(2001) 09 P&H CK 0116

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters Patent Appeal No. 1112 of 1991 in Civil Writ Petition No. 7327 of 1989

H.K. Dass		APPELLANT
	Vs	
State of Punjab		RESPONDENT

Date of Decision: Sept. 4, 2001

Citation: (2002) 3 PLR 593 : (2002) 4 RCR(Civil) 822

Hon'ble Judges: G.S.Singhvi, J and M.M.Kumar, J

Advocate: Mr. H.L. Sibal, Senior Advocate with Mr. V.K. Sibal, Advocate. Mr. N.D.S. Mann, D.A.G., Punjab., Advocates for appearing Parties

Judgement

M.M. Kumar, J.

This appeal is directed against order dated 27.5.1991 passed by the learned Single Judge in Civil Writ Petition No. 7327 of 1989 rejecting the appellant''s prayer for quashing notification dated 30.3.1988 issued by the Government refusing to grant/extend the benefit of concession in the matter of levy of sales tax to the appellant.

2. The appellant is a dealer of the Tata Diesel Vehicle. He claimed that in the year 1984 Government of India introduced a liberalisation policy with the object of saving fuel by encouraging the diesel/petrol efficient vehicle. The policy further postulated that there should be such a technological advancement in automobile vehicle which may better the carrying capacity of the vehicle and its fuel efficiency in relation to the petrol/diesel. The emphasis in the policy was to the indigenous technological advancement with or without forcian collaborators. The underlying idea of the policy was to save fuel cost because the import of fuel used to dry up the foreign exchange reserve of which the country had always felt shortage. It is further averred in the writ petition that the policy of liberalisation encouraged foreign collaborators from Japan to enter into the field in partnership with the Indian manufacturers to produce the diesel/petrol vehicles with such a technology that they were fuel efficient. In so far as medium and light commercial vehicles were concerned, the foreign collaboration was only with four manufacturers. Japan has taken the

advance stride in the field of technology which created a competitive market in the country and also resulted in fuel conservation. However, the disadvantage of a vehicle manufactured in Japan or manufactured in India with Japanese collaboration used to be that it would cost more because of the maintenance and spare parts. As a result of this difficulty, instead of the import of spare parts the necessity of a local manufacturer was felt and the TATA came in the forefront in giving a tough competition to all the foreign collaborators with their Indian partners because the TATA vehicles have usually been dependent on indigenous manufacturing technology which is quite advance and it has produced light/medium commercial vehicles. As a result, the manufacturers who had collaboration with foreign companies pressed before the Government of India for certain concession in order to enable them to compete with the indigenous motor vehicles including fuel efficient TATA vehicle.

3. On 9.12.1986, the Government of India issued a circular granting exemption to the light commercial motor vehicles which were fuel efficient. This was amended on 22.6.1987. The notification was issued under subrule 1 of Rule 8 of the Central Excise Rules, 1944. According to the notification, the fuel efficient light commercial motor vehicle would be that vehicle which meets a specific fuel consumption and certified accordingly by an officer not below the rank of Deputy Secretary to the Government of India in the Ministry of Industry. The officer was required to carry out the fuel efficient test as specified in the notification. This notification was further amended on 30.3.1988 and a new notification was issued under Section 5A of the Central Excise Salt Act 1944. The appellant claimed that according to the notification issued on 9.12.1986 as amended from time to time they were issued fuel efficiency certificate in respect of their light commercial vehicle known as TATA 407. A copy of the certificate has been attached as Annexure P.3 and the same reads as under :

No. 6(3)/87AE1

Government of India

Ministry of Industry

(Department of Industrial Development)

New Delhi, the January, 1988

CERTIFICATE OF FUEL EFFICIENCY

In terms of notification No. 462/86 Central Excise (462/86) dated 9.12.1986, as amended from time to time, and in accordance with the procedure prescribed in the notification No. 368(E) dated 21st May, 1983 issued by the erstwhile Department of Heavy Industry, two vehicles of the following specifications were selected and picked up by the testing agency from firms production line for carrying out fuel efficient tests.

