

(2003) 09 BOM CK 0092
In the Bombay High Court
Case No : Writ Petition No. 3583 of 2002

Western Coalfields Ltd.

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 16-09-2003

Acts Referred:

Bombay Motor Vehicles Tax Act, 1958 — Section 3
Central Motor Vehicles Rules, 1989 — Rule 126B, 2
Motor Vehicles Act, 1988 — Section 2(28)

Citation : (2004) 2 ALLMR 109 : (2004) 3 BomCR 237 : (2004) 1 MhLj 883

Hon'ble Judges : R.M. Lodha, J;K.J. Rohee, J

Bench : Division Bench

Advocate : A.S. Mehadia, for the Appellant; B.H. Dangre, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—Rule. Returnable forthwith. Ms. Dangre, A.G.P. waives service for respondents. Rule is heard finally by consent of the parties at this stage.

2. On 20th September, 2002, at Nari Saoner Road, Nagpur, Excavator (Heavy Earth Mover) being Model No. 2021, Serial No. 20212379 having Chassis No. 81016314/13, FIF 409 FD 12/97, was seized by the Regional Transport Officer, Nagpur. The said Excavator belongs to the petitioner --Western Coalfields Ltd. It was going from Silewara to Nagpur (Godhani) and upon demand, the driver of the said Excavator failed to produce valid documents. In the opinion of the Regional Transport Officer, Nagpur, said Excavator was "motor vehicle" and, accordingly, it was detained for want of valid documents. The seizure of the said Excavator has led to the filing of this writ petition. It is prayed that it be declared that the Heavy Earth Moving Machineries owned by the petitioner are not the "motor vehicle" as contemplated under the Motor Vehicles Act, 1988 (for short "MV Act"), and hence they are not required to be registered nor any tax is required to be paid on them under the provisions of Bombay Motor Vehicles Tax

Act, 1988 (for short, "Bombay Act, 1988). The petitioner has also prayed for quashing of the order dated 20th September, 2002, whereby the Excavator was seized.

3. The case set up by the petitioner in the writ petition is that it owns mines in the country and for open cast mining, the heavy equipments and machineries are required to be used for digging as well as removal and transport of coal. The said equipments and machineries, according to the petitioner, are used which can even carry loads at a time. For plying such heavy machineries, the special types of roads are required to be prepared in the mines and they cannot ply on ordinary roads. The Petitioner's case is that these machineries have got the special features; they can be used in the mining conditions only. They have different description designed for use in the Colliery for mining activities and for use on specially built roads (haul roads) within the Colliery/mining area. It is averred by the petitioner that Excavators are commonly known as "Dumpers" and the said dumpers, are self designed for off high way operation; some of them are chain mounted and some are tyre mounted for their use in the mining area.

4. In opposition to the petitioner's case the respondent No. 2 has filed reply affidavit and it is submitted that the dumpers or Excavator or for that matter Earth Mover machineries are nothing but a "motor vehicle" within" the meaning of MV Act and the Central Motor Vehicles Rules, 1989 (for short, "the Central Rules of 1989"). The respondents have, thus, justified seizure of the Excavator on 20th September, 2002, as it did not have relevant documents like Registration book, receipt of BMV Tax etc.

5. The learned Counsel for the petitioner placed reliance on Section 2(28) of the MV Act and Rule 126 of the Central Rules of 1989 and submitted that Heavy Earth Moving Machinery cannot be treated as motor vehicle under MV Act.

6. On the other hand, Ms. Bharti Dangre, AGP, referred to Rule 2(ca) of the Central Rules of 1989 which came into effect on 28th July, 2000. She submitted that by insertion of Rule 2 (ca) in the Central Rules of 1989, no doubt is left that the Heavy earth moving machinery is motor vehicle under the Act of 1988 read with the Central Rules of 1989.

