
(2008) 3 ALD 241 : (2008) 4 ALT 53 : (2010) 1 APLJ 297

Andhra Pradesh High Court

Case No: Writ Petition No"s. 21008, 21498, 21025, 21026, 21027, 21265, 21322, 21323, 21506, 21507, 21508, 21512, 21515, 21530, 21560, 21561, 21602, 21616, 21975, 21976, 21977, 21988, 21604, 21673, 21725, 22066, 22142, 22198, 22206, 22320, 22321, 22322, 22430, 224

Sri. K. Srinivas and
Others

APPELLANT

Vs

The Government of
Andhra Pradesh and
The Dy. Transport
Commissioner and
Secretary, Regional
Transport Authority and
Others

RESPONDENT

Date of Decision: Nov. 30, 2007

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 " Rule 2, 2(1), 258, 258(2)#Andhra Pradesh Motor Vehicles Taxation Act, 1963 " Section 2, 3, 3(1), 3(2), 3A#Constitution of India, 1950 " Article 14, 226, 245, 246(3), 254#Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 " Section 3, 9#Motor Vehicles Act, 1939 " Section 123, 123(1), 22, 42#Motor Vehicles Act, 1988 " Section 192A, 192A(1), 2(31), 53, 53(1)

Citation: (2008) 3 ALD 241 : (2008) 4 ALT 53 : (2010) 1 APLJ 297

Hon'ble Judges: Bilal Nazki, Acting C.J.; Ramesh Ranganathan, J

Bench: Division Bench

Advocate: B. Siva Rama Krishnaiah and etc. etc, for the Appellant; Advocate General and GP for Taransport, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Ramesh Ranganathan, J.

In these batch of writ petitions the petitioners, transport operators whose vehicles are

covered by subsisting

permits valid to ply as contract carriages in the State of Andhra Pradesh, have questioned the vires of Section 3-A of the Andhra Pradesh Motor

Vehicles Taxation Act, as inserted by the Andhra Pradesh Motor Vehicles Taxation (Amendment) Act, 2006 (Act 33 of 2006), and the

notification issued in G.O.Ms. No. 180, Transport, Roads & Buildings (Tr.I) Department dated 27.09.2006.

2. The Government of Andhra Pradesh had, hitherto, issued G.O.Ms. No. 77 dated 01.06.2002 prescribing a new rate of tax of Rs. 3500/- per

seat per quarter in respect of stage carriages plying a distance exceeding 1000 km a day. On a challenge thereto a Larger bench of this Court, in

L. Royal Reddy and Others Vs. Government of Andhra Pradesh and Others, , had held that, since the charging section under the A. P. Motor

Vehicles Taxation Act did not authorize levy of additional tax in case of violation of the permit or its conditions, para 1(iii), para 3 and Explanation

VI(iv) of para 5 of G.O.Ms. No. 77 dated 01.06.2002 was invalid. Consequent thereto, the Andhra Pradesh Motor Vehicles Taxation Act, 1963

(hereinafter referred to as the Act), was amended by insertion of Section 3-A and the notification in G.O.Ms. No. 180, Transport, Roads &

Buildings (Tr.I) Department, dated 27.09.2006 was issued amending the notification in G.O.Ms. No. 68 dated 13.04.2006.

3. Sri E. Manohar, Learned Senior Counsel, Sri Noushad Ali and Sri B. Sivaramakrishnaiah, Learned Counsel for the petitioners made elaborate

submissions on the vires of Section 3-A of the Act and the notification in G.O.Ms. No. 180 dated 27.9.2006. Learned Advocate General

appeared on behalf of the respondents and, after putting forth extensive oral arguments, also filed his written submissions.

SECTION 3-A: IS IT BEYOND THE LEGISLATIVE COMPETENCE OF THE STATE LEGISLATURE:

The vires of Section 3-A of the Act is under challenge on the ground that motor vehicles tax can be levied only as a compensatory measure for use

of the roads and not as a penalty, that Sections 53(1)(d), 66, 86(1)(a), and 192-A(1) of the Motor Vehicles Act, 1988 are penal provisions for

violation of permit conditions and, as the field is occupied by the Motor Vehicles Act, 1988, (a law made by Parliament under Entry 35 of List III),

the State Legislature is denuded of the power to make a law levying motor vehicles tax as a measure of penalty and Section 3-A, which enables

the State Government to do so, is repugnant to the penal provisions of the Motor Vehicles Act, 1988 and, in the absence of assent of the

President, is ultravires and illegal. Reliance is placed on Inder Kumar Goyal and Others Vs. State of Rajasthan and Others, ; M.P.A.I.T. Permit

Owners Assn. and Another Vs. State of Madhya Pradesh, , L. Royal Reddy and Others Vs. Government of Andhra Pradesh and Others, , M.

Narasimhaiah Vs. Deputy Commissioner for Transport, Bangalore Division, Infantry Road, Bangalore and Another, , and State of Karnataka and

Others Vs. N. Madappa and Others, .

4. Learned Advocate General would submit that the Motor Vehicles Act, 1988, (enacted by Parliament under Entry 35 of List III), and the A.P.

Motor Vehicles Taxation Act, 1963, (enacted by the State Legislature under Entry 56 and 57 of List II), operate in their own fields and that the

State Act cannot be said to have encroached upon the Central Act as long as the State enactment is referable to tax on vehicles. Learned

Advocate General would contend that the penal provisions under the Motor Vehicles Act, 1988 cannot bar the State from making provisions for

levy and imposition of additional tax as the levy does not amount to a penalty. According to the learned Advocate General it is the duty of the State

not only to collect tax for the use of roads but also to regulate use of vehicles in accordance with the permits issued. Learned Advocate General

would submit that additional tax is also a tax and that Section 3-A, which enables levy of additional tax by the State authorities, is compensatory

and regulatory and not penal in nature. He would rely on Bolani Ores Ltd., , Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, , The

Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, , Prithipal Singh Vs. State of Punjab and Others, and Hardev

Motor Transport Vs. State of M.P. and Others, .

5. Under Entry 35 of List III, both Parliament and the State Legislatures are empowered to legislate in respect of mechanically propelled vehicles

including the principles on which taxes on such vehicles are to be levied. Entry 57 of List II empowers the State Legislature to make a law in

respect of taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of Entry

35 of List III. While Entry 57 of List II relates only to taxes on motor vehicles, Entry 35 of List III deals also with the principles on which taxes on

such vehicles are to be levied. The two entries deal with two different matters though allied - one deals with taxes on vehicles and the other with the

principles on which such taxes are to be levied. Taxes on vehicles, in their ordinary meaning, connote the liability to pay taxes at the rates at which

taxes are to be levied. On the other hand, the expression "principles of taxation" denotes rules of guidance in the matter of taxation. State of Assam

v. Labenya Probha Debi AIR 1967 SC 1575 ; Bolani Ores Ltd., , M. Narasimhaiah Vs. Deputy Commissioner for Transport, Bangalore Division,

Infantry Road, Bangalore and Another, , State of Karnataka and Others Vs. N. Madappa and Others, . While Parliament may also lay down

guidelines for levy of taxes on mechanically propelled vehicles, the right to levy such taxes vests solely in the State Legislature. B.A. Jayaram and

Others Vs. Union of India (UOI) and Others, .

6. Whenever a legislation is said to be beyond the legislative competence of a State Legislature, what one must do is to find out, by applying the

rule of pith and substance, whether that legislation falls within any of the entries in List II. If it does, no further question arises; the attack upon the

ground of legislative competence shall fail. It cannot be that even in such a case, Article 246(3) can be employed to invalidate the legislation on the

ground of legislative incompetence of the State Legislature. If, on the other hand, the State legislation in question is relatable to an entry in List III

applying the rule of pith and substance, then also the State legislation would be valid, subject to a Parliamentary enactment inconsistent with it, a

situation dealt with by Article 254. *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, .

7. It cannot, however, be lost sight of that Entry 57 of List II is itself made ""subject to"" Entry 35 of List III which would only mean that

notwithstanding the general terms in Entry 57 of List II, the specific terms in Entry 35 of List III shall take effect. This is also on the principle that

the ""special"" excludes the ""general"" and the general entry in Entry 57 of List II is subject to the special entry in Entry 35 of List III. *Kerala State*

Electricity Board Vs. The Indian Aluminium Co. Ltd., . The State legislation levying tax on motor vehicles must not only conform to the principles

of taxation laid down in the law made by Parliament under Entry 35 of the concurrent list, it must also not run contrary to the provisions of such a

law relating to mechanically propelled vehicles.

