

(1977) 01 KL CK 0016

High Court Of Kerala

Case No: O.P. No"s. 2812 and 5230 of 1975

V.M. Philip

APPELLANT

Vs

Regional Transport Officer

RESPONDENT

Date of Decision: Jan. 31, 1977**Acts Referred:**

- Kerala Motor Vehicles (Taxation of Passengers and Goods) Act, 1963 - Section 10, 12, 13, 3, 4
- Motor Vehicles Act, 1939 - Section 2(22), 2(28A), 42(2)

Hon'ble Judges: Narendran, J**Bench:** Single Bench**Advocate:** M. Pathrose Mathai, Joseph Vellappally and Thomas Alex, for the Appellant;
Government Pleader, for the Respondent**Final Decision:** Allowed

Judgement

Narendran, J.

The question that arises for consideration in these original petitions is whether the registered owner of a goods vehicle which is used only on private roads inside his factory or estate has any liability to tax under the Kerala Motor Vehicles (Taxation of Passengers and Goods) Act, 1963, for short the Act. The Petitioner in O.P. No. 2812 of 1975 is the Managing Partner of the Lakshmicoil and Chandravanam Estates, Peermade. His case is that the goods vehicle KLT 2170 owned by the estates is used only on private roads inside the estates and that it is not used at any time for the carriage of goods of any other person. The Petitioner questions Ext. P-6 communication of the Respondent -- Regional Transport Officer, Idikki directing him to pay an amount of Rs. 3,43,750 by way of T.P.G. on the goods vehicle from 1st July 1967 onwards. The Petitioner has prayed for a declaration that he is not liable to pay any tax under the Act for the carriage of goods in the goods vehicle within the private premises of the Petitioner's estate. The Petitioner in O.P. No. 5230 of 1975 is the Indian Aluminium Co., Ltd., which owns two goods vehicles, K.L.E. 4128 and

K.L.E. 3763. The Petitioner's case is that the above goods vehicles are used exclusively within the factory and only for the purposes of the factory. The Petitioner questions Ext. P-3 endorsement made by the Respondent -Regional Transport Officer, Ernakulam in the Registration Certificate of the goods vehicle K.L.E. 4128 making the Petitioner liable to a quarterly tax of Rs. 112.50 under the Act with effect from 1st April 1972 and directing the Petitioner to pay an amount of Rs. 1,800 by way of T.P.G., from 1st April 1968 to 31st March 1972. The Petitioner also questions a similar endorsement in the Registration Certificate produced as Ext. P-6 along with the Original Petition. A writ of mandamus or other appropriate writ, direction or order directing the Respondent to cancel Ext. P-3 endorsement as well as paragraphs 2 and 3 of Ext. P-6 endorsement is also prayed for by the Petitioner.

2. Counter-affidavits are filled by the Respondents in both the Original Petitions justifying the action taken to levy T.P.G., on the goods vehicles in question.

3. Sri Joseph Vallapally, learned Counsel for the Petitioners, contends that as long as the goods vehicles in question are used only on private roads belonging to the registered owners for carrying the goods belonging to the registered owners only, no liability to tax under the Act will arise. According to the learned Counsel, tax under the Act will be attracted only when a goods vehicle is put on the public road. Learned Counsel then refers to Entries Nos. 56 and 57 in List II, Schedule VII to the Constitution. Entries Nos. 56 and 57 read:

56. Taxes on goods and passengers carried by road or on inland waterways.

57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 33 of List III.

Learned Counsel contends that "road" in Entry No. 56 can only mean a public road. In support of this contention learned Counsel refers to *H. P. Barua v. State of Assam*, AIR 1955 Gau 249 . In para 6 of the above decision it is said:

The words of the entry have to be given their full effect and have to be construed in a natural and liberal sense. But at the same time they have not to be so construed as to destroy the very significance of the context in which they appear. To some extent this entry in List II appears to have been adopted with modification from entry 52 of the Government of India Act which ran thus:

"Dues on passengers and goods on inland waterways."

We thus find that in the entry as it now stands in the Constitution there were three distinct changes introduced: in place of "dues" we find the word "tax", for "passengers and goods", the order has been reversed and "goods and passengers" has been substituted and the word "by road" has also been added to "inland waterways". There is no doubt that the above changes have enlarged the scope of the entry. The whole object of that entry appears to be to enable the State Legislature to impose tax on the transportation of goods and passengers by the

road and inland waterways.