1. Name of the manufacturer M/s Telco Engg. and Locomotive Co. Pune

2. Model and make TATA 407 Light Commercial Vehicle.

3. Engine Capacity 2952 cc.

2. These vehicles were subjected to fuel efficiency test by vehicle research and Development Establishment Ahmednagar in accordance with the prescribed procedure and they have achieved fuel consumption as noted below :

1. Engine No. Vehicle I Vehicle II

867038 866385

2. Chassis No. 357 010908652 357 010 908662

3. Payload 5060 Kg.

4. Type of tyre 7.50 x 15 14 PR

5. Net tonne kilometer moved per litre of diesel a) 49,903 at average speed of 40.10 Kilometre per hour. b) 36.518 at an average speed of 60.00 kilometre per hour

ii) a) 43.608 at average speed of 40.00 kilometre per hour. b) 35.520 at average speed of 59.85 kilometres per hour

6. Specific fuel consumption 238 222

(Gramme per KW Hr)

3. The test reports of the VRDE were considered by the Fuel Efficiency Committee and it has been decided that the vehicles tested satisfy the fule efficiency norms prescribed in the aforesaid notification.

4. Accordingly, this fuel efficiency certificate is issued for the model and make of the vehicle mentioned above having technical specifications and components similar to those of the vehicles tested by VRDE.

5. This fuel efficiency certificate shall be valid for a period of one year with effect from the date of issue.

Sd/ J.S. Rana

Deputy Secretary to the Govt. of India,

(Stamp)"

The appellant further claimed that his light commercial vehicle TATA 407 has also been considered road worthy and a certificate to that effect was issued by the Automotive Research Association of India on 15.1.1986. The certificate is on record as Annexure P.7 and reads as under :

"The Automotive Research Association of India.

(Research Institution of Automotive Industry with the Ministry of Industry Government of India)

Post Box NO.882 POONA

VT/86/03

Certificate

M/s TATA Engg. and Locomotive Co. Ltd.,

Pimpri, Puna 411818

The performance trials on the vehicle model TATA 407 with drum brake at both front and rear have been completed. Based on these results, we are glad to certify that this mode is roadworthy of Indian roads.

Sd/ T.M. Balaraman

Assistant Director

January 15, 1986"

4. The appellant has also made averments and attached the orders of the State Transport Commissioners of Punjab and Haryana showing that their vehicle TATA 407 was approved as a Chassis for Mini Bus Operations and they are certified to be road worthy also. The grievance of the appellant is that despite fulfilling the test of fuel efficiency and road worthiness and on that score being qualified for the concessional rate of sales tax, which was introduced to encourage the fuel efficient vehicle of indigenous technology, the State Government excluded the vehicle TATA 407 from the entitlement of that concession. He challenged the notification on the ground of arbitrariness/discrimination and violation of Article 14 of the Constitution.

5. The learned Single Judge rejected the claim of the appellant observing that the notification issued by the Government of Punjab, Department of Excise and Taxation for extending the concession of sales tax to the light commercial vehicle with the engine capacity of 3200 to 3500 CC did not suffer from any discrimination or arbitrariness on that score. The leaned Single Judge took the view that in matters concerning imposition of taxes exactitude in equality cannot be insisted and there cannot be any equality amongst the unequals and as such Article 14 of the Constitution cannot be considered to have been violated. The findings recorded by His Lordship on this aspect read as under :

"Government in its wisdom took into consideration the following two factors while granting concessional rate of sales tax :

1. That the vehicle should be fuel efficient light commercial vehicle and certified to be so by the Government of India; and

