

(1989) 09 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2577 of 1979

Union of India

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 13-09-1989

Acts Referred:

Adaptation of Laws Order, 1950 — Section 11, 18
Constitution of India, 1950 — Article 226, 285(1), 372(2)
East Punjab General Sales Tax Act, 1948 — Section 2
General Clauses Act, 1897 — Section 4
Government of India Act, 1935 — Section 154
Punjab Motor Vehicles Taxation Act, 1924 — Section 13, 13(1)
Punjab Motor Vehicles Taxation Rules, 1925 — Rule 8

Citation : AIR 1990 P&H 183 : (1991) 1 ILR (P&H) 310

Hon'ble Judges : Jai Singh Sekhon, J

Bench : Single Bench

Advocate : Deepak Thapar, for the Appellant; K.P. Bhandari, General and S.P. Soni, for the Respondent

Judgement

1. Through this writ petition, the Union of India through Railway Department, had challenged the imposition of Road-tax under S. 13(1) of the Punjab Motor Vehicles Taxation Act, 1924 (hereinafter referred to as the Act) and R. 8(i) of the Punjab Motor Vehicles Taxation Rules, 1925 (hereinafter referred to as the Rules), on the motor vehicles owned by the Northern Railway Workshop, Amritsar, mainly on the ground that these vehicles being the property of the Central Government are not liable to any tax under Art. 285(1) of the Constitution of India.

2. In brief, the relevant facts are that the District Transport Officer, Amritsar, vide impugned order, Annexure P-2, imposed tax on the motor vehicles of the Railway Department under R. 8(i) of the Rules framed under S. 13 of the Act, by holding that the Adaptation; of Laws Order, 1950, protects the tax already imposed at the time of the commencement of the Constitution of India. Being aggrieved against that order, the Union of India went in appeal, which was dismissed by the

Collector, Amritsar, vide order Annexure P-3, dated 17th November, 1977. The Union of India then filed an appeal before the Commissioner, Jullundur Division, Jullundur, on the wrong assumption that such an appeal was maintainable under S. 12 of the Act, but the learned Commissioner dismissed the appeal by holding that it will not be legal for him to interfere in the impugned order in second appeal.

3. The Union of India then invoked the extraordinary jurisdiction of this Court under Art. 226 of the Constitution of India through this writ petition, mainly on the ground that the Central Government is not liable to pay any tax on the vehicles under Art. 285(1) of the Constitution. It was further maintained that the provisions of the Adaptation of Laws Order, 1950, could not override the provisions of the Constitution, especially when no such tax at any time earlier has been claimed or paid by the petitioner on its motor vehicles. In the alternative, it was averred that R. 8(i) of the Rules only makes the motor vehicles exigible which are used for commercial purposes and the vehicles in question being simply used for giving facility to its employees without charging any fair, cannot be said to be used for commercial purposes.

4. The State of Punjab resisted this petition contending that the orders, Annexure P-2 and P-3 passed by the concerned authorities, are perfectly legal and that the provisions of the Adaptation of Laws Order, 1950, along with the provisions of S. 4 of the General Clauses Act, 1897, clearly protect the operation of the laws and the rules already in force, unless the Parliament by law directs otherwise as envisaged by Cl. (2) of Art. 285 of the Constitution.

5. There is considerable force in the contention of Mr. Deepak Thapar, learned counsel for the petitioner, that Cl. (2) of Art. 285 of the Constitution saves only those tax laws and rules under which the property belonging to the Union of India was being subjected immediately before the commencement of the Constitution, and that the provisions of the Adaptation of Laws Order, 1950, or S. 4 of the General Clauses Act, 1897, would not override the provisions of Art. 285(1) of the Constitution as against the contention of Mr. K. P. Bhandari, the then learned Advocate General, assisted by Mr. S. P. Soni, Advocate, that the Adaptation of Laws Order, 1950 and the provisions of S. 4 of the application of the relevant provisions of the Rules and Laws as these were applicable in the State of Punjab to the properties of the Railway Department at the time of the commencement of the Constitution. S. 11 of the Adoption of Laws Order, 1950, reads as under:--

"As from the appointed day all existing provincial laws shall, until repealed or altered or amended by a competent Legislature or other competent authority, be subject to the adaptations directed in this Order."