8. To find out whether a piece of legislation falls within a particular Entry, its true nature and character must be in respect of such an Entry. The

Entries must receive a liberal interpretation as the few words of the Entry are intended to confer vast and plenary powers. *The Second Gift Tax*

Officer, Mangalore etc. Vs. D.H. Nazareth etc., . The Court, in determining the scope of the area covered by a particular Entry, must interpret the

relevant words in the Entry in a natural way and give the said words the widest interpretation. *Seth Banarsi Das etc. Vs. Wealth Tax Officer,*

Special Circle Meerut, etc., . It must also borne in mind that when the vires of an enactment is impugned, there is an initial presumption of its

constitutionality. If there exists any difficulty in ascertaining the limits of the legislative power it must be resolved, as far as possible, in favour of the

legislature, putting the most liberal construction on the legislative entry so that it is intra vires. *P.N. Krishna Lal and Others Vs. Govt. of Kerala and*

Another, .

9. Entry 57 of List II enables the State Government to levy a tax on all motor vehicles suitable for use on roads. Travancore Tea Estates Co. Ltd.

and Others Vs. State of Kerala and Others, . Such taxes are in the nature of regulatory and compensatory measures and are levied for the purpose

of raising revenue to meet the expenditure for making roads, maintaining them and to facilitate the movement and regulation of traffic. Bolani Ores

Ltd., . The regulatory and compensatory nature of the tax requires the power to impose taxes to be exercised on such motor vehicles which use

the roads in the State or are kept for use thereon either throughout the whole area or parts thereof and are sufficient to make and maintain such

roads. The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, , Bolani Ores Ltd., .

10. A law, enabling imposition of taxes on motor vehicles, can be validly made under Entry 57 of List II to regulate the manner in which roads are

to be used by such motor vehicles. A law providing for levy of motor vehicles tax as a penalty can, however, be made only under Entry 35 List III,

and not under Entry 57 of List II, since the words ""suitable for use on roads"" used therein would limit the power to impose taxes on motor vehicles

only as a regulatory or a compensatory measure and not as a penalty.

11. Penal provisions relating to motor vehicles can be imposed only by a law made under Entry 35 of List III and not Entry 57 of List II. The

Motor Vehicles Act, 1988, a law made by Parliament under Entry 35 of List III, contains penal provisions for use of motor vehicles without a

permit or for violation of the conditions of the permit. Section 53 relates to suspension of registration and, under Sub-section (1) thereof, if the

registering authority has reason to believe that any motor vehicle has been, or is being, used for hire or reward without a valid permit for being used

as such, he may, after giving the owner an opportunity of making a representation, and for reasons to be recorded, suspend the certificate of

registration of the vehicle. Chapter V relates to control of transport vehicles and, u/s 66(1), no owner of a motor vehicle shall use or permit the use

of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying passengers or goods save in accordance

with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him the

use of the vehicle in that place and in the manner in which the vehicle is to be used. Section 86 relates to cancellation and suspension of permits

and, under Sub-section (1), the transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit

(a) on breach of any condition specified in Section 84 or of any condition contained in the permit or (b) if the holder of the permit uses or causes or

allows a vehicle to be used in any manner not authorized by the permit. Section 192-A relates to using a vehicle without a permit and, under Sub-

section (1), whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of Section 66(1) or

of any condition of a permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, shall be liable to

be punished.

12. What is required to be determined is whether Section 3-A of the Act is regulatory and compensatory or is it in the nature of a penalty. If it is

the former, then the State Legislature must be held to have the legislative competence to make such a law under Entry 57 of List II. However, if it

falls in the latter category then, penal provisions having already been prescribed under the Motor Vehicles Act, 1988 an additional penal provision

in the A.P. Motor Vehicles Taxation Act, 1963, in the absence of the assent of the President thereto, would fall foul of and be repugnant to the

Motor Vehicles Act, 1988. When offences under the law made by Parliament and the State Legislature respectively are substantially identical, but

additional penalties are imposed for the contravention by the provisions of the State law, it would be inconsistent with the law made by the

Parliament and, therefore, invalid. M.P.A.I.T. Permit Owners Assn. and Another Vs. State of Madhya Pradesh, .

13. In adjudging whether a tax is regulatory/compensatory or it is penal in nature, the true character of the tax has to be determined. Municipal

Council, Kota, Rajasthan Vs. The Delhi Cloth and General Mills Co. Ltd., Etc. Etc., . It is not the nomenclature used or chosen to christen the levy

that is relevant or determinative of the real character or the nature of the levy. What has to be examined is the pith and substance of the levy which

has to be adjudged, with reference to the charge, viz., the taxable event and the incidence of the levy. Municipal Council, Kota, Rajasthan Vs. The

Delhi Cloth and General Mills Co. Ltd., Etc. Etc., . To ascertain the essential character of the tax, the charging section has to be examined as the

identification of the subject-matter of the tax is only to be found therein. T.

Aswathanarayana v. The State of Andhra by the Secretary, dealing with

Commercial Taxes, Government of Andhra, Kurnool, (now Andhra Pradesh, Hyderabad) 1959 (1) AnW.R. 347.

14. Section 3 of the Act enables the State Government, by notification, to direct that a tax shall be levied on every motor vehicle used or kept for

use in a public place in the State. The notification is required to specify the class of motor vehicles of which and the rates at which taxes shall be

levied. Power is conferred on the State Government, u/s 3(2), to prescribe different rates of taxes for different classes of motor vehicles. It is

evident that Section 3(1), which enables the Government to levy a tax on motor vehicles used or kept for use in a public place, is regulatory and

compensatory.

15. Section 3-A, as inserted by A.P. Amendment Act 33 of 2006 and which is deemed to have come into force with effect from 1st June, 2002,

reads thus:

3-A(1) Notwithstanding anything contained in Section 3, it shall be competent for the Government to provide for levying an additional tax in

respect of a motor vehicle specified in one category or class notified u/s 3, if misused or used not in accordance with the purpose for which the

vehicle was registered, or the permit was granted, attracting higher rate of tax as a vehicle falling in another category or class:

Provided that the additional tax so levied shall be a sum equal to the difference of amount between the tax already levied and collected and the tax

which shall be leviable in respect of such vehicle falling in another category.

(2) The registered owner or the person who is in possession or control of such vehicle misused or used not in accordance with the purpose for

which the vehicle was registered or the permit was granted, shall pay the additional tax so levied under Sub-section (1).

Section 3-A enables the Government to levy additional tax in cases where a motor vehicle specified in one category or class is misused as a vehicle

falling under another category or class. It is only in cases where the vehicle is misused, or is not used in accordance with the purpose for which it

was registered or the permit granted, is the Government empowered to levy an additional tax.

15. As noted above, Entry 57 empowers legislation in respect of vehicles suitable for ""use on the roads"". All that is necessary to uphold a tax

which purports to be or is claimed to be a regulatory or compensatory tax is the existence of a specific, identifiable object behind the levy and a

nexus between the subject and the object of the levy. B.A. Jayaram and Others Vs. Union of India (UOI) and Others, . By virtue of Entries 56

and 57 of List II, the State Legislature has the power to make a law to compensate for the services, benefits and facilities provided by it for motor

vehicles operating on roads within the territory of the State. The State Legislature has also the power to levy a tax to regulate the manner in which

the motor vehicles use the roads and to prevent them from misusing the roads contrary to the purpose for which it was registered and the

conditions subject to which the permit was granted. Taxes resulting from such legislative activity are, by their very nature, regulatory and

compensatory. The nexus between the levy and its object is patent in the case of such taxes. B.A. Jayaram and Others Vs. Union of India (UOI)

and Others, . The words ""suitable for use on the roads"" in Entry 57 when liberally construed and given a wide interpretation would include within

its ambit prevention of misuse of motor vehicles on the roads and the power to levy tax for misuse of the conditions of permit, which is but a step in

the process of preventing misuse of motor vehicles on the roads, is only a regulatory measure under Entry 57 of List II and not a penalty under

Entry 35 List III. The levy u/s 3-A is to regulate motor vehicles and ensure that they are used on the roads in accordance with the purpose for

which they were registered and the conditions subject which the permit was granted. As Section 3-A is regulatory and is not in the nature of a

penalty, it is a law referable to Entry 57 of List II and is well within the legislative competence of the State legislature. Challenge to the vires of

Section 3-A on the ground of lack of legislative competence must, therefore, fail.

16. Reliance is placed on behalf of the petitioners on a division bench judgment of the Rajasthan High Court, in Inder Kumar Goyal and Others

Vs. State of Rajasthan and Others, , to contend that a provision, identical to Section 3-A of the Act, in the Rajasthan Motor Vehicles Taxation Act

was struck down on the ground that it was in the nature of a penalty. It is, therefore, necessary to examine the said judgment in some detail.

Section 4b(3) of the Rajasthan Motor Vehicles Taxation Act, the vires of which was under challenge in Inder Kumar Goyal and Others Vs. State

of Rajasthan and Others, , reads thus:

Where a transport vehicle is used without a valid permit or in any manner not authorised by the permit, there shall be levied and paid to the State

Government further special road tax in addition to the tax payable under Sub-section (1) on such vehicle at the rate fixed by notification not

exceeding the maximum rate specified in this behalf in Schedule A.