Inland waterways must evidently refer to waterways which are used for navigation by public boats or crafts. Similarly, "road" here cannot possibly refer to private roads or tracks but must refer to public roads used for traffic both vehicular and pedestrian as of right. The contention of the learned Advocate-General that the word "road" must be held to include both private and public road does not appeal to me. As I said, the entry has to be construed as a whole. Thus the State Legislature is empowered under this head to impose tax for the carriage or transportation of goods on such roads or inland water, ways.

Again in para 24 it is said:

The carriage has to be by road or by inland waterways. "Road" in the entry should be interpreted as a "public road" That is the meaning that is normally given, to it in legislative enactments. In -- *Curtis v. Embay* (1872) 7 EX 369 372 (S, it was held that

"a road as used in the Act of Parliament must manifestly mean a public road, a road which the public have a right to use for passage."

The word road is on a par with inland waterways so far as its nature or quality goes. Navigability is the characteristic of inland waterways. These waterways are public in character.

The carriage has to be by road or water-ways of a public character. Mr. Lahiri has contended that the word "road" in the entry also should be given its widest meaning and should not be restricted to public roads. This he considers, would be restricting the scope of the entry. I am unable to subscribe to this view. The word "road" also occurs in entry 13 of List II, which relates to communications, that is to say, roads, bridges, ferries and other means of communication not specified in List I.

Learned Counsel then refers to the definition "route" in Section 2(28A) of the Motor Vehicles Act, 1939 which reads:

"route" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and Anr. .

According to the learned Counsel, movement of goods on a "route" is necessary to attract tax under the Act and in the case of a goods vehicle which uses only private roads within the premises of the registered owner there will be no movement on a "route". Learned Counsel also refers to Section 12 of the Act which makes specific reference to "public road in the State". Section 12 reads:

12. Restrictions on the use of taxable vehicles in certain cases. -- No taxable vehicle shall be used on any public road in the State --

(a)....

(b)....

Reference is also made to Section 5 of the Act which provides for the submission of the returns in any Police Station which lies on the neighbourhood of the route on which the vehicle is used. Learned Counsel also contends that no appeal u/s 13 of the Act will lie against the orders questioned in these Original Petitions because they are demands made u/s 4 of the Act and not u/s 10 of the Act.

4. Learned Government Pleader contends that there is no distinction between private and public roads as far as entries 56 and 57 in List II, Schedule VII to the Constitution are concerned. It is further contended that once a goods vehicle is used on roads, the liability to tax is immediately attracted. Reference is also made to Travancore Tea Estates Co. Ltd. v. State 1972 KLT 760 and Peermade Tea Co., Ltd. v. State of Kerala AIR 1953 Gau 249. Learned Counsel then refers to Section 2(22) of the Motor Vehicles Act, 1939 which defines a private carrier. Section 2(22) reads:

"private carrier" means an owner of a transport vehicle other than a public carrier who uses that vehicle Solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport, or who uses the vehicle for any of the purposes specified in Sub-section (2) of Section 42.

Learned Government Pleader then points out that H.P. Barua v. State of Assam 1972 KLT 848 has been reversed by the Supreme Court in [Atiabari Tea Co., Ltd. Vs. The State of Assam and Others](#). It is then pointed out that the vehicles in question are designed for carrying goods and are, as a matter of fact, used for carrying goods and hence the liability to tax under the Act cannot be disputed. Learned Government Pleader further contends that u/s 3 of the Act there is power to levy tax on all goods transported by a goods vehicle;.