6. The provisions of S. 18 figuring in Part III of the Adaptation of Laws Order, 1950 reads:--

"As from the appointed day, all existing State Laws shall, until repealed or

altered or amended by a competent Legislature or other competent authority, be subject to the adaptations directs in this order."

7. Thus, there is no doubt that the operation of the existing Provincial laws or State laws until repealed or altered by a competent Legislature or by any other competent authority, was kept intact. The perusal of the other provisions of the Adaptation of Laws Order issued by the President of India under Art. 372(2) of the Constitution further shows that the relevant amendments were made in the existing law with regard to reference to his Majesty or Parliament of the United Kingdom etc. which after the appointed day, i.e. 26th January, 1950, be read as President of India or the Parliament of India as the case may be. No doubt, the Parliament has; not enacted any law so far in this regard, but all the same the above refund provisions of the Adaptation of Laws Order would not override the specific provisions of Art. 285 of the Constitution which is the touch-stone for judging the vires of any existing law qua the imposition of tax by the State against the property of Union of India. Art. 285 of the Constitution reads as under:--

"285. Exemption of property of the Union from State taxation.--(1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from ail taxes imposed by a State or by any authority within a State.

(2) Nothing in Cl.(1) shall, until Parliament by law otherwise provides, prevent any authority, within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

A bare perusal of this clause leaves no doubt that the property of the Union of India has been exempted from all taxes imposed by a State or any other authority within the State, except to the extent that the Parliament may otherwise provide such taxation by enacting any law. Cl. (2) of this Article saves the levying of any tax on any property of the Union to which such property was immediately before the commencement of the Constitution liable or treated as liable so long as that tax continues to be levied in that State. In the case in hand admittedly the Act and the Rules were in force at the time of the commencement of the Constitution, but it is for the first time that such tax is being imposed on the vehicles belonging to the Railway Department i.e. of the Union of India. Thus, it can be well said that although the provisions of R. 8(i) of the Rules relating to the imposition of tax on the vehicles of Central Government (Railways) or of the State Government starting for commercial purposes were on statute book before the commencement of the Constitution but all the same this tax was being not actually levied against any vehicle of the Central Government or Union of India, or that such vehicles were not being treated as liable to this tax. If that is so, then the provisions of Cl. (2) of Art. 285 of the Constitution will not come to the rescue of the State Government for imposition of the tax under the existing Tax Laws or Rules, as contended by the then learned Advocate

General. A Division Bench of this Court in *Union of India v. State of Punjab*, (1974) 76 Pun LR 608 had taken the view that the catering service of Northern Railway Department on no profit no loss basis, would attract the imposition of the sales-tax under S. 2(d) of the East Punjab General Sales Tax Act, 1948, as this service would not fall within the definition of "sale" and that the provisions of Art. 285(1) of the Constitution clearly exempts the property of the Union from the imposition of any tax by a State or by any other authority within the State. This authority relied upon by the learned counsel for the petitioner is (not?) of much help to the case in hand, as the import of Cl. (2) of Art. 285 of the Constitution was not discussed therein.

8. The Calcutta High Court in *The Corporation of Calcutta Vs. Union of India (UOI)*, , while interpreting the scope of the provisions of Art. 285(2) of the Constitution in para 10 of the judgment has held as under:--

"A Union property would be liable to a particular local tax under Art. 285(2) of the Constitution if, at the relevant date, namely, immediately before the commencement of the Constitution, it was, in fact, assessed to such tax as Central Government property and the same was being actually paid and realised even if such assessment was unlawful, not to speak of cases where the invalidity of the particular imposition at the above relevant date is disputed and not altogether free from doubt. The phrase "treated as liable" has the same legal meaning in both the proviso to S. 154 of the Government of India Act, 1935, and Cl. (2) of Art. 285 of the Constitution and it has the same purpose, namely, to avoid a final solution of the dispute as to the legal liability of the particular property to the disputed tax and to authorise or validate the levy of the tax in the post-Act and post-Constitution period respectively, at least when such tax was actually levied and realised and paid, in fact, for the particular property as Central Government property for the period immediately before the relevant date, that is, the commencement of Part III of the Government of India Act, 1935, in the one case and the commencement of the Constitution in the other, even if such levy was illegal."

Thus, according to the Division Bench of the Calcutta High Court, Art. 285(2) of the Constitution saves only those State Acts vide which the property of the Union was actually being taxed immediately before the commencement of the Constitution of India.