The division bench of the Rajasthan High Court, in holding it to be ultra-vires on the ground of lack of legislative" competence, observed:

...Power to impose tax, which are in the nature of regulatory and compensatory measure vest with the State Legislature under Entry 56 of List II of

Seventh Schedule. Entry 57 of List II empowers the Legislatures in respect of tax on vehicles suitable for use on roads. The powers exercisable

under Entry 57 is also a power to impose tax, which are in the nature of regulatory and compensatory measures. In *The Automobile Transport*

(Rajasthan) Ltd. Vs. The State of Rajasthan and Others, , it was held by their Lordships of the Supreme Court that the tax on motor vehicles is a

compensatory tax levied for the use of vehicles and it is not a tax on trade. The object of the act is achieved by charging to tax motor vehicles

suitable for use on roads kept in the State....

...A perusal of Section 4(1) and 4(2) shows that the tax is levied on motor vehicles used or kept for use in the State. Surcharge is levied at the rate

of 10% of the tax impose.... Section 4b(3) provides for imposition of further special road tax, which is in addition to the tax payable u/s 4b(1).

There are two situations under which tax u/s 4b(3) can be levied. First is, where a transport vehicle is used without valid permit and the second is,

that where a transport vehicle is used in any manner not authorised by permit. Thus, ordinarily, a transport or non-transport vehicle is liable to pay

tax, surcharge and special road tax u/s 4, 4a and 4b(1). However, those transport vehicles which are used without a valid permit or in any manner

not authorised by permit, an additional special road tax has to be paid as per Section 4b(3). So far as Section 4b(3) is concerned, it does not say

that this additional road tax is to be paid with reference to user of the vehicle or road. It is clearly not a tax on the road or on a vehicle or on

passenger. According to the assertion made by the respondents themselves it is the additional special road tax imposed for vehicles plying without

licence or in contravention with the conditions of licence or permit. Those who are using the road without permit or in breach of the permit are

made to pay higher special road tax....

...This provision has been referred to in order to emphasise that the Act of 1951 makes specific provision to treat the breach of the provisions of

that Act and the Rules made thereunder as offence, specifies the punishment which may be imposed on conviction in respect of such offence and

also for compounding of offence by the prescribed officer by accepting money may extend up to the amount of tax. However, the provisions of the

Act of 1951 do not deal with the cases relating to the violation of permit or conditions of permit. Violation of permit granted under the Motor

Vehicles Act or contravention of any of the conditions of permit or of the provisions relating to restrictions are dealt with u/s 123 of 1939 Act. A

specific provision has been made in that Act to deal with the cases relating to the contravention of the provisions of Sections 22 and 42 of the Act.

Section 123(1) provides for punishment of fine for the first offence and of imprisonment which may extend to six months or with fine which may

extend to Rs. 2rs. 2000.00 or both for second or subsequent offence. Proviso to Section 123(1) makes it obligatory for the Court to impose a fine

of at least Rs. 500. 00 for any second or subsequent offence. Section 123(1) also provides for suspension of certificate of registration or permit of

the vehicle used in commission of offence. This is in addition to the sentence which may be passed under Sub-section (1) of Section 123(1). It is

clear from Section 123(1) that a specific provision has been made in 1939 Act to deal with the cases involving contraventions of Sections 22 and

42 of 1939 Act. Any person who plies vehicle without permit or in contravention of conditions of such permit is liable to be prosecuted and is

liable to be punished in case of conviction. Source of a provision like Section 123 can be traced in Entry 93 of List I of Seventh Schedule. It is,

therefore, clear that a specific provision exists to deal with the offences involving violation of Section 42, namely, where the vehicle is plied without

permit or in contravention of the conditions of permit. The question now arises for consideration is as to whether a tax, additional tax or special tax

can be imposed for an act which is offence under a provision contained in the Motor Vehicles Act, 1939 and has the State Legislature a power to

legislate for imposition of tax or additional tax with reference to an act committed by a person, which is treated as an offence under the Act of

1939. Entry 56 of List II of Seventh Schedule will no doubt receive a liberal construction. However, as already noticed hereinabove, under Entry

56 tax can be imposed on goods and passengers carried by road or inland waterways. Such tax has to be compensatory or regulatory. It can be

for the use of road and of the vehicle. Entry 56 of List II cannot however be interpreted to bring within its frame work the imposition of tax for an

act which is offence. A person who is plying vehicle on road is liable to pay tax, surcharge, special road tax. Thus, irrespective of whether he is

having a permit or not or whether he is plying the vehicle in contravention of the conditions of permit, the power vesting with the State Legislature in

Entry 56 cannot be utilised for imposition of penalty in the form of tax. In our opinion, what has been done by Section 4b(3) is not the imposition of

tax, but a fine or penalty for an alleged offence of plying the vehicle without a valid permit or in contravention of the conditions of permit. Such a

penalty cannot be treated as a part of regulatory or compensatory tax.

In view of the above discussions, it must be held that Section 4b(3) is beyond the legislative competence of the State Legislature and is liable to be

declared as ultra vires to the powers of the State Legislature....

(emphasis supplied).

We must express our inability to agree with the views expressed, in Inder Kumar Goyal and Others Vs. State of Rajasthan and Others, , that levy

of additional road tax was not with reference to the user of the vehicle or the road but was a fine or penalty for the alleged offence of plying the

vehicle without a valid permit or in contravention of the conditions of the permit and that such a penalty could not be treated as a part of regulatory

or compensatory tax. Neither was the scope of Entry 57 List II vis-a-vis Entry 35 List III examined in Inder Kumar Goyal and Others Vs. State of

Rajasthan and Others, , nor did the Rajasthan High Court consider that a liberal construction and a wide interpretation of Entry 57 List II would

require the words ""use of the roads"" therein to include its misuse on the failure of the owner of the vehicle to adhere either to the purpose for which

the vehicle was registered or the conditions subject to which the permit was granted.

17. In M. Narasimhaiah Vs. Deputy Commissioner for Transport, Bangalore Division, Infantry Road, Bangalore and Another, , levy of additional

tax u/s 8 of the Karnataka Motor Vehicles Taxation Act was under challenge. u/s 8 if any motor vehicle, in respect of which tax had been paid,

was altered or proposed to be used in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax was

payable, the registered owner or person who was in possession or control of such a vehicle was required to pay additional tax or a sum which was

equal to the difference between the tax already paid and the tax which was payable in respect of such a vehicle for the period for which the higher

rate of tax was payable in consequence of its being altered or so proposed to be used. Item 4(2) of the Schedule to the Act related to vehicles

permitted to carry more than six persons for a total mileage exceeding 100 km per day. The Supreme Court held that, in order to bring the case

within the scope of Section 8, it must first be shown that there is a provision in the Act which makes a stage carriage vehicle which carries a larger

number of passengers, than what it is permitted under the permit, subject to a higher rate of tax, that the highest rate of tax in respect of a stage

carriage that could be levied under the Act was incorporated in Clause (2) of item 4 of the Schedule and that it would have been possible to levy a

higher tax on the owner only if the words ""which the vehicle is permitted to carry"" in item 4(2) had been omitted. In M. Narasimhaiah Vs. Deputy

Commissioner for Transport, Bangalore Division, Infantry Road, Bangalore and Another, , the construction to be placed on Section 8 was in issue

and there was no challenge to its vires.

18. In *State of Karnataka and Others Vs. N. Madappa and Others*, , the validity of sub-sections 4 and 5 of Section 3 of the Karnataka Motor

Vehicles Taxation Act was under challenge. The Supreme Court, while examining the question whether the State Legislature was competent to

enact a law relating to levy of tax on excess passengers carried by the holder of the permit under the Motor Vehicles Act, held that under Entry 57

of List II, the State Legislature had the power to impose tax on vehicles subject to the provisions of Entry 35 of List III and, as there was no law

made by Parliament occupying the field under Entry 35 of List III, the State Legislature had the power under Entry 57 of List II to make a law

levying tax on vehicles. The Supreme Court, however, held that the power to levy tax at the enhanced rate on excess passengers, on finding the

vehicle to have been overloaded in excess of the prescribed limit, appeared not to be consistent with the scheme u/s 8 of the Act and that the

amendment was not valid in law.

