

PETITIONER:
HINDUSTAN AERONAUTICS LIMITED

Vs.

RESPONDENT:
REGISTERING AUTHORITY & ORS.

DATE OF JUDGMENT: 10/09/1999

BENCH:
S.R.Babu, R.C.Lahoti

JUDGMENT:

RAJENDRA BABU, J. :

The appellant before us is Hindustan Aeronautics Limited situate at Sunabeda in Koraput District, Orissa State. They possess several vehicles which are assessed to tax under Item No. 6 of the Schedule annexed to Orissa Motor Vehicles Taxation Act, 1986 [hereinafter referred to as the Act]. In respect of vehicles bearing registration Nos. ORK 3597, ORK 3810, ORK 5638, ORK 5639 and OSK 1563 proceedings were initiated by the Taxing Officer under the Act. On February 22, 1991 the Tax Inspector, Orissa Motor Vehicle Department, stopped and checked the vehicles bearing registration Nos. ORK 3597 and ORK 3810 and the remaining three vehicles on March 4, 1991 while proceeding from Sunabeda to Koraput carrying college students and employees. He issued a vehicle check report stating that the vehicle was being used for hire and reward as contract carriage and seized the vehicle. The vehicle was released on March 4, 1991 on payment of differential tax for different periods. A notice was issued to the appellant to clarify (i) the date from which the bus was plying to Koraput or to school at Sunabeda; (ii) amount of fare collected from each student for such journey from time to time on daily/monthly basis, and (iii) number of students performing journey in the bus. The Administrative Officer of the appellant replied to the said notice stating that the vehicles are used only as an amenity extended to the children of the employees to facilitate them to attend the school or college; that the tax paid earlier was appropriate and sufficient; that the bus was not liable to tax at a higher rate as it does not come within the definition of contract carriage and, therefore, he claimed refund of the entire amount collected at the time of release of the vehicle. The Taxing Officer did not accept the explanation offered by the appellant and took the view that the appellant is realising hire charges at different rates may be at nominal or subsidised rates from the travellers or passengers of vehicle for their journey from Sunabeda to Koraput and vice versa. Although it was made clear that they are not charging any amount from any of the college or school going children to Koraput and back, even then the view was taken that it should be deemed that they were charging money from travellers or passengers for carrying them in their vehicles.

Appeals were preferred in respect of each of the said vehicles. It is contended before the appellate authority that the vehicles of the appellant are private service vehicles which are engaged for transporting its employees to different work sites and are also used for providing transport to the school/college going children of the employees and even if any charge was collected it does not amount to plying the buses for hire or reward inasmuch as there was no motive to earn profit. It is contended that there is no contract between the appellant and its employees and, therefore, Section 2(7) of the Motor Vehicles Act, 1988 was not attracted. In the absence of such a contract, it is claimed, the vehicles cannot be termed as contract carriage in the light of the decision of this Court M/s Tata Engineering and Locomotive Co. Ltd. v. The Sales Tax Officer and Regional Transport Officer, Poona and Anr., AIR 1979 SC 343. Relying upon the decision in Hindustan Zinc Ltd. and Anr. v. State of Rajasthan & Ors., AIR 1989 Rajasthan 124, it was claimed that even if certain collections were made from the children of the company employees, it does not justify to treat the buses as contract carriage. The appellate authority is of the view that a private service vehicle should be understood to be one which is used for own trade or business but it should not be used for the purpose of hire or reward. On the material on record that the buses were carrying college students and employees by collecting fees and, therefore, were being used for hire or reward as a contract carriage. The appellate authority held that there was overwhelming evidence which showed that the buses were used for hire or reward. That evidence was in the shape of hire charges collected by the appellant under different receipt Nos. 4468 dated 3.12.90 for Rs. 100/-, 3845 dated 25.7.90 for Rs. 50/-, 3967 dated 14.8.90 for Rs. 50/-, 3804 dated 16.7.90 for Rs. 50/-, 3511 dated 14.7.89 for Rs. 100/-, 4025 dated 6.7.88 for Rs. 200/-, 91444 dated 5.8.87 for Rs. 200/-, 91448 dated 5.8.87 for Rs. 100/-, 4283 dated 25.11.88 for Rs. 100/-, 93249 dated 31.1.83 and 92053 dated 10.9.82 for Rs. 30/- which was held to fully prove that the buses were being used for hire during the period from 1982 to 1990. The circular No. HAL/KPT/CAF/3- 3/88/137 issued by the appellant on February 27, 1988 indicated that the revision of hire charges to be levied for use of their vehicles for private purposes. Thus the mode of use of the vehicles was contract carriage and, therefore, imposition of higher tax is justified in terms of Entry 4 of the Schedule to the Act and on that basis the appellate authority dismissed the appeals.

The matter was further carried in revision to the revisional authority. The revisional authority took the view that the proceedings of the taxing officer indicated that the vehicles were used not only by its employees but also by outsiders and the office memorandum clearly indicated that it was intended to let these vehicles at stipulated hire charges not only for its own employees but also to outsiders. In that view of the matter, the revisional authority affirmed the view taken by the taxing officer and the appellate authority. He was of the view that the children of the employees of the appellant- company were not in any way connected with the trade or business of the appellant nor these buses were run by educational institutions.

The matter was carried by way of writ petitions. The

High Court was of the view that the taxing officer, the appellate authority and revisional authority had appropriately considered the matter and question involved was, in fact, correctly answered and the conclusion thereof could not be interfered with in a proceeding arising out of Article 226 of the Constitution. On that basis the High Court dismissed the writ petitions. Hence these appeals.

