

K.D. Mehta Vs State of Gujarat

Court: Gujarat High Court

Date of Decision: Oct. 6, 2000

Acts Referred: Bombay Motor Vehicles Tax Act, 1958 " Section 13, 13(2), 2(10)

Motor Vehicles Act, 1939 " Section 2(18), 2(28)

Motor Vehicles Act, 1988 " Section 110, 2(28), 39, 40, 41

Hon'ble Judges: M.R. Calla, J

Bench: Single Bench

Advocate: Pankaj A. Kapadia, in SCA Nos. 7491 of 1999 and 7536 of 1999, Sanjay M. Amin, in SCA No. 7491 of 1999 and S.A. Desai, in SCA No. 7536 of 1999, for the Appellant; Arun D. Oza, Ld. GP and P.K. Shukla, Ld. AGP, for the Respondent

Final Decision: Dismissed

Judgement

M.R. Calla, J.

In all these petitions, 11 in number, common questions are involved with the only difference in the type and nature of vehicles/machines and it is to be considered as to whether such vehicles/machines are motor vehicles/vehicles under the Bombay Motor Vehicles

Act, 1958 or they are simply machines or equipments not covered under the said Act.

2. Special Civil Application No.9976 of 1999 was argued as the main case and therefore, the facts in brief are taken from this petition. The case of

the petitioner is that Larsen & Toubro Ltd. is a limited Company of international reputation. The construction division of this Company undertakes

the execution of turn-key projects all over India and for execution of these projects, it holds various kinds of equipments. It is the further case of

the petitioner that it has number of construction units located at various places and to carry out the construction projects at different places all over

the country, the machineries/equipments owned by the petitioner are transferred from one construction unit to another construction unit depending

upon the workload involved in the project at hand. These machines, according to the petitioner, were being transferred by the petitioner for the

construction of work undertaken by the petitioner at Bharuch, Kachchh, Jamnagar and Mehsana and the same were detained by the office of the

Regional Transport Officer (RTO) at Check Post, Songadh, Dist. Surat on the ground that these machines were in fact vehicles for which the

registration was necessary and the taxes were required to be paid by the petitioner. On behalf of the petitioner, it was pleaded before the RTO that

these machines were not the vehicles as defined under the Motor Vehicles Act and they were simply machines or equipments in aid of the

construction work, but the RTO did not agree and detained all these machines. It is the case of the petitioner that these machines are not driven on

the road but are being transferred from Coimbatore to the places as aforesaid on a trailer/truck. It has been submitted that these machines/vehicles

are required to be released by the RTO and that the detention of the same is illegal.

8th Sept.2000:

2. The machines/vehicles in question in different petitions are as under:

SCA No. Type or Nature of the machine/vehicle

9976/99 Motor Grader - 2

9826/99 Wheel Loader - 1

10417/99 Vibratory Roller - 1

419/2000 Paver - 1

2034/2000 Motor Graders - 3

Wheel Loader - 1

Vibratory - 1

Vibratory Roller - 1

Excavator-cum-Loader - 1

619/2000 Motor Grader - 1

342/2000 Crane - 1

801/2000 Crane - 1

524/2000 Motor Graders - 2

Vibratory Rollers - 2

7491/99 Motor Grader - 1

7536/99 Crane - 1.

On the basis of the contentions as have been raised before this Court with regard to the different machines/vehicles as above, it has to be examined

as to whether the Motor Grader, Vibratory Roller, Wheel Loader, Paver, Excavator-cum-loader, Crane etc. have to be treated as motor vehicle

or vehicles in the context of the Motor Vehicles Act, 1988, the Central Motor Vehicles Rules, 1989, the Bombay Motor Vehicles Tax Act, 1958,

and the Gujarat Motor Vehicles Rules, 1989 or not.

3. So far as the mobile cranes are concerned, the question has already been considered by a Division Bench of this Court in Special Civil

Application No. 3011 of 1996 with Special Civil Application No. 1308 of 2000 decided by a common judgment rendered on 14th August 2000.