19. In *M.P.A.I.T. Permit Owners Assn. and Another Vs. State of Madhya Pradesh*, , Section 16(6) of the M.P. Motor Vehicles Taxation Act

was under challenge. Section 16(6) provided that where the taxation authority, upon receipt of a report about the seizure of the vehicle, was

satisfied that the owner had committed an offence u/s 66 read with 192-A of the Motor Vehicles Act, and was plying a vehicle without a permit,

could confiscate the vehicle seized. Section 16(6) prescribed an additional penalty of confiscation of a motor vehicle for violation of Section 66 and

192-A of the Motor Vehicles Act, 1988. It is in this context that the Supreme Court observed that, apart from what was available u/s 192-A of

the Motor Vehicles Act, additional penalties were prescribed u/s 16(6) of the State Act and that when offences arising under the Union law and

the State law were substantially identical, but additional penalties were imposed for the contravention by the provisions of the State law, it would

be inconsistent with the law of the Union and, therefore, invalid.

20. In L. Royal Reddy and Others Vs. Government of Andhra Pradesh and Others, a Larger Bench of this Court held that, in the absence of any

provision in the Taxation Act providing for payment of a higher rate of tax for vehicles plying in deviation of the permit conditions, and as long as

there was no alteration in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax was payable, no

additional tax could be collected. The Larger Bench held that tax could not be levied as a fine or penalty for contravention of permit conditions

since penalty could not be treated as a part of recovery of compensatory tax. It is with a view to overcome the flaw pointed out by the Larger

Bench, in L. Royal Reddy and Others Vs. Government of Andhra Pradesh and Others, that Section 3-A was introduced in the A.P. Motor

Vehicles Taxation Act, 1963.

ABSENCE OF A PROVISION FOR APPEAL: WILL NOT RENDER THE STATUTORY PROVISION ILLEGAL:

The challenge mounted to Section 3-A, on the ground that there is no provision for an appeal against the assessment made thereunder, must also

fail. Absence of a provision to appeal against an order levying additional tax u/s 3-A, will not render the said Section illegal or necessitate its

striking down, for it is well settled that mere absence of a corrective machinery by way of an appeal or revision by itself would not render the

provision invalid especially when it is open to an aggrieved party to invoke the jurisdiction of the High Court under Article 226 of the Constitution.

Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another, ; Babubhai and Co. and Others Vs. State of Gujarat and

Others, .

VALIDITY OF EXPLANATION VI (iv) OF G.O.Ms. No. 180, DATED 27.09.2006:

The vires of Explanation VI (iv) of G.O.Ms. No. 180 dated 27.09.2006 is under challenge as ultravires the Charging Section 3-A. It is contended

that, pursuant to the introduction of Section 3-A, no notification was issued for levy of additional tax, that G.O.Ms. No. 180 dated 27.9.2006

does not classify or prescribe any category for misuse of vehicles, that u/s 3-A additional tax cannot exceed the difference of tax payable in respect

of a category or a class of vehicles to which the offending vehicle is put to i.e., if a contract carriage is misused as a stage carriage the additional tax

leviable should not be more than the tax payable in respect of the stage carriage, that the State Government had already issued a notification in

G.O.Ms. No. 68 dated 13.04.2006 prescribing the rates of tax in respect of stage carriages, that taxes have been prescribed according to the total

distance covered by the vehicle in a day, that Clause (iv) of Explanation VI is irrational besides being contrary to Section 3-A of the Act as it

prescribes a tax more than the tax prescribed for a stage carriage, that in the absence of the prescription that the vehicle is an express stage

carriage, as per Rule 2(1)(b) of the A.P. Motor Vehicles Rules, no tax can be collected treating a contract carriage as an express stage carriage,

that the object of the Explanation is to explain the meaning and intendment of the provision and cannot in any way interfere with or change the

provision since levy of tax is only on the basis of the class of motor vehicles indicated in the Schedule to the notification issued u/s 3 of the Act, that

Clause (iv) has been added to Explanation VI as a penalty for various categories of vehicles misused as stage carriages which, in effect, is

imposition of a fine for the alleged offence of plying the vehicle without a valid permit or in contravention of the permit, that levy of such penalty

cannot form part of the regulatory or compensatory tax and hence Explanation VI(iv) is ultravires the powers conferred on the State Legislature

under Entry 56 and 57 of List II.

21. In support of his contention that Explanation VI (iv), as introduced by G.O.Ms. No. 180 dated 27.09.2006, is intra-vires Section 3-A of the

Act, Learned Advocate General would submit that u/s 3 of the Act various classes/categories of motor vehicles have been notified by the

Government and, in exercise of such a power, a new category was introduced by para 1 of G.O.Ms.No.180 dated 27.9.2006 i.e., ""vehicles

exceeding 1000 K.Ms"", for which the rate of tax prescribed was Rs. 3675/-, that the said G.O. also provides for collection of additional tax

applicable to the new category at Rs. 3,675/- if any vehicle is plying without a permit or if a contract carriage is misused as a stage carriage, that

Section 3-A does not require a separate notification to be issued and, since Section 3-A is an enabling provision for collection of additional tax

referable to the notification u/s 3, the said notification would be the basis to operate Section 3-A and that collection of additional tax is now

supported by the statutory provision u/s 3-A of the Act.

22. According to the Learned Advocate General, once different classes/categories of vehicles are identified and notified u/s 3, as and when a

vehicle is plying without a permit or a contract carriage is misused as a stage carriage, the said vehicle would be reckoned as a vehicle under the

newly introduced category i.e., ""exceeding 1000 KMs"", that differential tax is liable to be collected as additional tax and that paragraphs 2 and 4 of

G.O.Ms. No. 180 have created a fiction referable to the new category under para 1 of the said G.O. Learned Advocate General would contend

that the Government is empowered to collect additional tax from the owners of such misused vehicles as if the vehicle was a vehicle under another

category or class i.e., ""exceeding 1000 kms"" and, accordingly, additional tax can be charged by virtue of Section 3-A and the legal fiction under

paras 2 and 4 of G.O.Ms. No. 180.

23. Before examining the rival contentions, it is useful to make a brief reference to the contents of G.O.Ms. No.68 dated 13.4.2006 and the

amendment issued thereto in G.O.Ms. No. 180 dated 27.9.2006. G.O.Ms.NO.68 dated 13.4.2006 was issued by the Government directing that

a tax for a quarter shall be levied, on every motor vehicle used or kept for use in a public place in the State, at the rates specified in column (2) of

the Schedule in respect of the classes of motor vehicles specified in column (1). Column (1) of the Schedule relates to classes of motor vehicles

and column (2) the rate of quarterly tax for such classes of motor vehicles. Under class 1 are motor cycles, motor scooters and cycles with

attachment for propelling the same by mechanical power. The second class relates to invalid carriages, the 3rd class to goods vehicles, the 4th class

to motor vehicles plying for hire and used for transport of passengers, the 5th class is of motor vehicles not themselves constructed to carry any

load other than water, fuel, accumulators etc, the 6th class of motor vehicles are fire engines, fire tenders and road water sprinklers, the 7th class is

of omni buses with a seating capacity of more than nine and under class 8 are motor vehicles other than those liable to tax under the earlier

provisions of the Schedule.

24. The 4th class of motor vehicles, i.e., "motor vehicles plying for hire and used for transport of passengers", is again sub-classified into different

categories. Category (i) are vehicles which are permitted to carry in all not more than 6 persons, Category (ii) is of three wheeled vehicles

permitted to carry 7 persons in all, Category (ii)(a) are vehicles permitted to carry 7 persons in all and covered by All India Tourist Taxi permits,

Category (iii) are vehicles permitted to carry more than 6 passengers and plying as stage carriages on town services routes, Category (iv) are

vehicles permitted to carry more than 6 passengers and plying as stage carriages on routes other than town service routes and Category (v) are the

vehicles permitted to carry more than 6 persons and plying as contract carriages.

Category (iv) is again sub-divided into (a) vehicles permitted to

ply as express services and (b) vehicles permitted to ply as ordinary services. Similarly category (v) is sub-divided into (a) vehicles covered by all-

India permit; (b) vehicles plying on intrastate routes; (c) vehicles plying within the home district and any one contiguous district; (d) idle contract

carriages not covered by any permit plying on the strength of temporary/special permits; and (e) vehicles with seating capacity of 8 to 13 covered

by intrastate or inter-state permits. While Item (iv) has Explanations I to V, Item (v) has one explanation i.e., Explanation VI.

25 The Schedule to the notification, in G.O.Ms. No. 68 dated 13.4.2006 was amended, by G.O.Ms. No. 180 dated 27.9.2006, to provide for

Entry (iii) after Entry (ii) in item (4)(iv)(a), Clause (ii) to Explanation III to Item 4(iv), Entry (aa), after entry (a) in Item 4 V(a) and Clause (iv) after

Clause (iii) in Explanation VI to Item 4(v).

