CASE NO.:
Appeal (civil) 5560 of 2002

PETITIONER:
MAHAKOSHAL TOURIST, NAPIER TOWN AND ORS.

RESPONDENT:
STATE OF MADHYA PRADESH AND ORS.

DATE OF JUDGMENT: 03/09/2002

BENCH:
SYED SHAH MOHAMMED QUADRI & RUMA PAL

JUDGMENT:
JUDGMENT

2002 Supp(2) SCR 93

The following Order of the Court was delivered: Leave is granted.

This batch of appeals arises from the common judgment and order of the High Court of Madhya Pradesh (Jabalpur Bench) passed on February 9, 1994 in various writ petitions filed by bus operators holding All-India Tourist permits.

The State of Madhya Pradesh passed the Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 [for short, 'Act 25 of 1991'] under Entry 57 of List-II of the Seventh Schedule to the Constitution. The said Act was subsequently amended by Act 26 of 1991. Act 25 of 1991, thus amended, was challenged before the High Court of Madhya Pradesh, inter alia, on the ground of lack of legislative competence. The High Court repelled the contention and dismissed the writ petition (Misc. Petition No. 39 of 1992) on 1st October, 1992. Subsequently, Act 25 of 1991 was again amended by Act 10 of 1993, which was also questioned but it was upheld by the High Court in Jabalpur Bus Operators Association and Ors. v. Union of India and Ors., (Misc. Petition No. 1646 of 1993), reported in 1993 M.P.L.J. 992. The scope of challenge in this batch of writ petitions is with regard to the absence of a machinery for assessment of tax for the vehicles plying on the basis of All-India Tourist Permit in the State of Madhya Pradesh and denying them refund of tax for the period they were not used or kept for use in the State of Madhya Pradesh.

Mr. M.L. Lahoty, learned counsel appearing for the appellants in the civil appeal (arising out of S.L.P. (C) No. 4771 of 1994), has contended that though the Act was upheld by the High Court, it was observed that the State should provide procedure for assessment of tax liability, already created, by way of filing return, assessment and payment for tax. What the learned counsel submits is that for the purpose of ascertaining the tax liability and refunding the tax. there is no provision in Act 25 of 1991 and the Madhya Pradesh Motoryan Karadhan Rules, 1991 (for short, " the M.P. Rules") as such the provisions of the Act have to be declared as unconstitutional.

We are afraid, we cannot accede to the contention of the learned counsel. On a plain reading of the provisions of Act 25 of 1991, it is evident that Section 3 is the charging section, assessment procedure is laid down in Section 8 of the Act for assessment and as a consequence of assessment where the operator is found entitled to refund, Section 14 provides for refund of the tax. These provisions equally apply to the operators holding All-India Tourist permits. Section 14, insofar as it is relevant for our purpose, reads as follows:

"14. Refund of tax,--(l) Where

(i) the tax for any motor vehicle has been paid for any month, quarter,

half year or year and the motor vehicle has not been used during the whole of that month, quarter, half year or year or a continuous part thereof not being less than one month and written intimation of such non-use has been given in the prescribed form to the Taxation Authority in the manner prescribed prior to the commencement of the period of such non-use; or

(ii) the vehicle has been so altered as to entitle the owner to the refund of a portion of the already paid, a refund of the tax shall be payable at such rates and subject to such conditions as may be prescribed."

From a perusal for the provisions, extracted above, it is clear that (1) where tax has been paid for any month, quarter, half year or a year and any motor vehicle (which includes a vehicle plying on the basis of All-India Tourist permit) has not been used during the whole of the Month, quarter, half year or year or a continuous part thereof, not being less than one month, and written intimation of such non-use has been given in the prescribed form to the Taxation Authority in the manner prescribed prior to the commencement of the period of non-use: or (2) the vehicle has been so altered as to entitle the owner to the refund of a portion of tax already paid, a refund of tax shall have to be made.

The proviso inserted by Act 26 of 1991 provides relief even in case of non-use of vehicle for a part of the month as well.

Admittedly, in these cases, none of the member of the appellant Association had given any written intimation of non-use of the vehicle for any part of the period, be it less than a month, a month, a quarter, half a year or a year. The charge on the motor vehicle levied under Section 3 of the M.P. Act is on every motor vehicle used of kept for 'use in the State' at the rate specified in the Schedule. The vehicles in question fall in clause (f) of the Schedule The expression 'used' or 'kept for use' means, either the actual use of the vehicle on the roads of the State of Madhya Pradesh or keeping the vehicle (which is in condition and capable of being used) available for use in the State, if so desired. While plying outside the State in connection with a contract, a vehicle will, nonetheless, be within the import of 'kept for use' in the State. It is immaterial for the purpose of Section 3 of Act 25 of 1991, whether a vehicle is actually being used or is kept for use in the State.