7. Section 2(28) of MV Act, 1988 defines "motor vehicle" or "vehicle" thus :--

"2(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty five cubic centimeters;

8. Chapter IV of MV Act, 1988 deals with Registration of Motor Vehicles. The said

Chapter provides for necessity for registration and the place where and how the vehicle is to be registered. Section 110 empowers the Central Government to make Rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to subject matters provided therein while Section 111 empowers the State Government to make Rules regulating the Construction, equipment and maintenance of motor vehicles and trailers in respect of the matters not covered by Sub-section (1) of Section 110. The "construction equipment vehicle" has been defined in Rule 2(ca) of the Central Rules, 1989, thus :--

"2(ca) "construction equipment vehicle" means rubber tyred (including pneumatic tyred), rubber padded or steel drum wheel mounted, self-propelled, excavator, loader, backhoe, compactor roller, dumper, motor grader, mobile crane, dozer, fork lift truck, self-loading concrete mixer or any other construction equipment vehicle or combination thereof designed for off-highway operations in mining, industrial undertaking, irrigation and general construction but modified and manufactured with "on or off or "on and off highway capabilities.

Explanation. -- A construction equipment vehicle shall be a non-transport vehicle the driving on the road of which is incidental to the main off-highway function and for a short duration at a speed not exceeding 50 kms per hour, but such vehicle does not include other purely off-highway construction equipment vehicle designed and adopted for use in any enclosed premises, factory or mine other than road network, not equipped to travel on public roads on their own power."

9. Rule 126 of the Central Rules, 1989 which was introduced by the Central Motor Vehicles (Amendment) Rules, 1993, provides that on and from the date of commencement of Central Motor Vehicle (Amendment) Rules, 1993, every manufacturer of motor vehicles other than trailers and semi-trailers shall submit the prototype of the vehicle to be manufactured by him for test by the Vehicle Research and Development Establishment of the Ministry of Defence of the Government of India or Automotive Research Association of India, Pune, or the Central Machinery Testing and Training Institute, Budni (MP), or the Indian Institute of Petroleum, Dehradun, and such other agencies as may be specified by the Central Government for granting a certificate by that agency as to the compliance of provisions of MV Act and the Central Rules of 1989. Rule 126B provides for Prototype of every construction equipment vehicle to be subject to test as provided therein. Rule 126B reads thus :

"126B. Prototype of every construction equipment vehicle to be subject to test. -- (1) On and from the date of commencement of the Central Motor Vehicles (Sixth Amendment) Rules, 2000, every manufacturer of construction equipment vehicle shall submit the prototype of the construction equipment vehicle to be manufactured by him for test by any of the agencies referred to in Rule 126 for granting a certificate by that agency as to the compliance of provision of the Act and these rules. (2) The testing agencies referred to in Rule 126 shall in accordance with the procedure laid down by the Central Government conduct

tests on vehicles drawn from the production line of the manufacturer to verify whether the vehicles conform to the provisions of the Act, or rules or orders issued thereunder shall be re-numbered as Sub-rule (1) thereof and after Sub-rule (1) as so, renumbered."

10. The question that falls for decision before us is whether the heavy earth moving machinery used by the petitioner in its colliery for mining activities is "motor vehicle" within the meaning of Section 2(28) of the MV Act, read with the "Construction Equipment Vehicle" defined in Rule 2(ca) of the Central Rules of 1989.

11. In *M/s. Central Coal Fields Ltd. and Others Vs. State of Orissa and others*, , the Apex Court was seized with the question whether Dumpers and Rockers are motor vehicles within the meaning of Motor Vehicles Act and were liable to pay road tax. The Apex Court in paragraph 9 observed thus :

"9. It would be appropriate now to mention that some documentary material was sent to us by the appellants by means of an affidavit after we had reserved judgment. That material is suggestive of the fact that Dumpers in some States are granted permission to run on public roads at a speed not exceeding 16 kms per hour and on bridges and culverts at a speed not exceeding 8 kms per hour. From this it is suggested that they have a minimum weight and safe laden weight fixed on some principles. Pictures of various types of Dumpers have also been sent to us which indicate prominently one factor that these Dumpers run on tyres, in marked contrast to chain plates like caterpillars or military tanks. By the use of rubber tyres it is evident that they have been adapted for use on roads, which means they are suitable for being used on public roads. The mere fact that they are required at places to run at a particular speed is not to detract from the position otherwise clear that they are adapted for use on roads. The very nature of these vehicles make it clear that they are not manufactured or adapted for use only in factories or enclosed premises. The mere fact that the Dumpers or Rockers as suggested are heavy and cannot move on the roads without damaging them is not to say that they are not suitable for use on roads. The word "adapted" in the provision was read as "suitable" in *Bolani Ores* case by interpretation on the strength of the language in Entry 57, List II of the Constitution. Thus on that basis it was idle to contend on behalf of the appellants that Dumpers and Rockers were neither adaptable nor suitable for use on public roads. Thus on the fact situation, we have no hesitation in holding that the High Court was right in concluding that Dumpers and Rockers are vehicles adapted or suitable for use on roads and being motor vehicles per se as held in *Bolani Ores* case were liable to taxation on the footing of their use or kept for use on public roads; the network of which, the State spreads, maintains it and keeps available for use of motor vehicles and hence is entitled to a regulatory and compensatory tax (Exemptions claimable apart). The appellants, therefore, in our view, have no case for grant of any relief in these appeals."