As noted above, Item 4(iv)(a) are motor vehicles permitted to carry more than six passengers and plying as stage carriages on routes other than

town service routes. In respect of such vehicles the rate of quarterly tax, for every passenger which the vehicle is permitted to carry, where the

total distance permitted to be covered by the vehicle in a day does not exceed 320 kms, is Rs. 1146-60 and where it exceeds 320 kms but does

not exceed 1000 kms is Rs. 1514-10. By virtue of the amendment, in para 1 of G.O.Ms. No. 180 dated 27.9.2006, a rate of tax of Rs. 3675-00

is prescribed for such vehicles which exceed 1000 kms.

Explanation I to Item 4(iv) relates to the number of persons or passengers which a vehicle is permitted to carry. Explanation II defines ""town

service"" route and ""express service"". Clause (iii) of Explanation II provides that, for the purpose of Item 4(iv)(a), "express service" shall have the

meaning of express stage carriage as defined under Rule 2(b) of the Andhra Pradesh Motor Vehicles Rules, 1989. Rule 2(b) of the A.P. Motor

Vehicles Rules, 1989 defines "express stage carriage" to mean (i) a carriage plying on city and town routes "non-stop" or with "limited halts" as

may be prescribed by the transport authority; (ii) a carriage plying nonstop on mufasil routes of short distances as may be prescribed by the

transport authority; or (iii) a carriage plying on mufasil routes with limited halts, as may be prescribed by the transport authority. Explanation III

provides that the distance which is permitted to be covered by a vehicle in a day shall (i) in the case of a motor vehicle in respect of which a permit

is granted under the Motor Vehicles Act, 1988 be the distance authorized to be covered according to the permits. By para 2, of G.O.Ms. No.

180 dated 27.09.2006, Clause (ii) was inserted to Explanation III that in case of a motor vehicle plying without a permit, granted under the Motor

Vehicles Act, the distance permitted to be covered by the vehicle in a day shall be reckoned as above 1000 kms. While item 4(v)(a) prescribes

the rate of tax of Rs. 3675-00 for vehicles which are permitted to carry more than 6 persons and are plying as contract carriages covered by All

India Tourist Permit, the newly inserted entry (aa), by para 3 of G.O.Ms. No. 180 dated 27.09.2006, prescribes a similar rate of tax of Rs. 3675-

00 for a vehicle permitted to carry more than 6 persons and plying as a contract carriage on inter-state routes.

Explanation VI relates to misuse of different classes of vehicles as stage carriages.

Clause (i) of Explanation VI relates to a motor cab or a motor

car having a seating capacity of upto 6. Clause (ii) relates to a motor-cab having a seating capacity of 7 in all. Clause (iii) relates to maxi cabs

having a seating capacity between 8 and 13. Clause (iv) of Explanation VI, as inserted by para 4 of G.O.Ms. No. 180 dated 27.9.2006, provides

that, where contract carriages, covered by inter-state, state wide, district wide permits and idle contract carriages are mis-used as stage carriages,

tax at the rate of Rs. 3675/- per seat per quarter shall be leviable.

26. Item 4 of G.O.Ms. No. 68 dated 13.4.2006, after its amendment by G.O.Ms. No. 180 dated 27.9.2006, with all its clauses and Explanations

is extracted hereunder. For the sake of convenience the amendment made to the schedule, by G.O.Ms. No. 180 dated 27.9.2006, is emphasized

in italics:

4. Motor vehicles plying for hire and used for transport of passengers:

Rs. Ps.

(i) Vehicles permitted to carry in all:

(a) Not more than 3 persons (LMV Cycle Rickshaw) power 12-10

(b) Not more than 4 persons 105-00

(c) More than 4 persons but not more than 6 persons 326-55

(ii) Three wheeled vehicles permitted to carry (7)

persons in all for every person other than the driver 200-00

(ii)(a) Vehicles permitted to carry 7 persons in all and

covered by all India Tourist Taxi permits 652-05

(iii) Vehicles permitted to carry more than 6 passengers

and plying as stage carriage on town services routes

(a) In respect of vehicle permitted to ply as ordinary

services, for every passenger (other than the driver 863-10

and conductor) which the vehicle is permitted to

carry.

(b) In respect of vehicles permitted to ply as ordinary

services, for every passenger (other than the driver and

conductor) which the vehicle is permitted to carry and

where the total distance permitted to be covered by the

vehicle in a day:

(a) does not exceed 100 kms 346-50

(b) exceeds 100 kms but does not exceed 160 kms 516-60

(c) exceeds 160 kms but does not exceed 240 kms 648-90

(d) exceeds 240 kms 693-00

(iv) Vehicles permitted to carry more than six passengers

and plying as stage carriages on the routes other than

town service routes

(a) In respect of vehicles permitted to ply as express

services for every passenger (other than the driver and conductor), which the vehicle is permitted to carry and where the total distance permitted to be covered by the vehicle in a day

(i) does not exceed 320 kms 1146-60

(ii) exceeds 320 kms but does not exceed 1000 kms 1514-10

(iii) exceeds 1000 kms 3675-00

(b) In respect of vehicles permitted to ply as ordinary services for every passenger (other than the driver and conductor), which the vehicle is permitted to carry and where the total distance permitted to be covered by the vehicle in a day

(i) does not exceed 100 kms 434-70

(ii) exceeds 100 kms but does not exceed 160 kms 611-10

(iii) exceeds 160 kms but does not exceed 240 kms 781-20

(iv) exceeds 240 kms but does not exceed 320 kms 913-50

(v) exceeds 320 kms 995-40

Provided that in respect of a reserve stage carriage or spare bus (by whatever name called) of an operator, the tax payable shall be at Rs. 258-30

ps for every passenger other than driver and conductor which the vehicle is permitted to carry, if the taxes for the corresponding period in respect

of all the regular stage carriages covered by valid permits have been paid irrespective of the stoppage or otherwise of the vehicles.

Explanation-I

The number of persons or passengers which a vehicle is permitted to carry shall:

(i) In the case of a motor vehicle in respect of which a permit is granted under Motor Vehicles Act, 1988 be the number of persons or passengers

which the motor vehicle is authorized to carry by the permits, and

(ii) In the case of a motor vehicle plying for hire or reward without permit granted under Motor Vehicles Act, 1988, be the maximum number of

persons or passengers which the vehicle may be permitted to carry, if a permit was granted under the aforesaid Act.

Provided further that in the case of Motor Cab or a Motor Car misused as a stage carriage be the number of persons or passengers actually

carried in the vehicle at the time of such misuse.

Explanation-II:

(i) For the purpose of item 4 (iii) ""town service"" shall mean a route described under Rule 258(2) of the Andhra Pradesh Motor Vehicles Rules and

determined as such by the Transport Authority.

(ii) For the purpose of item 4(iii)(a) an express service shall mean a service on a town service route as described under Rule 258 of Andhra

Pradesh Motor Vehicles Rules, 1989 and permitted to ply with limited halts as prescribed by the Transport Authority.

(iii) For the purpose of item 4(iv)(a) an ""express service"" shall have meaning of express stage carriage defined under Rule 2(b) of Andhra Pradesh

Motor Vehicles Rules, 1989.

Explanation - III:

The distance permitted to be covered by a Vehicle in a day shall:

(i) In the case of a motor vehicle in respect of which a permit is granted under Motor Vehicles Act, 1988 be the distance authorized to be covered

according to the permits.

(ii) In case of a Motor vehicle plying without a permit granted under Motor Vehicles Act, 1988 be reckoned, as above 1000 Kms.

Explanation - IV:

Where in pursuance of any agreement between the Government of Andhra Pradesh and the government of any other State, tax in respect of any

stage carriage plying on a route lying partly in the State of Andhra Pradesh and partly in the other states, is payable to the Government of Andhra

Pradesh only, the tax in respect of such vehicle shall be calculated on the total distance covered by the Stage Carriages on such route.

Explanation - V:

Where a conductor is exempted to be carried in a stage carriage, for the words other than the driver and conductor occurring in item (iii) and (iv)

shall be construed as other than driver only.