5. Learned Counsel for the Petitioner points out that though the decision of the High Court of Assam in H.P. Barua v. State of Assam 1972 KLT 848 has been reversed by the Supreme Court in [Atiabari Tea Co., Ltd. Vs. The State of Assam and Others](#), there is nothing in the Supreme Court judgment which will give an indication that the conclusions of the High Court of Assam that by word "road" in entry 56 in List II Schedule VII to the Constitution what is meant is public road, are disapproved. Learned Counsel also points out that the Supreme Court has in [The Automobile Transport \(Rajasthan\) Ltd. Vs. The State of Rajasthan and Others](#), overruled the decision in [Atiabari Tea Co., Ltd. Vs. The State of Assam and Others](#). Learned Counsel points out that the decisions in Travancore Tea Estates Co., Ltd. v. State 1972 KLT 760 and Peermade Tea Co., Ltd. v. State of Kerala AIR 1953 Gau 249 are not applicable to the facts here as they are decisions under the Kerala Motor Vehicles Taxation Act, 1963. Learned Counsel contends that under the Kerala Motor Vehicles Taxation Act, 1963 enacted by virtue of the powers under entry 57 of List II Schedule VII to the Constitution Tax will be attracted even if a motor vehicle is "kept for use". According to the learned Counsel, the power under entry 56 in List II Schedule VII to the Constitution is to levy a tax on goods and passengers "carried by road or on

inland waterways". So, unless a goods vehicle carries goods by road no tax liability arises under the Act.

6. Section 3 of the Kerala Motor Vehicles (Taxation of Passengers and Goods) Act, 1963 reads:

3. Levy of tax on passengers and goods. -- (1) On and from the date of commencement of this Act, there shall be levied and paid to the Government a tax on all passengers, luggage and goods carried by stage carriages and on all goods transported by goods vehicles, at the following rates, namely:

(a) in the case of stage carriages, 10 paise in the rupee, on the fares and freights payable to the operators of such carriages;

(b) in the case of public carrier vehicles, five paise in the rupee on the freights payable to the operators of such vehicles;

(c) in the case of private carrier vehicles, 2 paise per tonne kilometre of the goods.

(2) The tax levied under Sub-section (1) shall be paid by the passengers or the consignors of the goods, as the case may be, to the operators along with the fares or freights payable to the operators of the stage carriages or the goods vehicles.

(3) The operator shall be liable to pay the tax levied u/s (1) on all passengers, luggages or goods carried by stage carriages and on all goods carried by goods vehicles of which he is the operator, to the Government in the manner provided in this Act:

Provided that in the case of all goods transported by goods vehicles for export out of the territory of India, no tax under this section shall be payable:

Explanation 1. -- For the purposes of this proviso, "export" shall not include movements of goods from one part in the territory of India to Anr. part in the said territory.

Explanation 2. -- For the removal of doubts it is hereby declared that --

(i) in respect of passengers, luggage or goods booked through over the railways and road transport service, the tax payable under this Act shall be calculated only on the fares and freights payable for such passengers, luggage or goods for the distance on the road covered by the taxable vehicles;

(ii) no tax shall be payable under this Act on goods carried by any vehicle owned by any department of the Central Government or by the railways.

Admittedly the goods vehicles in question are used by the Petitioners only on private roads in their premises for carrying their own goods. Then the question is as long as the vehicles are not put on public roads will tax u/s 3 of the Act be attracted. The section provides for the levy of tax on all goods carried by private carrier vehicles

also. Then the further question is whether tax can be levied when a private carrier vehicle does not use a public road. No doubt, Section 3 of the Act does not make any mention of road. But, Section 12 of the Act imposes a restriction that no taxable vehicle shall be used on any public road in the State under certain conditions. It is not disputed that the legislative power is under entry 56 in List II. "Road" mentioned in entry 56 can only be a public road which the public have a right to use for passage. It cannot be a private road which a public carrier vehicle cannot have the right to use. A route as defined in Section 2(28A) of the Motor Vehicles Act, 1939 can only be along a public road. The indication in Section 5 of the Act is also that the vehicle carrying the goods should use a route. So, the irresistible conclusion is that as long as a goods vehicle which is a private carrier vehicle does not use a public road, no tax under the Act can be levied on the goods carried by it. In this view of the matter, the levy of tax under the Act on the Petitioners' vehicles is wrong and illegal. Hence Ext. P-6 in O.P. No. 2812 of 1975 and Ext. P-3 and paragraphs 2 and 3 of Ext. P-6 in O.P. No. 5230 of 1975 are set aside. The Petitioners are given a declaration that no tax u/s 3 of the Act can be levied on goods carried by the goods vehicles in question as long as those vehicles are not used on public roads in the State.

7. The Original Petitions are allowed as above. There will be no order as to costs.