It is no doubt true that in Bolani Ores Limited v. State of Orissa, [1974] 2 SCC 777, three-Judge Bench of this Court observed,

"If the vehicles do not use the roads, notwithstanding that they are registered under the Act. they cannot be taxed"

but the Court elucidated the principle thus:

"This very concept is embodied in the provisions of Section 7 of the Taxation Act as also the relevant sections in the Taxation Acts of other States, namely, that where a motor vehicle is not using the roads and it is declared that it will not use the roads for any quarter or quarters of a year or for any particular year or years, no tax is leviable thereon and if any tax has been paid for any quarter during which it is not proposed to use the motor vehicle on the road, the tax for that quarter is refundable."

It is. therefore, clear that non-use of a vehicle in the State is by itself not enough; the fact of non-use has to be declared to the concerned authority to avoid tax liability. The principle underlying taxing the vehicle in the absence of such a declaration and relieving it from the burden of tax only when a declaration of non-use is given, has been explained by this Court in Travancore Tea Estates Co. Ltd. and Ors. v. State of Kerala and Ors. [1980] 3 SCC 619. It is laid down therein

"If the words 'used or kept for use in the Stave' are construed as used or kept for use on the public roads of the State, the Act would be in

conformity with the powers conferred on the State legislature under Entry 57 of List II. If the vehicles are suitable for use on public roads they are liable to be taxed. In order to levy a tax on vehicles used or kept for use on public roads of the State and at the same time to avoid evasion of tax the legislature has prescribed the procedure."

It was further pointed that the registered owner or any person having possession of or control of a motor vehicle for which a certificate of registration is current shall for the purpose of this Act be deemed to use or keep such vehicles for use in the State, except during any period for which the Regional transport Authority has certified in the prescribed manner that the motor vehicle has not been used or kept for use. The presumption is that a motor vehicle for which a certificate registration is current shall be deemed to be used or kept for use in the State. This is to ensure and safeguard the revenue of the State by relieving it from the burden of proving that the vehicle was used or kept for use on the public road of the State. At the same time, the interest of the bonafide owner is also safeguarded by enabling him to claim or obtain a certificate of non-use from the prescribed authority and, in that case, the owner is required to give intimation of non-use. We are in respectful agreement with these observations.

It may be mentioned that to give effect to the provisions for refund of tax, Rules 12 to 14 of the M.P. Rules lay down the requirements and the procedure for that purpose in the event of non-user of the vehicle.

It is not necessary to dilate on this aspect as, admittedly, the members of the appellant Association have not given any such intimation so as to avail any benefit of Section 14 of Act 25 of 1991 read with the above said Rules. Therefore, we cannot but repel the contention of the learned counsel that the Act did not provide for the refund of tax for the period for which the vehicle plying on All-India Tourist permits is not actually used in the State, so the provision has to be declared as unconstitutional. Having regard to the scope of the charge under Section 3 of Act 25 of 1991, once it is found that such vehicles are kept for use within the meaning of the said expression, explained above, the tax liability cannot be avoided.

From the above discussion, it follows that there are adequate provisions in Act 25 of 1991. as amended, and the Rules framed thereunder for ascertaining the liability, assessment and refund of tax leviable under the said Act. The vehicles plied by the members of the appellant Association, which are registered in the State of Madhya Pradesh, are within the net of charge under Section 3. They do not qualify for refund of tax merely because while plying in other States in connection with a contract with tourists, the vehicle cannot be said to be used or kept for use in the State. However, they will be entitled to refund of tax only on fulfilment of requirements of Section 14 of Act 25 of 1991 and the Rules made thereunder, referred to above.

For these reasons, we find no merit in these appeals and they are, accordingly, dismissed with costs.

Interim orders passed by this court in these cases shall stand vacated.
Writ Petition (C) No. 281 of 1994:

On the contention raised, we are not satisfied that any fundamental right of the petitioners is infringed to maintain this petition under Article 32 of the Constitution. However, in view of the order passed in the Civil Appeal Nos. 5560, 5561 and 5562-5570 of 2002 (arising out of S.L.P. (C) Nos. 4771/1994, 5034/1994 and 4516/1995), this writ petition is dismissed.

Civil Appeal No. 2176/1993 and S.L.P. (C) No. 6483/1995:

None appears for the appellants/petitioners. The civil appeal and the special leave petition are dismissed.