29th Sept.2000:

4. Before the Division Bench in the aforesaid case, the challenge at the instance of the Owners of Cranes and their Association was against the

provisions of the Bombay Motor Vehicles Tax Act, 1958 and the amendment introduced therein by Gujarat Act No.13 of 1995 published in the

Gujarat Govt. Gazette Extraordinary dated 31st July 1995 and the notification issued thereunder published in the Gujarat Gazette Extraordinary

dated 31st July 1995 whereby the tax at increased rates had been imposed on mobile cranes mounted on motor vehicles. The Division Bench after

considering the provisions of the Bombay Motor Vehicles Act, 1958 and its charging Section 3 empowering the State Govt. to impose the tax on

motor vehicles and the relevant entries in the Schedule in the light of the Supreme Court decisions in the cases of Bolani Ores Ltd., , Goodyear

India Ltd. Vs. Union of India and others, , Union of India and others, Vs. Chowgule and Co. Pvt. Ltd., etc. etc., , Regional Transport Officer-

cum-Taxing Authority, Rourkela and others Vs. Steel Authority of India Ltd., , and the decision in the cases of Ishardas and Co. and Others Vs.

State of Maharashtra and Another, , Poomani Vs. Tuticorin Thermal Power Project, and the case of Travancore Tea Estates Co. Ltd. and Others

Vs. State of Kerala and Others, , has held as under:

(i) The decision in the case of Bolani Ores (supra) was based on the unamended definition u/s 2(18) of the Motor Vehicles Act, 1949 (as existing

then), is of no help as the cases under consideration before the Division Bench were based on the provisions of the Bombay Act as applicable to

the State of Gujarat.

(ii) Under the new Motor Vehicles Act of 1988, through Section 2(28), "vehicles" adapted for use on roads and not of special type adapted for

use only in a factory or in any other enclosed premises or a vehicle having less than 4 wheels fitted with engine capacity of not exceeding 25 cubic

cms. are all included in the definition of "motor vehicles".

(iii) That, "mobile crane mounted on motor vehicle" is so manufactured and designed as to become a vehicle ""adapted for use on roads"".

(iv) That, mounted cranes are principally used at work sites or in enclosed premises for lifting or moving goods of heavy weights and loading and

unloading.

(v) That, mounted crane on a motor vehicle is capable of being used on the roads as it is required to to be sometimes taken from one work site to

another and it is a motor vehicle adapted for use upon roads - may be that it is not frequently or regularly used on roads.

(vi) The proposition that mounted crane is a vehicle of a special type adapted for use only in factories or in any other enclosed premises was not

accepted and it was found that mobile mounted crane is capable of being used on roads for its transportation and therefore, it is not a vehicle of

special type for exclusive use inside the factory or enclosed premises and its liability to tax as a motor vehicle could not be questioned.

(vii) That, cranes which are actually at the work site and not intended to be used on roads may avail the provisions of refund of tax for non-user.

(viii) Thus, the challenge to the provisions of the Act of 1958 and the notification issued thereunder fixing different rates of tax on mobile cranes

failed.

5. However, it has been pointed out that the cranes in question in the present cases are not the mobile cranes and the same are not permanently

fitted on the vehicles, but are the cranes which are transported on other heavy long bedded motor carriers at different work sites and in some

cases, they are Motor Graders, Wheel Loaders, Vibratory Rollers, Paver and Excavator -cum-Loader as have been stated in para 2 of this

judgment hereinabove. The word, "motor vehicle" or "vehicle" as such has not been defined under the Bombay Motor Vehicles Tax Act, 1958,

but Section 2(10) of the said Act provides that other words and expressions used, but not defined, in this Act, shall have the meanings respectively

assigned to them in the Motor Vehicles Act, 1988. Therefore, we straightway make reference to the Motor Vehicles Act, 1988. u/s 2(28) of the

Motor Vehicles Act, the word "motor vehicle" or "vehicle" has been defined as under:

2(28) ""motor vehicle"" or ""vehicle"" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is

transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not

include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a

vehicle having less than four wheels fitted with engine capacity of not exceeding twenty five cubic centimeters.

