shall be paid by the owner or person having possession or control of a motor vehicle on which one time tax is payable, any tax or penalty as was payable under this Act for any period prior to the coming into force of the provisions of Chapter V of the Rajasthan Finance Act, 1997 (Rajasthan Act No. 9 of 1997) at such rates as were applicable to such vehicles from time to time.

Provided further that on every transfer of ownership of motor vehicle mentioned above, an additional one time tax shall be payable at such rates as may be notified by the State Government in the Official Gazette."

8. With a view to check the frequent transfers of the vehicles, a proviso was

added to Section 4(1)(b) by making a provision for payment of additional one time tax, which is evident from reading of para D of the statement of objects and reasons for insertion of the said provision by Rajasthan Finance Act, 2000:

"As per existing provision of Clause (b) of Sub-section (1) of Section 4, all non-transport vehicle owners pay one time tax at the time of registration of motor vehicle. These vehicle owners pay one time tax at the time of registration of motor vehicle. These vehicles get transferred very frequently. A provision of payment of additional one time tax already exists in the notifications. It is now proposed to make such provision in the aforesaid section of the Act."

The State Government in exercise of powers conferred u/s 4(1)(b) has specified rates of tax under the notification dt. 54-3-1999, which reads as follows:

"F6(179)/Pari/Tax/Hqrs/95/IC: Dt. 24-3-99

In exercise of the powers conferred by Clause (b) of Sub-section (1) of Section 4 of the Rajasthan Motor Vehicles Taxation Act. 1951, (Rajasthan Act No. 11 of 1951) and in supersession of all previous notifications issued in this behalf, the State Government hereby with effect from 1-4-1999 prescribes the rate of one time tax in case of different class of non-transport vehicles, as specified in Col. No. 2 of the table appended here, at the rates specified against each in Col. No. 3 thereof, subject to the maximum of Rs. 25,000/- (Twenty Five Thousand) for one motor vehicles:--

TABLE

S.No.

Description of class of Motor Vehicle

One Time Tax

1

2

3

1.

Motor Vehicle including Two Wheeled Vehicles, constructed and used solely for the conveyance of persons and light personal luggage, with seating capacity up to 10 including driver;

(a) Motor Vehicles in the name of individuals;

3% in case of Two Wheeled Vehicles and 2.50% in all other cases, of the cost of the vehicles.

(b) Motor Vehicles in the name of other than individuals :

(c)

5% of the cost of the vehicle

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2.

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3.

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Provided that on every transfer of ownership of the Motor Vehicles mentioned in Column No. 2 above excluding two wheelers an additional tax at the rate of fifty per cent of the one time tax paid at the time of registration shall be payable.

Note.-- If such vehicles as mentioned above in column No. 2 are found plying on hire or reward, then these vehicles shall be liable to pay tax as notified for transport vehicles of similar type, for the complete financial year, in which the vehicle was found plying on hire or reward.

Explanations-- The cost of the vehicles for computation of tax:"

In view of the insertion of proviso to Section 4(1)(b) by the Finance Act, 2001, the State Government vide notification dated 18-1-2000 substituted another proviso for the additional tax as follows :

"Provided that on every transfer of ownership of the motor vehicles mentioned in column No. 2 above excluding two wheelers an additional tax at the rate of fifty percent of the one time tax paid at the time of registration shall be payable but this additional tax shall not be payable in case where transfer of ownership is being done in the name of the person succeeding to the possession of the motor vehicle owing to the death of the registered owner of the motor vehicle."

The said proviso was further amended vide notification dated 31-3-2000 with effect from 1-4-2000, which is extracted as follows :

"Provided that on every transfer of ownership of the Motor Vehicles mentioned in column No. 2 above an additional tax at the rate of fifty percent of the one time tax paid at the time of registration shall be payable but this additional tax shall not be payable in case where transfer of ownership is being done in the name of person succeeding to the possession of the motor vehicle owing to the death of the registered owner of the motor vehicle."

9. It would be relevant to extract the Entry 57 of List II of Schedule VII of the Constitution of India, which is as follows :

"Tax on vehicles, whether mechanically propelled or not, suitable for use on

roads, including tramcars subject to the provisions of Entry 35 of List III."

A bare reading of the Entry shows that it permits the State Government to impose the tax on vehicle and not on owner.

10. The Apex Court in the case of *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, . has observed that tax on motor vehicle is a compensatory tax levied for use of roads and it is not on ownership or possession of the motor vehicle. The Court further observed that the object of the Act is achieved by charging to tax on motor vehicles suitable for use on roads kept in the State. In the said case, the question for consideration was whether the owner or person having the possession or control of the motor vehicle is not bound to pay the tax u/s 3(1) of the Act because the vehicle was in the state of affair and was not put to use on road and further mere the certificate of fitness of the vehicle has not been kept, even though the certificate of registration was kept.

11. The contention raised by the learned Advocate General to the effect that the tax under the Act of 1951 is a regulatory and compensatory tax imposed under Entry 57. a tax for user of public road by the motor vehicle which is related to the owner and, as such, the State is entitled to charge OTT, cannot be accepted for the reason that there is no nexus between the subject i.e. transfer of ownership and object of levy i.e. compensatory tax.

12. The Apex Court in *State of Maharashtra and Others Vs. Madhukar Balkrishna Badiya and Others*, has observed that Entry 57 of List II of the Schedule VII of the Constitution of India was subject to the limitations, viz; the power of taxation cannot exceed the compensatory nature, which must have some nexus with the vehicles using the roads. The Court reiterated that the tax imposed on motor vehicles or class of motor cycles could not be valid unless it is compensatory or regulatory or it has any nexus with the vehicles using the public roads. The Court buttressed its view by referring its earlier decision in *Bolani Ores Ltd. v. State of Orissa*, reported in AIR 1976 SC 17. Thus, what is necessary to uphold a regulatory and compensatory tax is the existence of specific identifiable object behind the levy and a nexus between the subject and the object of the levy.

13. In the instant case, the compensation for use of roads etc. by the vehicle was already paid by the vendor u/s 4(1)(b) of the Act of 1951. He paid the OTT for the life time of the vehicle. Keeping this in mind, each of the petitioners purchased vehicle from the vendor. Obviously, it carried element of tax in the purchase consideration of vehicle. Thus, the petitioner has already paid off his share of tax in the form of purchase price, paid to the vendor. The object for insertion of the second proviso to Section 4(1)(b) as stated is to discourage the transfer of vehicle. We have not been able to understand the nexus between the transfer of ownership and the object of levy i.e. compensatory tax. Thus, in our view, the impugned additional tax under proviso second to Section 4(1)(b) of the Act is arbitrary inasmuch as it amounts to tax a person merely on the incidence

of transfer of vehicle, which is clearly beyond the legislative competence being outside the scope of Entry 57 of List II of Schedule VII of the Constitution of India. The ratio laid down by the Division Bench of this Court in *East India Hotels Ltd. and Another Vs. State of Rajasthan and Others*, equally applies to the facts of the instant cases. Thus, the second proviso to Section 4(1)(b) of the Act is violative of the Article 265 of the Constitution of India and is, therefore, liable to be struck down.

14. Accordingly, we allow all the writ petitions and declare the second proviso to Section 4(1)(b) of the Act of 1951 as ultra vires and void. The respondents are directed to grant all consequential benefits to each of the petitioners.