2. Cubic capacity of such a fuel efficient light commercial should be between 32003500 CC.

Both these facts are relevant. The Government of Punjab fixed the rate of tax 05% in respect of fuel efficient light vehicles having cubic capacity of 3200 to 3500 CC irrespective of location/collaboration of the manufactures and any manufacturer satisfying these two constituents, is eligible to be taxed at the above mentioned rates. Cubic capacity of a vehicle is a very relevant consideration and larger the cubic capacity of the engine the higher its horse power is State of Punjab in its reply has stated and otherwise also it is a matter of common knowledge that cubic capacity of an engine is a factor that makes for safer, more expeditious and economical and better performing vehicles. Thus, the vehicles which are both fuel efficient and have engine capacity of 3200 to 3500 CC constitute a clear and identifiable class based on relevant considerations. Larger the cubic capacity the higher is its horse power. For similar pay loads vehicles fitted with higher cubic capacity engines when compared to lower cubic capacity engines, as has been stated by the State in its written staternent results in :

i) safety due to higher reserve power;

ii) longer life and improvement in operating economies for the vehicle owner, and,

iii) better capability to handle sub mountain areas, desert/kutcha roads etc., which are common in Punjab. The State of Punjab after taking all these factors into consideration came to the conclusion that fuel efficiency vehicles having cubic capacity of 3200 to 3500 should only be extended the benefit of concessional rate of sales tax. In my view, such a condition is arbitrary or discriminatory in nature and is thus not violative of Article 14 of the Constitution of India. Any manufacturer irrespective of location/collaboration of the manufacturing, satisfying these twin conditions of fuel efficiency and engine capacity of 3200 to 3500 CC is eligible to be taxed at the rates mentioned in the notification Annexure P.2 and it cannot be said that this notification has been notified only to give an undue advantage to local foreign collaborators and especially the one which is located in Punjab. The impugned notification does not treat equally situated persons differently; it operates alike on all persons similarly situated and thus it cannot be said that the notification is violative of Article 14 of the Constitution of India."

6. The learned Single Judge also rejected another contention of the appellant namely that this fundamental right under Article 19(1)(g) of the Constitution has been violated by the notification dated 30.3.1988. It was held that the notification does not create obstacles and restrictions for the petitioner in enjoying his fundamental right of business and trade.

7. We have heard Shri H.L. Sibal, learned Senior Counsel for the appellant and Shri N.D.S. Mann, learned Deputy Advocate General, Punjab for the State of Punjab.

8. Shri H.L. Sibal argued that impugned notification suffers from the vice of discrimination and the learned Single Judge committed a serious error by refusing to quash the same. He pointed out that by granting concession to the vehicles of a particular manufacturer and denying similar concession to the vehicles of other manufacturers, the State Government had brought about an artificial classification amongst similarly situated parties. He submitted that the only object behind the issuance of notification dated 30.3.1988 is to encourage the fuel efficient vehicles and from that point of view, the effect of concession could not be denied to the vehicles sold by the appellant. The learned counsel claimed that any notification having features of encouraging fuel efficient vehicles and extending concession for that reason to such vehicles would be consistent with the requirement of Article 14 of the Constitution. This feature is completely lacking in the notification dated 30.3.1988 because the notifications seeks to defeat the basic object of fuel efficiency of vehicles by adding further specifications which are extraneous to the basic object. For this proposition, he has placed reliance on the judgments of the Supreme Court in Mrs. Maneka Gandhi v. Union of India and another, AIR 1978 SC 597; The State of Madhya Pradesh v. The Gwalior Sugar Co. Ltd. 1962(2) SRC 618; Ajay Hasia etc. v. Khalid Mujib Sehravardi and others etc., AIR 1981 SC 487; Mrs. Meenakshi and others v. State of Karnataka and others, AIR 1983 SC 1283; Indian Express Newspapers (Bombay) Pvt. Ltd. and others v. Union of India and others, AIR 1986 SC 515; Arya Vaidya Pharmacy and another v. State of Tamil Nadu, (1989)73 STC 346 and Express Hotels Private Ltd. v. The State of Gujarat and another, JT 1989(3) SC 72.