This Section, therefore, provides as to what is meant to be a motor vehicle or vehicle and further as to what is not included in the meaning of motor

vehicle or vehicle. It has been specifically provided that, a vehicle running upon a fixed rails or a vehicle of special type adapted for use only in a

factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 25 cubic cms. is

neither a motor vehicle nor a vehicle. It is not the case with respect to any of the machines in question that they are vehicles running upon a fixed

rails and therefore, none of these machines/vehicles would fall in this exclusionary clause. The other exclusion is with regard to the vehicles of

special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity

of not exceeding 25 cubic cms. The case of the petitioners is that all these machines are the machines of special type adapted for use in enclosed

premises and therefore, they fall in this exclusionary clause and should not be treated as motor vehicle or vehicle. It has been argued that these

machines are not adapted for use on the road, they are only equipments for the purpose of carrying out the projects of construction of buildings,

roads, dams, highways, and bridges over rivers and only for that purpose they are being carried from one place to another place and that too not

on their own wheels as such, but after mounting them on some other registered vehicles which are long bedded. These machines are made to move

on the wheels only at the time when they are actually put to use at the site and essentially they are not at all meant for transportation from one place

to another place. In fact, these machines are themselves transported from one place to another place and are made use only at the work sites. It

has also been submitted that they are essentially special types of vehicles and they are adapted for use at the work sites and their use is to be

treated as in a factory or in an enclosed premises for that limited purpose only. The whole thrust of the argument is based on the words, ""vehicle of

a special type adapted for use only in a factory or in any other enclosed premises"", i.e. part of the exclusionary clause in Section 2(28) of the

Motor Vehicles Act, 1988 and this definition of motor vehicle or vehicle as given in the Motor Vehicles Act, 1988 stands incorporated in the

Bombay Motor Vehicles Tax Act, 1958 by virtue of the provisions of Section 2(10) of the Bombay Motor Vehicles Tax Act, 1958 to which the

reference has already been made hereinabove.

6. It was pointed out by Mr. Shukla, learned AGP that Chapter 4 of the Motor Vehicles Act, 1988 provides for registration of motor vehicles and

while Section 39 provides for the necessity of registration, Section 40 provides for registration where to be made, and, Section 41 provides for

registration, how to be made. Sub-section (4) of Section 41 of the Motor Vehicles Act provides that in addition to the other particulars required to

be included in the certificate of registration, it shall also specify the type of motor vehicle, being a type as the Central Government may, having

regard to the design, construction and use of the motor vehicle, by notification in the Official Gazette, specify and it has been submitted by Mr.

Shukla, learned AGP that in exercise of the powers conferred by Sub-section (4) of Section 41 of the Motor Vehicles Act, 1988, it has specified

the types vide S.O.436(E) dated 12th June 1989 under the Central Motor Vehicles Rules 1989 for the purpose of Sub-section (4) of Section 41.

In the said S.O. dated 12th June 1989, crane and dumper have been mentioned in column 2, i.e. type of motor vehicles against the medium and

heavy motor vehicles as mentioned in column 1. The argument is that crane and dumper having been included as medium and heavy motor vehicles

in the said S.O. dated 12th June 1989, there is no scope for excluding the crane and dumper from the definition of the motor vehicle and crane as

well as dumper should be taken as medium and heavy vehicles in accordance with the Central Motor Vehicles Rules, 1989. Further reference has

been made to S.O.451(E) dated 19th June 1992 which has been issued in supersession of S.O.436(E) dated 12th June 1989 and in the Table

given in S.O. dated 19th June 1992, there is a classification of vehicles as transport vehicles and non-transport vehicles. Crane mounted vehicle

has been shown at item no.ix as non-transport vehicle and Dumper/Excavator at item no.xxiv has been included as a transport vehicle. The

reference has also been made to Rule 60 of the Motor Vehicles Rules, 1989. This Rule 60 of the Motor Vehicles Rules, 1989 is a Rule under

Chapter IV, i.e. Registration of Motor Vehicles under the Gujarat Motor Vehicles Rules, 1989. Rule 176 of the said Rules also provides for

exemption of road rollers, graders etc. under Chapter VII dealing with construction, repair and maintenance of motor vehicles and according to

Rule 176, nothing contained in these Rules shall apply to road rollers, graders and other vehicles designed and used solely for the construction,

repair and cleansings of roads or for the construction and maintenance of dams etc. Both these Rules, i.e. Rules 60 and 176 provide for exemption

of road rollers, graders, etc. Thus, crane mounted vehicle and dumper/excavator are non-transport vehicles and it is to be seen as to whether these

two entries made in this Table under S.O. dated 19th June 1992 really form any basis so as to treat the crane mounted vehicle or the

dumper/excavator as a motor vehicle. The question of crane mounted vehicle stands decided by the order of the Division Bench and as per this

S.O. dated 19th June 1992, the dumper/excavator has been included as a transport vehicle. This Table shows that the Motor Graders, Wheel

Loaders, Vibratory Rollers, Paver etc. are neither transport vehicles nor non-transport vehicles. Even the crane other than the crane mounted

vehicle has not been included either as a transport vehicle or as a non-transport vehicle. Learned AGP has submitted that the exemption under

Rules 60 and 176 of the Gujarat Motor Vehicles Rules, 1989 has been withdrawn by the notifications issued in April 2000 and July 2000.

