

CASE NO.:
Appeal (civil) 7033 of 2003

PETITIONER:
Commissioner, Transport-cum-Chairman & Ors.

RESPONDENT:
Tapan Kumar Biswas

DATE OF JUDGMENT: 26/08/2004

BENCH:
S. N. Variava & G. P. Mathur

JUDGMENT:
J U D G M E N T

S. N. VARIAVA, J.

This Appeal is against the Judgment of the High Court of Orissa dated 8th January, 2002.

Briefly stated the facts are as follows.

The Respondent is the owner of a Truck bearing No.WMK-7067. In respect of this Truck, the registration and fitness certificate had been issued and motor vehicle tax was being paid regularly. The said vehicle met with an accident on 23rd January 1991. The Respondent gave off-road intimation as required for the period January 1991 to December 1991. He did not, however, submit any off-road intimation for the period from January 1992 to December 1995. As the accident was severe, the fitness certificate was cancelled by the Appellant on 24th January 1991.

The Taxing Officer-cum-Regional Transport Officer of the Appellant by his letter dated 10th January 1996 called upon the Respondent to pay a sum of Rs.27,750/- being the tax for the period from January 1992 to December 1995. The Respondent preferred an Appeal, against this demand, before the Chairman, Regional Transport Authority. By an Order dated 23rd August 1996, the appellate authority dismissed the Appeal. Revision filed by the Respondent, before the Transport Commissioner, also stood dismissed.

The Taxing Officer also raised further demands for subsequent periods. The Respondent thus filed a Writ Petition in the High Court. The Writ Petition has been allowed by the impugned Judgment. It has been held that the tax on motor vehicle can only be levied on vehicles which are suitable for use on roads, kept in the State of Orissa. It is held that under the Orissa Motor Vehicles Act unless a vehicle had both a certificate of fitness as well as a valid certificate of registration, the vehicle cannot be presumed to have been kept for use. It is held that the demand was thus unsustainable in law and the notices of demand were quashed.

We have heard the parties.

The relevant provisions of the Orissa Motor Vehicles Taxation Act, 1975 read as follows:-

"3. Levy of tax\027(1) Subject to the other provisions of this Act, there shall be levied on every motor vehicle used or kept for use within the State a tax at the rate specified in

Schedule-I;

(2) The State Government may by notification, from time to time, increase the rate of tax specified in Schedule-I:

Provided that such increase shall not exceed fifty per cent of the rate specified in Schedule-I.

(3) All references made in this Act to [Schedule-I] shall be construed as references to Schedule-I as for the time being amended in exercise of the powers conferred by this section.

Explanation\027An owner who keeps a transport vehicle for which the certificate of fitness and the certificate of registration are valid, or an owner who keeps any other motor vehicle, of which the certificate of registration is valid, shall, for the purpose of this Act, be presumed to keep such vehicle for use :

Provided that if the Taxing Officer finds a motor vehicle having been used on any day during the period for which the registration certificate of a vehicle has been suspended or cancelled under the relevant provisions of the Motor Vehicles Act such vehicle shall be deemed to have been kept for use for the whole period without payment of tax.

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10. Prior intimation of temporary discontinuance of use of a vehicle\027(1) Whenever any motor vehicle is intended not to be used for any period, the registered owner or person having possession or control thereof shall on or before the date of expiry of the term for which tax has been paid, deliver to the Taxing Officer, an undertaking duly signed and verified in the prescribed form and manner specifying the period aforesaid and the place where the motor vehicle is to be kept alongwith such other particulars as may be prescribed and the registration certificate, fitness certificate, permit and tax token, then current and shall from time to time by delivering, further undertakings give prior intimation to the concerned Taxing Officer of the extension, if any, of the said period and the changes, if any, of the place where the motor vehicle shall be kept :

Provided that no such undertaking shall relate to a period exceeding one year at a time.

(2) If at any time during the period covered by an undertaking as aforesaid the motor vehicle is found being used or is kept at a place in contravention of any such

undertaking, such vehicle shall, for the purposes of this Act, be deemed to have been used throughout the said period without payment of tax.

(3) In the absence of any undertaking delivered under Sub-section (1) every motor vehicle liable to tax under this Act shall be deemed to have been used or kept for use within the State."

Thus, under Section 3 tax has to be paid on every motor vehicle used or kept for use within the State. If a transport vehicle has a certificate of fitness as well as a valid certificate of registration then that vehicle will be presumed to have been kept for use. However, this does not mean that a vehicle which does not have a certificate of fitness and/or a certificate of registration is not capable of being used on the road. Merely because, legally, a vehicle cannot be plied on the road without a certificate of fitness and/or the registration certificate would not mean that all such vehicles are not capable of being used on the road. Under the Act, the owner of the vehicle has to pay tax. That is why Section 10 provides that whenever any motor vehicle is intended not to be used on the road for any period, the registered owner or person having possession or control thereof has to give an undertaking duly signed and verified in the prescribed form and manner and the taxing authority must be given intimation about the period the vehicle is intended not to be used and the place where the motor vehicle is going to be kept. The relevant documents including the registration certificate, fitness certificate, permit and tax token, etc. are to be delivered to the Taxing Officer. The undertaking contemplated by Section 10 can only be for a period of one year at a time. Thus, it is clear that such an intimation and undertaking has to be given from year to year if the vehicle is intended not to be used on the road for more than one year. If no intimation, as required under Section 10 along with the undertaking, has been given then, by virtue of proviso (3) to Section 10, it will be deemed that the vehicle had been used or kept for use within the State.

In this case, admittedly, during the initial period the required intimation and undertaking had been filed. But for the subsequent periods the undertaking has not been filed and intimation not given. The undertaking filed for the initial period would not operate beyond the period of one year. As no subsequent undertaking was filed, it has to be presumed that the vehicle had been used or kept for use within the State. The High Court was not right in concluding that merely because the certificate of fitness was cancelled, it could not be said that the vehicle had not been kept for use in the State.

Our view is supported by a decision of this Court in *Mahakoshal Tourist, Napier Town & Ors. Vs. State of M.P. & Ors.* reported in (2002) 7 SCC 245. In this case, the vehicle had been registered in Madhya Pradesh but was plying out of the State for a long period. Tax was demanded on that vehicle by the State of Madhya Pradesh. A submission that tax was not payable as the vehicle had not been used in the State was negatived. It was held that mere non-use of the vehicle was not sufficient. This Court held that in order to avoid tax liability the fact of non-use of the vehicle had to be declared to the concerned authority.

A similar view has also been taken in an unreported Judgment of this Court dated 26th February 2004 in Civil Appeal No. 3599 of 1998. In this case, the vehicle had not been used as a stage carriage permit had not been granted. The submission that without the stage carriage permit, the vehicle could not be used and, therefore, there was no

liability to pay tax was not accepted. This Court held that under Section 10 of the Orissa Motor Vehicles Taxation Act, in the absence of any undertaking and intimation it had to be presumed that the vehicle had been used or kept for use within the State.

In this view of the matter, the decision of the High Court cannot be sustained. It is set aside. The Writ Petition filed by the Respondent stands dismissed.

The Appeal is accordingly allowed. There will be no order as to costs.

JUDIS