9. Sh. N.D.S. Mann supported the view taken by the learned Single Judge. He relied on the judgments in M/s. Spencer Hotel Pvt. Ltd. and another v. The State of West Bengal and others, JT 1991(1) SC 479 and M/s Khadi and Village Soap Industries Association v. State of Haryana, AIR 1994 SC 2479 and argued that the appellant cannot claim concession as of right. He also stated that w.e.f. April, 2000 sales tax is being charged on all the vehicles at a uniform rate.

10. A perusal of the notification dated 30.3.1988 makes it obvious that the basic object sought to be achieved by the notification issued on 9.12.1986 as amended from time to time, was to encourage the fuel efficient vehicles so as to avoid the import of crude oil/petrol/diesel as vital foreign exchange reserve is depleted. With this object in view, certain concessions were to be conferred on the industry manufacturing light commercial fuel efficient vehicles in order to achieve the object of reducing the import of crude oil/petrol/diesel. The introduction of cubic capacity of the vehicle has no relation with the aforementioned object and the intelligible differentia gets completely obliterated because the dividing line between the two class of vehicles could be fuel efficient vehicles and fuel nonefficient vehicle. The concession cannot be based on the cubic capacity of the vehicle because it has no nexus with fuel efficiency. The allegation of the appellant gets fortified when this condition has been introduced in the notification only to confer undue advantage on a particular vehicle namely Swaraj Mazda so that it may avoid any competition in

business with the TATA 407 vehicle sold by the petitioner. The record of the department also shows that a representation was made by the Swaraj Mazda and on a consideration of that representation, the specification in the form of proviso has been added to hold that a particular vehicle alone was entitled to the grant of concession by excluding the vehicle TATA 407 which is having capacity of 2952 CC. In these circumstances, the group of vehicles collected under the head of fuel efficient vehicle cannot be considered rational which infact exclude the actual fuel efficient vehicle by introducing an extraneous element of cubic capacity. On that basis the notification cannot survive the judicial scrutiny on the anvil of Article 14 of the Constitution.

11. On the question as to whether the State Government could select different rates of sales tax for the same category of commodities, the view of the Supreme Court in Arya Vaidya Pharmacy and another v. State of Tamil Nadu, (1989)2 SCC 285 may be referred. The observations of their lordships in this regard read as under :

"We think that the appeals are entitled to succeed. Item No. 95 mentions the rate of 7 percent (now 8 percent) as the tax to be levied at the point for first sale in the State. Item No. 135 provides a rate of 30 percent in respect of arishtams and asavas at the point of first sale. We see no reason why arishtams and asavas should be treated differently from the general class of ayurvedic medicines covered by item No. 95. It is open to the Legislature, or the State Government if it is authorised in that behalf by the Legislature, to select different rates of tax for different commodities. But where the commodities belong to the same class or category, there must be a rational basis for discriminating between one commodity and another for the purpose of imposing tax. It is commonly known that considerations of economic policy constitute a basis for levying different rates of sales tax. For instance, the object may be to encourage a certain trade or industry in the context of the State policy for economic growth and a lower rate would be considered justified in the case of such a commodity. There may be several such considerations bearing directly on the choice of the rate of sales tax, and so long as there is good reason for making the distinction from other commodities no complaint can be made. What the actual rate should be is not a matter for the courts to determine generally, but where a distinction is made between commodities falling in the same category a question arises at once before a court where there is justification for the discrimination. In the present case, we are not satisfied that the reason behind the rate of 30 percent on the turnover of arishtams and asavas constitutes good ground for taking these two preparations out from the general class of medicinal preparations to which a lower rate has been applied." (emphasis added).

12. For the reasons stated above, this appeal is allowed and the judgment of the learned Single Judge is set aside. It is clear that the notification dated 30.3.1988 is arbitrary and discriminatory as it creates invidious classification amongst the vehicles on the basis of consideration extraneous to the main object of encouraging

the fuel efficient vehicles by granting them relaxation in the payment of general sales tax. However, it is made clear that the appellant shall not be entitled to take any benefit of the declaration of law because the learned Deputy Advocate General on the basis of the instructions given to him has stated that from April, 2000 sales tax at uniform rate is being charged.