7. (a) Crane is a machine for moving heavy objects both vertically and horizontally. Cranes range in capacity from a few hundred pounds to several

hundred tons; motive power may be furnished by hand, by steam or internal combustion engines, or by electric motors. In form, cranes are

classified as jib, derrick, or bridge. A jib crane carries a horizontal jib or beam at the top of a vertical pillar. Horizontal motion of the load is

obtained by rotation of the jib or the entire crane or by carrying the hoisting tackle over a movable trolley running on the beam. The derrick crane,

or derrick, is a cantilever design and consists of a boom, hinged at the base to the bottom of a vertical mast and supported at the tip by tackle from

the top of the mast; the mast is braced or counterweighted to keep it from collapsing toward the boom. Horizontal motion is obtained by rotating

the derrick and by luffing, that is raising or lowering, the boom. A bridge crane consists of a horizontal beam, running on tracks at both ends for

longitudinal motion and carrying a trolley running on the beam for lateral motion. The ordinary bridge crane runs on elevated tracks, while the

gantry crane is mounted on legs that run on tracks at ground level.

(b) Paver is used for the purpose of uniform distribution of Coal Tar at the time of construction of roads. For that purpose, even if a paver moves

on the road, it cannot be said to be a movement on the road as such because the movement is for limited use for constructing the road and once

the road is constructed, on that constructed part of the road, there is no need of movement of the paver nor in fact it moves.

6th Oct.2000:

(c) Vibratory Roller has hydrostatic ground and vibratory drive on both drums which is used in the process of construction of roads for distribution

of coal tar and to press the road level. It is also brought on the roads only for the purposes as aforesaid.

(d) Motor Grader has six wheels and flywheel horsepower of 145 HP and it is also used for the purpose of mixing liquid coal tar with concrete to

be used as the material for the purpose of construction of the roads and it is brought on the roads for this purpose only at the time when the roads

are under construction.

(e) Wheel Loader has four wheels and is used for the purpose of digging and shifting sand etc. so as to place it in the trucks. It is used for

preparatory work for constructing the roads.

8. Section 13 of the Bombay Motor Vehicles Tax Act, 1958 provides for exemption of all motor vehicles designed and used solely for agricultural

operations on farms or farm lands and the same are exempted from the payment of tax. Section 13(2) further provides that the State Government

may, subject to the provisions of any rules made in that behalf, by notification in the Official Gazette, exempt either totally or partially any class of

motor vehicles other than those falling under sub-section (1), or any motor vehicles belonging to any class of persons, from the payment of the tax.

It is not the case of the petitioners that any of these machines/vehicles are used solely for agricultural operations or that any of these

machines/vehicles are otherwise exempted u/s 13(2) of the Bombay Motor Vehicles Tax Act, 1958.

9. During the course of dictation of the order, learned AGP Mr. Shukla referred to a notification dated 4th April 2000 issued by the Home

Department of the Govt. of Gujarat in exercise of the powers u/s 13(2) of the Bombay Motor Vehicles Tax Act, 1958 and yet another notification

dated 28th July 2000 issued by the Ministry of Surface Transport of the Govt. of India and the xerox copies of the same were produced. Copies

of these notifications were also made available to the learned Counsel for the petitioners and with reference to the notification dated 28th July

2000, some written submissions dated 6th Oct. 2000 have also been filed by Mr. Kapadia, learned Counsel for the petitioners. The notification

dated 4th April 2000 as has been issued by the Govt. of Gujarat speaks of exemption only with regard to the passenger cars and motor cycles and

that too, for the quarter in respect of which a corresponding tax on the vehicle has been paid in any other State or Union Territory. It is therefore,

clear that none of these vehicles in question are exempted from payment of tax u/s 13 of the Bombay Motor Vehicles Tax Act, 1958. Through this

notification dated 28th July 2000, the Central Motor Vehicles Rules, 1989 have been amended in exercise of the powers conferred by Section

110 of the Motor Vehicles Act, 1988 by the Central Government. Through these amended Rules, after Rule 2, Clause (ca) has been inserted,

which reads as under:

(ca) "construction equipment vehicle" means rubber tyred, (including pneumatic tyred), rubber padded or steel drum wheel mounted, self-

propelled, excavator, loader, backhoe, compactor roller, dumper, motor grader, mobile crane, dozer, fork lift truck; self-loading concrete mixer or

any other construction equipment vehicle or combination thereof designed for off highway operations in mining, industrial undertaking, irrigation and

general construction but modified and manufactured with "on or off" or "on and off" highway capabilities.