12. The Apex Court, thus, held that merely because the Dumpers were used

solely on the premises of the owner, or that they were in closed premises, or permission of the authorities was needed to move them from one place to another, or that they were not intended to be used or were incapable of being used for general purposes, or that they have an unladen and laden capacity depending on their weight and size, were of no consequence and dumpers are liable to be treated as vehicles.

13. In *Chief General Manager, Jagannath Area and Others Vs. State of Orissa and Another*, , the question for consideration was whether the dumpers used in the mining areas were taxable as motor vehicles under the provisions of Orissa Motor Vehicles Taxation Act, 1975. The Apex Court applied the principles laid down in *Central Coalfields Ltd.* and in paragraph 6 of the Judgment observed thus :

"6. According to Mr. Shanti Bhushan, learned Senior Counsel, since the dimension of the dumpers in question exceed the permissible dimensions under the aforesaid Rules, there is an embargo for the dumpers to be used on public roads and as such, the vehicle cannot be taxed under the Taxation Act. We are unable to persuade ourselves to agree with the submission of the learned Senior Counsel for the petitioner. The crux of the question is whether the dumper is a motor vehicle and whether the vehicle attracts the liability of tax u/s 3 of the Taxation Act? The very question came up for consideration before this Court in the case of *Central Coal Fields Ltd. v. State of Orissa* wherein the various provisions of the Orissa Motor Vehicles Taxation Act was under consideration and the vehicles which had been taxed under the Taxation Act in the said case were dumpers and rockers. This Court after tracing the legislative history and the decisions of this Court commencing from *Bolani Ores Ltd. v. State of Orissa* repelled argument of the mine owners who used dumpers within their mining premises to the effect that the dumpers are vehicles not adapted for use upon roads and, therefore, are outside the Scope of the Taxation Act and held that these dumpers run on tyres, in marked contrast to chain plates like caterpillars or military tanks. It was also held that by the use of rubber tyres it is evident that they have been adapted for use on roads, which means they are suitable for being used on public roads and on the mere fact that they are required at places to run at a particular speed is not to detract from the position otherwise clear that they are adapted for use on roads. The very nature of these vehicles make it clear that they are not manufactured or adapted for use only in factories or enclosed premises. The mere fact that the dumpers or rockers as suggested are heavy and cannot move on the roads without damaging them is not to say that they are not suitable for use on roads. The word "adapted" in the provision was read as "suitable" in *Bolani Ores Case* by interpretation on the strength of the language in Entry 57 List II of the Constitution. On the fact situation, therefore, it must be held that dumpers and rockers are vehicles adapted or suitable for use on roads and being motor vehicles per se, were liable to taxation on the footing of their use or kept for use on public roads."

In paragraphs 8 and 9, the Supreme Court dealt with the certificate given by the

manufacturer that the vehicles were not meant for plying on highways and observed that even though for most of the time dumpers might actually be used within the mining areas on the roads prepared by the mining owners, the dumpers were motor vehicles and taxable within the ambit of Taxation Act. The Supreme Court in paragraphs 8 and 9 observed thus :

"8. The dumpers in question which have been levied under the Taxation Act run on tyres as is apparent from the letter to the Automotive Research Association of India dated 25-1-1993, which has been annexed as Annexure "C" to this SLP but the tyres are of higher load carrying capacity from the certificate given by Hindustan Motors which has been annexed as Annexure "D" to this special leave petition. It appears that the reasons which impelled the manufacturer to give the certificate that the vehicles are not meant for plying on highways are -

(i) Culverts and bridges on highways are generally not designed to take care of such axle loads continuously;

(ii) The vehicles cannot run at reasonable speed on highway and hence obstruct the flow of normal traffic;

(iii) Width and height of the equipment will adversely affect the traffic and minimum preferable width of the road required for plying these vehicles is 50 ft.