(v) (a) Vehicles permitted to carry more than Six (6)

persons and plying as contract carriages covered by

All India Tourist Permit issued u/s 88(9)

of the Motor Vehicles Act, 1988, for every

passenger other than the Driver and Conductor/

Attender, which the vehicle is permitted

to carry 3675-00

(aa) Vehicles permitted to carry more than

six (6) persons and plying as contract

carriages on Inter-State routes for

every passenger (other than the driver

and conductor/attender) which the vehicle

is permitted to carry 3675-00

(b) Vehicles permitted to carry more than Six (6)

passengers and plying as contract carriage on

Intra State routes for every passenger (other Than driver) which the vehicle is permitted to Carry 2625-00

(c) Contract carriages plying within the Home District and any one contiguous district, For every passenger (other than driver) 1207-50

(d) Idle Contract Carriages not covered by any permit plying on the strength of temporary/ special permits issued u/s 87 or

Sub-section (8) of Section 88 of Motor Vehicles Act, per seat per quarter 892-50

(e) Contract carriages with a seating capacity of 8 in all to 13 in all covered by intra-state or inter-state permit for every passenger (other than driver) the vehicle is permitted to carry 630-00

Explanation-VI:

(i) Where a motor cab or motor car having a seating capacity upto 6 in all is misused as stage carriage, it shall attract tax at the lowest rate applicable to ordinary stage carriages operating on town services,

(ii) Where a motor cab having seating capacity

of 7 in all is misused as stage carriage,
it shall attract tax at the lowest rate
applicable to ordinary stage carriage other
than those operating on town services,

(iii) Where a maxi cab having seating capacity
between 8 in all and 13 in all is misused
as stage carriage it shall attract tax at
the maximum rate applicable to ordinary
stage carriage other than those operating
on town service

(iv) Where contract carriages covered by inter-state,
state wide, Districtwide permits and idle contract
carriages are misused as stage carriages, tax at the
rate of Rs. 3675/- per seat per quarter shall be
leviable

The entire case of the respondents, as persuasively put across by the Learned Advocate
General, rests on the premise that, under para 1 of

G.O.Ms. No. 180 dated 27.9.2006, a new category of vehicles is introduced i.e.,
""vehicles exceeding 1000 KMs"" and that paragraphs 2 and 4 of

the said G.O. create a legal fiction referable to the new category under Para 1. The
question which must, therefore, be answered is whether Para 1

of G.O.Ms. No. 180 dated 27.9.2006 does create a new class/category of vehicles i.e.,
""vehicles exceeding 1000 K.Ms.

27. It is only on a permit being granted by the competent authority, under the Motor
Vehicles Act, 1988 and the Rules made thereunder,

permitting the motor vehicle to ply as a stage carriage express service, and depending on
the distance permitted to be covered by the said vehicle

in a day are different rates of taxes prescribed. Section 2(j) of the A.P. Motor Vehicles Taxation Act, 1963 Act provides that words and

expressions used but not defined in the Act shall have the meaning assigned to them in the Motor Vehicles Act, 1988. Section 2(31) of the Motor

Vehicles Act, 1988 defines "permit" to mean a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf

under the Act authorizing the use of a motor vehicle as a transport vehicle. u/s 72(1), subject to the provisions of Section 71, the Regional

Transport Authority, may, on an application made to it u/s 70, grant a stage carriage permit in accordance with the application or with such

modifications as it deems fit. Under Sub-section (2) the Regional Transport Authority, while granting the permit, may attach to the permit any one

or more of the conditions specified thereunder. As noted above, by Para 1 of G.O.Ms. No. 180 dated 27.9.2006, Entry (iii) was inserted after

entry (ii) to Item 4(iv)(a) of G.O.Ms. No. 68 dated 13.4.2006. Item 4(iv)(a) relates to vehicles permitted to carry more than 6 passengers and

plying as stage carriage express services for which different rates of tax are prescribed on the basis of the distance they are permitted to cover in a

day. While the rate of tax of Rs. 1146-60 is prescribed for these stage carriage express service vehicles permitted to cover a total distance not

exceeding 320 KMs in a day, the rate of tax of Rs. 1514-10 is prescribed where such vehicles are permitted to cover a distance exceeding 320

K.Ms, but not exceeding 1000 K.Ms. All that Para I of G.O.Ms. No. 180 dated 20.7.2006 prescribes is that the rate of tax, for such stage

carriage express service vehicles permitted to cover a daily distance exceeding 1000 K.Ms. shall be Rs. 3675-00. Para 1 of G.O.Ms. No. 180

dated 27.9.2006 does not create a new class/category of motor vehicles but only prescribes the rate of tax for a stage carriage express service if,

under the permit granted, it is permitted to cover a total distance exceeding 1000 K.Ms. in a day.

28. While Entry (a) of item 4(v) of the Schedule prescribes the rate of tax of Rs. 3,675/- for vehicles permitted to carry more than six persons and

plying as contract carriages covered by All India Permits, Entry (aa), as introduced by para 3 of G.O.Ms. No. 180 dated 27.09.2006, prescribes

the rate of tax of Rs. 3,675/- also to vehicles permitted to carry more than six persons and plying as contract carriages on interstate routes. By

Paras 2 and 4 of G.O.Ms. No. 180 dated 27.09.2006 Clauses (ii) and (iv) were inserted in Explanations III and VI respectively.

29. It is well settled that an Explanation added to a provision is not a substantive provision but, as the plain meaning of the word itself shows, is

merely meant to explain or clarify certain ambiguities which may have crept in the provision. S. Sundaram Pillai and Others Vs. `R. Pattabiraman

and Others, , Dipak Chandra Ruhidas Vs. Chandan Kumar Sarkar, . The Explanation must be read so as to harmonise with the main Section. It

should not be so construed as to widen the ambit of the Section. Bihta Co-operative Development Cane Marketing Union Ltd., and Another Vs.

The Bank of Bihar and Others, , Baleshwar Mandal v. State of Bihar AIR 1977 SC 3471.

Item 4(v) of the Schedule prescribes, under Clauses (a) and (aa), the rate of quarterly tax of Rs. 3,675/- for contract carriage vehicles plying under

All India Tourist permit and interstate routes. Under Clauses (b) to (e) of item 4(v), for contract carriages plying on intra-state routes, within the

home district and one contiguous district, idle contract carriages etc., the rate of quarterly tax ranges between Rs. 2,675/- to Rs. 630/-.

Explanation VI(iv) cannot be so read as to widen the scope of item 4(v) of the Schedule to the Act. An Explanation is not a substantive provision

and cannot interfere with or change the enactment or any part thereof. Explanation VI, even after introduction of Clause (iv) by para 4 of G.O.Ms.

No. 180 dated 17.09.2006, is only to explain item 4(v) of the Schedule. Neither can the Explanation run counter to item 4(v) of the Schedule nor

can it travel beyond the scope of Section 3-A of the Act. On a conjoint reading of Section 3-A and its proviso, where a vehicle is misused as a

vehicle in another category, it is only the difference, between the tax already levied and collected and the tax which is leviable in respect of such a

vehicle falling in another category, which can be levied as additional tax. While the additional tax which can be levied u/s 3-A is the differential tax,

Clause (iv) of Explanation VI to item 4(v), as inserted by para 4 of G.O.Ms. No. 180 dated 27.09.2006, prescribes the rate of tax of Rs. 3,675/-,

and not the differential tax. Explanation VI (iv) travels beyond the scope of and is ultravires Section 3-A of the Act and is liable to be quashed.

29. In Hardev Motor Transport Vs. State of M.P. and Others, , the Supreme Court observed that tax imposed on motor vehicles was regulatory

and, while a tax may be imposed on a vehicle which is roadworthy and can be plied on a road, if the vehicle was not capable of being plied on the

road no tax could be levied. On the question whether motor vehicle tax could be levied as a penalty, the Supreme Court observed:

...If a permit has been granted, the holder of a permit is liable to comply with the conditions of permit. If he violates the terms and conditions of

permit, law will take its own course. A permit is granted under the 1988 Act. If there is violation of the terms of permit, the consequences therefor,

shall ensue as contained in Section 192-A of the 1988 Act. A distinction must be borne in mind that a tax cannot be imposed by way of penalty

although penalty can be imposed for non-payment of tax or evasion of tax. The State may make suitable legislations in this behalf. But the same

would not mean that while specifying a rate of tax, the executive Government of the State can indirectly levy a penalty which it cannot do directly....

...The transport authorities of the State indisputably have a power to check a vehicle so as to ascertain whether payment of tax is being evaded.

They have been conferred with the power to detain a vehicle. They can release the vehicle only when tax as demanded is paid. Even the power of

the court to release the vehicle has been taken away unless tax is paid and the court can satisfy itself as to whether a tax is paid or not only on the

receipt of the certificate issued by the transport authorities of the State. The power of the transport authorities, therefore, is very wide. We,

however, do not mean to suggest that only because a wide power has been conferred the same by itself would lead to a presumption that the same

is capable of misuse or on that count alone the provisions of Article 14 of the Constitution of India would be attracted. But, when a statute confers

a wide power upon a statutory authority, a closer scrutiny would be required.

The 1991 Act also does not make any provision for compliance with the principles of natural justice or for determination of a question as to

whether the conditions of permit have been violated by an independent authority.

The appellants have paid tax. They have paid tax as specified for in permits granted in their favour as a contract carriage. The rate of tax payable

by a contract carriage is higher than the rate of tax imposed on a stage carriage. For non-payment of tax or for payment of tax for a wrong

purpose, a penalty can be imposed but it is difficult to conceive that a different rate of tax which is not contemplated u/s 3 of the 1991 Act can be

imposed by way of penalty.

