

PETITIONER:
STATE OF GUJARAT & ORS.

Vs.

RESPONDENT:
KAUSHIKBHAI K. PATEL & ANR.

DATE OF JUDGMENT: 09/05/2000

BENCH:
P. Bhargava, Shivaraj V. Patil

JUDGMENT:

May 09, 2000. L.....I.....T.....T.....T.....T.....T.....T.....T..J

JUDGMENT

SHIVARAJ V. PATIL, J.

In this appeal the judgment and order dated 23.4.1998 made by the High Court of Gujarat at Ahmedabad in Special Civil Application No. 10356 of 1996 are impugned. The Respondents herein filed the said Special Civil Application in the High Court for setting aside the notice dated 29.3.1996 demanding payment of composite tax and penalty and for declaration that Section 3-A(5) of the Bombay Motor Vehicles Tax Act, 1958 as amended by the Bombay Motor Vehicles

Tax (Gujarat Amendment) Act, 1992, is ultra vires being violative of Articles 14 and 19 of the Constitution of India.

2. The Respondent No. I is the owner of omnibus bearing registration No. GRQ 8403. The said vehicle had not been used or kept for use during the period from 1.7.1995 to 31.3.1996. He intimated the non-user of the said omnibus to the Motor Vehicle Inspector. He claimed refund of the tax for the said period. His claim for refund was not allowed on the ground that the omnibus had been kept in non-use for a period exceeding three months and he failed to satisfy that such non-use was for the reasons, beyond his control. Consequently, the appellant issued demand notice dated 29.3.1996 demanding payment of composite tax of Rs. 14,000/- and penalty of Rs. 3,500/- from the Respondent No. I. Under these circumstances, the Respondents filed the aforementioned Special Civil Application.

3. Section 3 of Bombay Motor Vehicles Tax Act, 1958 (for short the "Act") authorises levy and collection of tax on motor vehicles used or kept for use in the State. As per sub-section 2 of Section 3, a motor vehicle shall be deemed to have been used or kept for use in

the State during the currency of certificate of registration except during the period for which the taxation authority has certified that the vehicle was not used or kept for use. Section 3-A of the Act provides for levy of tax on omnibuses which are used or kept for use in the State as contract carriages. The Act was amended by Gujarat State

by the Bombay Motor Vehicles Tax (Gujarat Amendment) Act. 1992. Sub-section 5 of Section 3-A was substituted. The said substituted sub-section 5 of Section 3-A to the extent it is relevant reads as follows:-

"5(a) Where the registered owner or any person having possession or control of a designated omnibus who has paid tax under this section proves to the satisfaction of the taxation authority that the designated omnibus in respect of which a tax has been paid has not been used or kept for use for a continuous period of not less than one month, he shall be entitled to the refund of an amount equal to 1/12th of the annual rate of tax paid in respect of such omnibus for each complete month of the period for which the tax has been paid so however that, except as otherwise provided in clause (b) the total amount of a refund in a year shall not exceed -

(b) Where a registered, owner or a person having possession or control of a designated omnibus who has paid tax under this section proves to the satisfaction of the State Government or such officer not below the rank of the Director of Transport, Gujarat State, as may be notification in the Official Gazette be authorised in this behalf by the State Government that the

designated omnibus in respect of which the tax has been paid has/or reason's beyond the control of such owner or person not been used or kept for the use for a continuous period of not less one month but exceeding three months in a year, he shall be entitled to the refund of an amount equal 1/12th of the annual rate of the tax paid in respect of such omnibus for each complete month of the period of which the tax has been paid.

(Emphasis supplied)

4. As per this amended Section, a registered owner or a person having possession or control of the designated omnibus could claim refund of tax already paid upto a period of three months for non-user of vehicle on proof to the satisfaction of the taxation authority that the designated omnibus in respect of which the tax has been paid has not been used or kept for use for a continuous period of not less than one month. In case the claim for refund exceeded three months, the owner or person in possession or control of the omnibus has to satisfy the State Government or the authorised officer that such non-use of vehicle was for the reasons beyond his control. Hence the controversy was raised as to whether satisfaction as to the reasons beyond the control of the owner or in possession or control of the omnibus was justified and tenable when the refund was claimed on the basis of non-user of the vehicle for a period exceeding three

months within one year.

5. The High Court referred to and relied on the pronouncements of this Court and held that under the Act the tax imposed is regulator and compensator in nature for the purpose of raising revenue to meet the expenditure for making the roads, maintaining them and for regulation of traffic. The Act does not provide for levy and collection of tax on vehicles which do not use, or are kept for use of the public roads in the State. The High Court also noticed

that other measures and provisions are already available to check the evasion of tax. The High Court concluded that insistence to satisfy the State Government or authorised officer as to the reasons beyond the control of the registered owner or the person in possession for non-use of the vehicle was beyond the legislative competence of the State. In this view, the words "for reasons beyond the control of such owner or person" occurring in clause (b) of sub-section 5 of Section 3-A of the Act were struck down.

6. The learned senior counsel for the appellants urged that the condition imposed in sub-section 5(b) of Section 3-A of the Act was not to impose tax on those vehicles which are not running on the roads

for a period beyond three months but it was only to check evasion of tax and to see that the refund is granted only in genuine cases; for the initial period of three months of non-use of vehicle in a financial year, refund of tax is available on proof of non-use of the vehicle without insisting for the reasons beyond the control of the registered owner or a person in possession of a vehicle. He pointed out to the inquiry report of the Inspector of Motor Vehicles dated 21.10.1995 (Annexure P-4) and submitted that the vehicle did not require any repair and as such the reason given by the owner for non-user of the vehicle could not be accepted. He also contended that ordinarily owners having purchased the omnibus investing several lakhs of rupees cannot keep vehicles off the road or put to non-use for a period more than three months; hence requiring satisfaction of the State Govt. or authorised officer as to reasons beyond the control for non-use of a vehicle is sustainable and justified particularly when such an amendment was made with a view to prevent evasion of tax.