(iv) The vehicles are fitted with specially designed heavy duty tyres and the heat generation is much more and generally cannot be run for more than about 5 kms at one stretch which is not so in case of normal conventional hauling units which ply on highways.

9. On these facts it is difficult for us to hold that the vehicles are not adapted or suitable or capable of being used on public roads, even though for most of the time they might actually be used within the mining areas on the roads prepared by the mining owners. Following the two earlier judgments of this Court in Central Coal Fields Ltd. and Union of India v. Chowgule & Co. we hold that the dumpers in question are motor vehicles and are taxable within the ambit of the Taxation Act."

14. The learned Counsel for the petitioner, however, invited our attention to the Judgment of the Supreme Court in the case of Goodyear India Ltd. Vs. Union of India and others, . The question before the Supreme Court in Goodyear India Ltd. v. Union of India was whether Tyres of size 1800 and above manufactured for fitment to heavy moving vehicles such as dumpers and earth movers were liable to excise duty as tyres for motor vehicles. The Supreme Court in the light of item No. 16 of the Central Excise Tariff (1st Schedule) of the Central Excise and Salt Act, 1944 and the definition of motor vehicle as provided in Item No. 34 held that tyres of the size 1800 and above would fall within the residuary sub-item III in item No. 16 of the Central Excise Tariff.

15. Goodyear India turns on the description of motor vehicles as defined in Item 34 of Schedule 1 of Central Excise and Salt Act, 1944. The definition of "motor

vehicle" therein is materially different and distinct from the definition of "motor vehicle" given in Section 2(28) of the MV Act, 1988. In the light of the specific definition of "motor vehicle" in Item 34 of Schedule 1 of the Act of 1944, the Apex Court observed that striking ingredient for such vehicle is that it should have been adapted for use upon roads and merely because the areas on which such heavy moving machinery travels may sometime include roads is not enough to hold that such were adapted for use upon roads.

16. In our considered view, the Judgment of the Apex Court in Goodyear India Ltd. (cited supra) can hardly be applied to the present case. The question before us is : whether the heavy earth moving machinery of Western Coalfields Ltd. is motor vehicle u/s 2(28) of MV Act, 1988. The answer, in our thoughtful consideration, is in the affirmative. In view of the amendment of Rules of 1989 by insertion of Rule 126B, by Central Motor Vehicles (Amendment) Rules, 1993 and insertion of Rule 2(ca), defining "construction equipment vehicle", no doubt is left about the legal position that heavy earth mover machinery is a motor vehicle. The construction equipment vehicle means rubber tyred (including pneumatic tyred), rubber padded or steel drum wheel mounted, self-propelled, excavator, loader, backhoe, compactor roller, dumper, motor grader, mobile crane, dozer, fork lift truck, designed for off-highway operations and by way of explanation it is clarified that such vehicle is non-transport vehicle driving on the road of which is incidental to the main off-highway function. We have, therefore, no hesitation in holding that heavy earth moving machineries, owned by the petitioner Western Coalfields Ltd. are required to be registered under the MV Act, 1988 and they are liable to pay tax under the Bombay Motor Vehicles Tax Act, 1988.

17. The seizure of the Excavator (Heavy earth mover) by Memorandum dated 20th September, 2002, thus cannot be faulted.

18. We find from the proceedings that on 7-10-2002, the petitioner gave an undertaking that in case this Court ultimately reaches the conclusion that the Earth Mover Excavator in question requires to be registered and the taxes are required to be paid, under the provisions of Bombay Motor Vehicles Tax Act, the petitioner shall make payment of the same without raising any dispute. Accordingly, the petitioner is liable to pay the due payment as per demand made by respondent No. 2.

19. Consequently, the writ petition is dismissed without any order as to costs. The petitioner is directed to register the Excavator in question and pay due tax under MV Tax Act within one month from today.