The interpretation clauses contained in the 1988 Act are incorporated in the 1991 Act by reference. The interpretation of the expressions ""permit"",

contract carriage"" and ""stage carriage"" must, thus, be understood on the premise that the said expressions carry the same interpretation as

contained in the 1988 Act....

...As a logical corollary the mode and manner in which the permits are granted must necessarily be considered to be part of the provisions of the

1991 Act. Article 254(2) of the Constitution of India as such may not be attracted but it is a trite law that the executive while fixing a rate of duty

cannot be permitted to usurp the legislative power and make a provision which would be inconsistent with the substantive provision of the statute.

In other words, the provisions contained in the Schedule must be in consonance with the substantive provisions in the main Act. It must be in

conformity with the charging section. As in terms of Section 3 of the 1991 Act, the legislature directed that the tax can be levied on motor vehicles

subject to the rates fixed; by taking recourse to Explanation (7), firstly, no new definition could be introduced and, secondly, an owner of a vehicle

having one kind of permit could not have been treated as having no permit at all only because the transport authorities have reasons to believe that

the conditions of permit have been violated....

(emphasis supplied).

Learned Advocate General would submit that a careful reading of the judgment of the Supreme Court in Hardev Motor Transport Vs. State of

M.P. and Others, , would show that a penalty can be imposed on erring permit holders provided that the concerned charging section enables the

authorities to do so. In Hardev Motor Transport Vs. State of M.P. and Others, the appeals, filed by holders of contract carriage permits, were

allowed on the ground that there was no charging section and it was held that, by way of a schedule or an Explanation, the substantive provision

could not be extended. As in Hardev Motor Transport Vs. State of M.P. and Others, , in the case on hand also Explanation VI(iv) to Item No.

4(v) of the Schedule to the Act travels beyond the scope of and is ultravires charging Section 3-A of the Act.

PROVISO TO A SECTION: ITS SCOPE:

Learned Advocate General would submit that a conjoint reading of Section 3-A and its proviso would show that its very purpose and object was

to charge additional tax for misuse of permits or for plying without ""permits, that Section 3-A and its proviso cannot be operated unless and until

the vehicle, as and when it is misused, is reckoned to be falling under the newly created category of vehicles ""exceeding 1000 Kms"", that if a

contract carriage vehicle, by paying more tax, is misused as a stage carriage, then Section 3-A cannot be operated, the mischief sought to be

arrested cannot be achieved and thereby the very purpose of introducing Section 3-A would be defeated. According to the Learned Advocate

General, a new class/category of vehicle ""exceeding 1000 K.Ms."" was therefore introduced so that Section 3-A and its proviso could be made

workable. Learned Advocate General would rely on Hindustan Ideal Insurance Co. Ltd. Vs. Life Insurance Corporation of India, to submit that

the proviso to a Section cannot be interpreted to nullify the effect of the main Section itself as a tail cannot wag the head and the proviso can only

be interpreted to give meaning to the Section. He would submit that a purposive construction has to be given while interpreting statutory provisions

and it is the duty of the Court to make the provisions of the Act workable. He would rely on Kesho Ram and Co. and Others etc. Vs. Union of

India (UOI) and Others, , Indian Handicrafts Emporium and Others Vs. Union of India (UOI) and Others, , Andhra Bank Vs. B. Satyanarayana

and Others, and Pratap Singh Vs. State of Jharkhand and Another, in this regard.

30. For Section 3-A to apply, the motor vehicle must have been specified in one category or class in the notification issued u/s 3. Such a vehicle

must be have been misused, or used not in accordance with the purpose for which it was registered or permit granted, as a vehicle in another

category. It is only in such cases of misuse can a higher rate of tax be imposed, as additional tax, as a vehicle falling in another category. For

instance, if a contract carriage vehicle is misused as a stage carriage vehicle then, u/s 3-A(1), the State Government is empowered to impose an

additional tax at the higher rate of tax applicable to stage carriage vehicles. Under the proviso to Section 3-A (1), such additional tax can be levied

for a sum equal to the difference of the amount between the tax already levied and collected and the tax which shall be leviable in respect of such

vehicle falling in another category. The effect of the proviso is that, if a contract carriage vehicle is misused as a Stage carriage vehicle, then the

additional tax which can be levied is for a sum equal to the difference between the tax already paid as a contract carriage vehicle and the tax which

is leviable in the category of stage carriage vehicles.

31. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and, ordinarily, a proviso is

not interpreted as stating a general rule. Babubhai and Co. and Others Vs. State of Gujarat and Others, , Shah Bhojraj Kuverji Oil Mills and

Ginning Factory Vs. Subbhash Chandra Yograaj Sinha, . The proper function of a proviso is that it qualifies the generality of the main enactment by

providing an exception and taking out from the main enactment a portion which, but for the proviso, would fall within the main enactment.

Ordinarily, it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which

is foreign to the main enactment. A proviso must be considered in relation to the principal matter to which it stands as a proviso and must be

construed harmoniously with the main enactment. Abdul Jabar Butt Vs. State of Jammu and Kashmir, ; Ram Narain Sons Ltd. Vs. Asst.

Commissioner of Sales Tax and Others, , CIT v. Indo-Mercantile Bank Ltd. 1959 Supp (2) SCR 256 . The territory of a proviso is to carve out

an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field

and, if the language of the main enactment is clear, it cannot be used for the purpose of interpreting the main enactment or to exclude by implication

what the enactment clearly says unless the words of the proviso are such that that is its necessary effect. Corporation of City of Toronto v.

Attorney-General for Canada (1946) AC 32 Indo-Mercantile Bank Ltd. 1959 Supp (2) SCR 256 . A proviso is, normally, in the nature of a

qualification or exception and does not wholly nullify the provision to which it is a proviso, for an exception cannot be allowed to swallow up the

general rule. Sree Raghuthilakathirtha Sreepadangalavaru Swamiji Vs. The State of Mysore and Others, , Director of Education (Secondary) and

Another Vs. Pushpendra Kumar and Others, , Madhu Gopal Vs. VI Additional District Judge and Others, . A proviso cannot be torn apart from

the main enactment. The effect of an exception or qualifying proviso, according to the ordinary rules of construction, is to except out of the

preceding portion of the enactment, or to qualify something enacted therein, which, but for the proviso, would be within it. The natural presumption

is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. S. Sundaram Pillai and Others

Vs. `R. Pattabiraman and Others, , Ishverlal Thakorelal Almaula Vs. Motibhai Nagjibhai, ; S. M. Railway Co., Ltd. v. Bezwada Municipality . The

proviso qualifies Section 3-A(1) and limits the additional tax which can be levied therein to the difference between the tax already collected and the

tax leviable in respect of such vehicle falling in another category. But for the proviso, the additional tax leviable u/s 3-A would be the tax applicable

to the other category which the vehicle was misused as and not the differential tax.

Explanation VI(iv) of the Schedule could have been upheld only

if Section 3-A(1), without its proviso, was held applicable. What the learned Advocate General would ask us to do, which we have no doubt that

we cannot, is to read Section 3-A in such a manner as to ignore the proviso and make it redundant and an inapposite surplussage.

33. The underlying premise of Section 3-A and its proviso is that the rate of tax prescribed for the misuse of a vehicle is higher than the rate of tax

applicable for the use of the vehicle in accordance with the purpose for which it was registered or the conditions subject to which a permit was

issued for such a vehicle. Section 3-A and its proviso can have no application where the rate of tax applicable to the vehicle used in accordance

with its permit is higher than the rate of tax specified for its misuse as a vehicle in another category.

TAXING STATUTES: ITS PROVISIONS MUST BE STRICTLY CONSTRUED:

To make Section 3-A and its proviso workable, Learned Advocate General would have us read them in a manner which, on a plain and natural

meaning given thereto, cannot be read at all. In interpreting taxing statutes, one must have regard to the strict letter of the law. Geo Miller and Co.

Pvt. Ltd. and Others Vs. State of M.P. and Others, . If the case falls strictly within the provisions of the law, the subject can be taxed. If, on the

other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or analogy. A

taxing statute demands strict construction. It must never be stretched against a taxpayer. Commissioner of Central Excise, Pondicherry Vs. ACER

India Ltd., . If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the

judicial mind to be. On the other hand, if the subject cannot be brought within the letter of the law, the subject is free, however apparently within

the spirit of law the case might otherwise appear to be. There is no room for any intendment. Nothing is to be read in, nothing is to be implied. One

can only look fairly at the language used. COMMISSIONER OF INCOME TAX Vs. KASTURI and SONS LTD., . The intention of the

legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a

taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. Equally

impermissible is an interpretation which does not follow from the plain unambiguous language of the statute. Words cannot be added to or

substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. Mathuram Agrawal Vs. State of Madhya

Pradesh, .