7. Per contra, the learned senior counsel for the respondents while supporting the judgment and order under challenge drew our attention to the Form NT (Annexure P/3). He submitted as per the form place

where the vehicle was kept for non-use was shown and a declaration was also made that he would not remove the said vehicle from the place mentioned in the Form without the previous permission of the taxation authority and that the certificate of taxation in respect of the said vehicle was also surrendered. This apart the authorities have got powers to detect the use of the vehicle on the road which otherwise was shown as in non-use and to impose penalty or to prosecute for the contravention as the case may be.

8. We have considered submissions of the learned counsel for the parties. The facts that are not in dispute are; the Respondent No. 1 filed Form NT declaring non-use of the vehicle in question for the period 1.7.95 to 31.3.96; the report submitted by the motor vehicle Inspector regarding non-user of the vehicle for three months from 1st July, 1995 to 30th September, 1995 was accepted and refund of tax was ordered. For the remaining period refund was not granted as the Director of Transport was not satisfied of the non-user of the vehicle for reasons beyond the control of the respondents. It is well-settled in law that the tax imposed on vehicle under the Act is compensatory in nature for the purpose of raising revenue to meet the

expenditure for making and maintaining the roads and

regulation of traffic. To put it differently, the taxes are levied on the vehicles using these roads or in any way forming the part of the flow of traffic on the

roads which is required to be regulated and not on the vehicles which

< do not use the roads at all. What is material and relevant is use of

road by vehicles for levy of tax under the Act. The reasons for non-use of roads is immaterial and irrelevant when the nature of the tax itself is compensatory for use of roads. It follows from sub-section (2) Section 3 of the Act that where a motor vehicle is not using the roads no tax is levied thereon. If any tax has been paid in relation to such vehicle then the tax for the period during which it was not put on the road is refundable. In order to avoid evasion of tax the State can compel the owner to pay tax in advance. In fact sub-section 5(a)&(b) of Section 3-A speak of refund of tax that had been collected earlier.

9. In the Statement of Objects and Reasons appended to the amending Act 3 of 1992, it is stated: "Having regard to the commercial use of omnibuses exclusively used as contract carriages in normal circumstances, it is generally uneconomic for the registered

owners of such omnibuses to put such omnibuses to non-use for a very long time. Cases have come to the notice of the Government indicating that many a time such omnibuses which purported to have been put to non-use were operated clandestinely resulting in evasion of the tax and consequent loss of revenue to the Government. In order, therefore to prevent evasion of tax, it was considered necessary to make a provision to restrict the refund of the tax to a total period of three months of non-use in a financial year, in normal circumstances. However; in order to meet with the genuine cases where such an omnibus may have to be put to non-use for a period exceeding three months on account of reasons beyond the control of the registered owner, provision is made for refund of tax for non-use of the omnibus for a period exceeding three months" Otherwise also various provisions and safeguards are available in the Act. The authorities have enough powers to check evasion of tax even without

insisting for the reasons beyond the control of registered owner or person as to the reasons for non-use. A registered owner or the person in possession in addition to filing of Form NT, can be directed to surrender the registration certificate, fitness certificate etc. for the period of non-use. If the vehicles are clandestinely put to use

without the certificate of registration, fitness certificate or taxation certificate, it is open to the authorities to take action against the owner in accordance with law. Mere apprehension of clandestine use of a vehicle cannot be a ground for imposing tax on omnibuses which are not put on road or kept away from use. In form NT (Annexure P-4) a declaration is made as to the place where the vehicle is kept for non-use and further declaration is made that the owner shall not remove the said vehicle from the said place without the previous permission of the taxation authority.

In the said Form it is also stated that the certificate of taxation in respect of the said vehicle is also surrendered. Motor Vehicle Inspectors could also check and verify about the availability of the vehicle in place of "non-use". Any clandestine operation or the absence of vehicle from the declared place of non-use whenever and wherever detected attracts heavy penalty to the extent of 25% of the tax due and for repetition of such contraventions the amount of penalty is coercively increased. Further claim for refund of tax for the period of non-use of vehicle is allowed only if the owner or any person having possession or control of a designated omnibus proves to the satisfaction of the taxation authority that the bus in respect of which

the tax has been paid has not been used or kept for use for a particular period. If the authorities are not satisfied as to the non-use of vehicle it is open to them to deny claim for refund. There is sufficient authority and machinery to the appellants to prevent evasion of tax in this regard. Looking to the Statement of Objects and Reasons for the amendment, it appears that the appellants do not trust the owners of omnibuses or their own officers and machinery. Mere apprehension of the appellants that omnibuses will be clandestinely operated and claim would be made for refund on the ground of their non-use, in our opinion, cannot justify for the insistence of satisfaction as to the reasons beyond the control of the owner or person for non-use of a omnibus. This apart, there is no good reason put forward as to why the omnibuses are singled out. Even heavy goods transport vehicles are also purchased by investing heavy amount. In other words, the condition that for a period of non-use beyond three months, the owner or a person in possession or control of vehicle should satisfy the reasons beyond the control for non-use of vehicle is attached to omnibuses and not to other vehicles. If the appellants see any difficulty in working of their officers in the matter of checking evasion of tax, that itself is not a good ground to uphold the validity

of the condition that an owner or possessor of a vehicle should satisfy as to the non-use of omnibus for the reasons beyond his control in order to claim refund of tax for a period exceeding three months.

Thus, having regard to all aspects, we do not find any good or valid reason to interfere with the judgment and order under appeal. Consequently we dismiss it with costs.