9. A Division Bench of the Allahabad High Court in *Union of India (UOI) Vs. Municipal Board*, , also had taken a similar view by holding that where the Municipal Board had levied the house-tax and water tax on the property of the Railways long before the commencement of the Constitution and this tax continued to be paid till 31st March, 1953, then in the absence of any law since the enforcement of the Constitution providing otherwise, the liability for the payment of tax by the Railway continues in view of the provisions of Art. 285(2) of the Constitution of India.

10. The Apex Court in Union of India (UOI) Vs. City Municipal Council, Bellary, , while interpreting the provisions of Art. 285(2) of the Constitution has held in para 7 of the judgment as under:--

"The property of the Union is exempt from all taxes imposed by a State or by any authority within a State. But the Parliament may by law provide otherwise and then any tax on the property of the Union can be imposed and levied in accordance with the said law. But then an exception has been carved out in Cl. (2). The exception is not meant for levying any tax on such property by any State, but it is merely for the benefit of any authority including the local authority like the Municipal Council in question. Cl. (1) cannot prevent such authority from levying any tax on any property of the Union if such property was exigible to such tax immediately before the commencement of the Constitution. The local authority, however, can reap advantage of this exception only under two conditions namely (1) that it is "that tax" which is being continued to be levied and no other; (2) that the local authority in "that State" is claiming to continue the levy of the tax. In other words, the nature, type and the property on which the tax was being levied prior to the commencement of the Constitution must be the same as also the local authority must be the local authority of the same State to which it belonged before the commencement of the Constitution. On fulfilment of these two conditions it is authorised to levy the tax on the Union property under Cl. (2). As in the case of Cl. (1) it lies within the power of the Parliament to make a law withdrawing the exemption of the imposition of the tax on the property of the Union, so in the case of Cl. (2) it is open to the Parliament to enact a law and finish the right of the local authority within a State to claim any tax on any property of the Union, a right it derived under Cl. (2). That is to say, in both the cases the ultimate power lies with the Parliament."

11. Thus, in view of the above rule of law laid down by the Supreme Court and other High Courts, there is absolutely no doubt that the property of the Union would continue to be taxable under the existing State Laws at the time of the commencement of the Constitution if actually such taxes were being imposed in the pre-Constitution period. In the case in hand, there is no dispute that this tax was not being levied on the motor vehicles of the Railways in the pre-Constitution period or in the post Constitution period and it was for the first time that the State Authorities had thought of at Amritsar. So the provisions of Art. 285(1) of the Constitution clearly bar the imposition of this tax.

12. Although the provisions of R. 8(i) of the Rules do provide for the imposition of tax on all the motor vehicles owned by the Railway Department of the Central Government, but it would be of no help to the State of Punjab in the face of Art. 285(1) of the Constitution of India, R. 8(i) reads as under:--

"8 Under sub-section (!) of S. 13 of the Act, persons who keep for use motor vehicles of the following classes are exempt from liability to pay the tax in respect of such motor vehicles to the extent specified below:

(i) Motor Vehicles owned and kept for use by department of the Central or State Government-- Total exemption: (Provided that this exemption shall not apply to motor vehicles belonging to the Central Government's (Railway) or the State Government operating for a commercial purpose);"

13. A bare perusal of the same leaves no doubt operating for a commercial purpose" only qualify the vehicles of the State Government and not the motor vehicles belonging to the Railway Department of Central Government, as the word "or" figuring between the vehicles belonging to the Central Government or the State Government clearly shows that the operation for commercial purposes relates to the vehicles belonging to the State Government only. If the Legislature intended to restrict the imposition of tax to the motor vehicles of the Railway Department of the Central Government, then it would have used "and" instead of "or". Moreover, it appears that the Railway being a commercial department of the Central Government, there was no necessity for qualifying the motor vehicles belonging to this department to be taxable on the ground that these were being used for commercial purposes.

14. For the foregoing reasons, the impugned orders, Annexure P-2 and P-3 of the District Transport Officer, and Collector Arnritsar levying tax on the motor vehicles of the Railway Department under R. 8(i) of the Rules framed under S. 13 of the Act, are hereby quashed by accepting the writ petition. In view of the peculiar legal position, there is no order as to costs.

15. Petition allowed.