The contentions urged before the authorities and the High Court are reiterated before us.

Tax under Entry 4 of the Schedule to the Act is attracted if a motor vehicle is plying for hire and used for conveyance of passengers including motor cabs. In view of the language adopted in the charging provision, namely, Entry 4 of the Schedule to the Act the question for consideration is whether the motor vehicle was plied for hire under Entry 4 of the Schedule and that must be a vehicle which is used for conveying passengers. In *Sales v. Lake & Ors.*, 1922 (1) KB 553, the expression plies for hire arose for consideration. The language used in the provision considered therein was every carriage of different descriptions or other vehicle which is intended or used for the conveyance of passengers and which plies for hire in any street, road or place and in which the passengers or any of them are charged to any separate and distinct or at the rate of separate and distinct fares for the respective places or seats therein. The court was of the view that a vehicle cannot accurately be said to ply for hire unless two conditions are satisfied. Firstly, there must be a soliciting or waiting to secure passengers by the driver or other person in control without any previous contract with them. And, secondly, the owner or person in control who is engaged in or authorised the soliciting or waiting must be in possession of a carriage for which he is soliciting or waiting to obtain passengers. We are not concerned with the second condition. So far as the first condition is concerned, a vehicle plies for hire means that is regularly used for such hire, that is, the vehicle which is offered for such service regularly. The expression to ply for hire means to exhibit the vehicle in such a way as to invite those who may desire to hire it for travel in it on payment of usual fares or to offer its use thereby soliciting customers.

All the authorities have relied upon the circular No. HAL/KPT/CAF/3-3/88/137 issued by the appellant on February 27, 1988. Therefore, to correctly appreciate the matter in dispute, it is necessary to set out the entire circular which is as under :-

Sub : Revision of charges to be levied for private use of Companys Vehicles ..

It has been decided to revise the charges for private use of Companys transport by employees as indicated below with effect from 1.3.88 so as to cover the direct cost of operations:-

a) Bus Rs. 4.00 per KM plus detention charges of Rs. 15/- per hour. b) Car(Diesel) Rs. 1.50 per KM plus detention charges of Rs. 6/- per hour. c) Car(Petrol) Rs. 3.00 ---- do ---- d) Jeep(Diesel) Rs. 1.50 ---- do ---- e) Jeep(Petrol) Rs. 2.00 ---- do ---- f) Van/Minibus/ Rs.

2.00 per KM plus detention Station Wagon/ charges of Rs.10/- Ambulance per hour. (diesel) g) --do(Petrol) Rs. 3.00 per KM -- do -- h) Truck(diesel) Rs. 4.00 per KM -- do --

2. The above charges will be levied on garage to garage basis.

3. In respect of Picnic trips arranged by employees through bodies recognised by HAL the charges would be Rs. 1.50 per KM plus detention charges of Rs. 6/- per hour for the bus on garage to garage basis.

4. The charges for trucks provided to Hindustan Aeronautics Consumers Co- operative stores will be Rs. 0.25 per KM on garage-to-garage basis for lifting the ration commodities only and for other trips at the rates mentioned in para-1 above.

5. The charges for the vehicles given for use by outside parties (other than HAL employees or other recognised bodies of HAL) like State Govt. authorities and other like institutions etc. will be 50% additional over the rates indicated in para-1 above. When the vehicles are given for private use by outside parties, they should deposit the full amount of expected usage in advance before the Vehicles is moved out of the garage.

6. While it should be the policy to discourage the private use of company's transport/vehicles, wherever it is considered necessary to permit such use in unavoidable cases, the officers concerned will intimate the employees of the revised rates before forwarding the requests to the General Manager for approval.

This issues with the approval of General Manager.

Although the circular is captioned Revision of charges to be levied for private use of Company's Vehicles, it is made clear that the policy of the company is to discourage private use of company's transport or vehicles but wherever it is considered necessary to permit such use in unavoidable cases, the officer concerned will intimate the employees of the revised rates before forwarding the requests to the General Manager for approval. Thus the rates specified are not by way of an offer to the general public but to regulate the use of the vehicles in a particular manner. Thus the buses are not plied for hire or reward. And, in addition to that, the vehicles are used mainly for their employees and their children as part of the welfare measure of the employees. If the members of the family of the employees, like the spouses or children, are allowed to travel in those buses, it should not be treated as the vehicle being plied for hire or reward. In such circumstances, we do not think that the authorities were justified in treating the vehicles as being plied for hire or reward. They have lost sight of the fact that the requirement to attract the charge under Entry 4 of the Schedule to the Act was plying of motor vehicles for hire and not mere user. Therefore, we do not think that either the High Court or authorities under the Act were justified in either imposing the higher rate of tax under Entry 4 of the Schedule to the Act or upholding the same when challenged.

Other decisions in I.T.I. Limited v. Passenger Tax Officer, AIR 1996 Allahabad 79, TATA Engineering & Locomotive Co. Ltd. v. The Sales Tax Officer & Regional Transport Officer, Poona & Anr., 1979 (2) SCR 357, and Smt. H.M.T. Sittamma & Anr. v. State of Karnataka & Ors., AIR 1979 Karnataka 211, are adverted to by the learned counsel appearing in the case. However, these cases turned upon the respective provisions of the Motor Vehicles Taxation Act with which they were concerned in those cases. Therefore, these decisions may not be of any relevance or application to the present case.

In the result, we set aside the order made by the High Court and consequently the order made by the Taxing Officer as affirmed by the appellate/revisional authority shall be quashed. Respondent are entitled to the refund of the amounts withheld by way of differential tax in each of the cases within three months from today. Appeals allowed accordingly.