Explanation: A construction equipment vehicle shall be a non-transport vehicle, the driving on the road of which is incidental to the main off

highway function and for a short duration at a speed not exceeding 50 kms per hour, but such vehicle does not include other purely off highway

construction equipment vehicle designed and adopted for use in any enclosed premises, factory or mine other than road network, not equipped to

travel on public roads on their own power.

In view of this amendment, any construction equipment is a non-transport vehicle. Even if the driving of the same on the road is incidental and for a

short duration at a slow speed not exceeding 50 kms per hour and what has been excluded or not included is the equipments which are purely off

highway construction equipment designed and adopted for use in any enclosed premises, factory or mines, other than road work, not equipped to

travel on public roads on their own power. Thus, as per this amendment, it is very clear and admits of no further argument or controversy that all or

any of the vehicles in question are non-transport vehicles and there is no provision for their exemption from the tax because none of these vehicles

fall in any of the exclusions as provided in the Act, i.e. Clause (ca) which is definition of the "construction equipment vehicle". It is apparent from

the description and use of the vehicles as aforesaid that they are all construction equipment vehicles, i.e. non-transport vehicles and such

construction equipment vehicles also fall within the definition of the motor vehicles or vehicles as such and hence, are liable to pay the tax.

10. On behalf of the petitioners, it has been pointed out by Mr. Kapadia that this notification dated 28th July 2000 has not been published in the

Gazette and the same cannot be applied unless it is published in the Gazette. He has made a pointed reference to Rule 1(2) of this amendment in

the Rules notified by notification dated 28th July 2000 that they shall come into force on the date of their publication in the Gazette. Mr. Shukla,

learned AGP has produced the Gazette of India, Extraordinary, Part-II, Khand-III(I) to show that this notification No. GSR 642(E) dated 28th

July 2000 has been published. In this view of the matter, this submission on behalf of the petitioners that these Rules have not come into force has

no basis and is found to be factually incorrect.

11. In the light of the discussion as aforesaid and for the reasons given hereinabove, it cannot be held that any of these machines/vehicles in

question are only used as the goods to be carried from one place to another place and that they are not covered by the definition of the motor

vehicle or vehicle and it is clear that they are all non-transport vehicles, may be that they are used and brought on roads for the limited purpose of

constructing the roads, these equipments are certainly construction equipments vehicles/machines and there is no question of their exemption either

from the requirement of registration or from the requirement of payment of the tax.

12. The net result of the adjudication as aforesaid is that the challenge thrown in all and in each of these petitions fail. However, keeping in view the

Division Bench decision dated 14th August 2000 and in the facts and circumstances of these cases, the course of action as under be followed by

all concerned:

(i) Any of these vehicles if it is found actually at the work site and not intended to be used on roads, may avail the provisions for claiming refund of

the tax for non-user.

(ii) Should the petitioners deposit 50% of the amount of tax due against them in respect of the vehicles in question and furnish an undertaking/ bank

guarantee of any nationalised bank to pay the rest of the 50% of the amount within a period of three months, the detained vehicle shall be released

if it has not already been released under any interim order of this Court and continues to be detained. In case of breach of undertaking/bank

guarantee, the respondents may proceed in accordance with law. In case of vehicles which may have already been released under interim orders of

this Court, also the respondents may proceed in accordance with law.

(iii) It will also be open for the petitioners to make any representation before the concerned authorities in the matter of dues for the period in past

particularly the period prior to 28th July 2000 and in case any such representation is moved, the concerned authorities shall decide it as

expeditiously as possible, but not later than a period of three months from the date such representation is made.

13. All these 11 Special Civil Applications are hereby rejected. Interim order passed in any of these matters automatically comes to an end and

ceases to be operative. Rule is hereby discharged. No order as to costs.