34. Courts must adhere to the words of the statute and construe the provisions of the taxing enactments according to the ordinary and natural

meaning of the language used. It must be interpreted as it reads, with no additions and no subtractions, on the ground of legislative intendment or

purpose or otherwise. M/s. VVS Sugars Vs. Govt. of Andhra Pradesh and Others, , M/s. Vikrant Tyres Ltd. Vs. The First Income Tax Officer,

Mysore, . In each case the court must take the taxing statute as it stands, subject to all its imperfections. If a transaction does not fairly fall within

the letter of the law, the court will not seek to put a strained construction to bring it within the law. His Highness Yeshwant Rao Ghorpade Vs.

Commissioner of Wealth-tax, Bangalore, . The court cannot proceed to make good the deficiencies, if there be any, in the statute. It shall interpret

the statute as it stands and in case of doubt, it shall interpret it in a manner favourable to the tax payer C.A. Abraham, Uppoottil, Kottayam Vs.

The Income Tax Officer, Kottayam and Another, . In considering a taxing Act, the court is not justified in straining the language in order to hold a

subject liable to tax. State of Punjab Vs. Jullunder Vegetables Syndicate, . Since the language of Section 3-A is unambiguous and clear, we cannot

read it in such a manner as to strain its language or to give it, as the Learned Advocate General would contend it to be our duty, a "purposive

construction".

OTHER CONTENTIONS:

35. We do not propose to examine the petitioners' contention that it is impossible to operate a vehicle exceeding 1000 Kms in a day as we are in

agreement with the submission of the Learned Advocate-General that no cogent material has been placed before us to establish that it is not

possible for a vehicle to ply 1000 KM or more in a day.

36. We must also express our inability to agree with the petitioners contention that vehicles plying with a permit cannot be treated as a case of no

permit as Section 3-A, in effect, equates the two. Reliance placed on certain observations made by the Full Bench of this Court, in Kanapala

Rama Rao Vs. Regional Transport Officer, Srikakulam, Srikakulam District, , is misplaced as the said judgment was rendered prior to introduction

of Section 3-A in the Act and the observations, which the petitioners rely upon, were made in the context where there was no statutory provision

in this regard.

ABSENCE OF A MACHINERY TO ADJUDICATE WHETHER A VEHICLE HAS BEEN MISUSED OR USED CONTRARY TO THE

PURPOSE FOR WHICH IT WAS REGISTERED OR THE PERMIT ISSUED

It is urged on behalf of the petitioners that misuse of a vehicle, or using it for purposes other than for which a permit is granted, is a condition

precedent for imposition of additional tax u/s 3-A of the Act and Explanation VI (iv) of G.O.Ms. No. 180 dated 27.9.2007, that such allegations

are to be adjudicated upon and a finding recorded as to the truth or otherwise of the allegation, that adjudication is a quasi judicial function and that

no machinery is provided either in the Act or the rules for adjudicating whether the vehicle has been used/misused contrary to the permit

conditions. It is contended that G.O.Ms. No. 180 dated 27.9.2006 should either be struck down or the respondents directed to forbear from

taking action u/s 3-A until a notification is issued thereunder and a machinery is provided for adjudication on the question whether the vehicle has

been misused or not.

37. Learned Advocate-General would contend that not having a mechanism to fulfill the requirements of principles of natural justice cannot be a

ground to set aside statutory provisions and that courts should read principles of natural justice into the Section. He would rely on The Government

of Mysore and Others Vs. J.V. Bhat and Others, and The Scheduled Caste and Weaker Section Welfare Association (Regd.) and anothers Vs.

State of Karnataka and others, .

In the additional counter-affidavit, filed on behalf of the respondents, it is stated that where the Motor Vehicles Inspector, on inspection of a

vehicle, finds misuse of the permit or that the vehicle is being plied without a permit, he prepares a check report in triplicate and furnishes a copy

thereof to the driver of the vehicle, that the check report is to be signed by the driver and on occasions passengers are also requested to sign the

check report, that the Motor Vehicles Inspector then seizes the vehicle directing the driver to approach the licensing authority for release, that the

licensing authority i.e., the Regional Transport Officer or the Deputy Transport Commissioner, on receipt of the check report, issues a show-cause

notice, based on the violations alleged, requiring the licensee to pay the additional tax and, upon receipt of the reply, the licensing authority passes a

reasoned order determining the liability. It is stated that, though there is no special machinery provided under the Act or the rules for determining

liability, the above said procedure is followed invariably in all cases with a view to comply with the rules of natural justice and that in no case is tax

liability mulcted on a licensee without giving him a reasonable opportunity of defending himself. It is stated that the Inspecting Officer and the

Licensing Authority, who is competent to adjudicate, are two different officers and the competent authority is much higher in rank than the

inspecting officer. According to the respondents no prejudice can be said to be caused to the petitioners merely because the Act and the Rules do

not specifically provide for any such procedure. It is contended that absence of a mechanism to adjudicate, whether or not a vehicle has been

misused or used without a permit, would not render the statute unconstitutional.

Learned Advocate General would reiterate that the principles of natural justice are being adhered to by the State, as detailed in the additional

counter affidavit, and that in no case would any one be penalized without being given the opportunity to explain his case.

STAGES IN IMPOSITION OF TAX:

There are three stages in the imposition of a tax. The first is the declaration of liability, that is the part of the statute which determines what persons

are liable. Next, there is the assessment. Liability does not depend on assessment, that ex-hypothesi has already been fixed. But assessment

particularises the exact sum which a person liable has to pay. Lastly comes the method of recovery if the person taxed does not voluntarily pay.

Chatturam v. CIT (1947) 15 ITR 302 Whitney v. IRC 1926 AC 37 and Harshad Shantilal Mehta Vs. Custodian and Ors, .

TAXES CAN NEITHER BE LEVIED NOR COLLECTED EXCEPT BY AUTHORITY OF LAW:

Article 265 of the constitution of India imposes a limitation on the taxing power of the State in so far as it provides that the State shall not levy or

collect a tax except by authority of law, that is to say, a tax cannot be levied or collected by a mere executive fiat. It has to be done by authority of

law alone. *Kunnathath Thathunni Moopil Nair Vs. The State of Kerala and Another*, . The authority of law, which Article 265 refers to, and under

which alone a tax can be levied, is to be found in Article 245 read with the corresponding legislative entries in Schedule VII. *Atiabari Tea Co., Ltd.*

Vs. The State of Assam and Others, . While Section 3-A, a valid law, would enable the Government to levy additional tax in the circumstances

specified in the Section itself, it is well to remember that under Article 265 of the Constitution not only the levy but also the collection of a tax must

be under the authority of law. The expression ""levy and collection"" is used in Article 265 in a comprehensive sense and is intended to include the

entire process of taxation commencing from the taxing statute to the taking away of the money from the citizen. What the Article enjoins is that

every stage in this entire process must be authorised by law. *District Mining Officer and Others Vs. Tata Iron and Steel Co. and Another*, . While

the power to levy additional tax has been conferred on the government, by Section 3-A of the Act, in the absence of a machinery being prescribed

by law to adjudicate whether in a given case additional tax u/s 3-A can be levied or not, or a procedure being prescribed by law for collection of

the assessed additional tax, additional tax can neither be levied nor collected. It is implicit in Article 265 of the Constitution that the procedure for

imposing the liability to pay a tax has to be prescribed by law and that such prescription must be strictly adhered to. Where it is not so complied

with, the liability to pay the tax cannot be said to be in accordance with law. *Municipal Council, Khurai and Another Vs. Kamal Kumar and*

Another, .

38. In *The Scheduled Caste and Weaker Section Welfare Association (Regd.) and others Vs. State of Karnataka and others*, , the Supreme

Court held that when a declaration is made u/s 3 and a further declaration is made u/s 11 of the Karnataka Slum Areas (Improvement and

Clearance) Act, 1973, the inhabitants of the areas would be affected and any further action in relation to the area which is declared to be a slum

clearance area, without affording such persons an opportunity of being heard, would prejudicially affect their rights. The Supreme Court held that

when a notification is issued, rescinding the earlier notification without hearing the affected parties, it was in clear violation of principles of natural

justice.

39. In *The Government of Mysore and Others Vs. J.V. Bhat and Others*, , the Supreme Court held that there was nothing in Sections 3 and 9 of

the Mysore Slum Areas (Improvement and Clearance) Act which debarred application of principles of natural justice and that the notification

issued by the authorities was liable to be struck down if they did not observe principles of natural justice while exercising their statutory powers.

40. In both the aforementioned judgments, the statutes in question were not tax/fiscal statutes. As noted above, under Article 265 of the

Constitution of India no tax can be levied/collected by executive fiat and without authority of law. Since no machinery has been, admittedly,

provided by law, the laudable intentions in the counter-affidavit notwithstanding, additional tax u/s 3-A can neither be imposed nor collected.

41. The State Government and its officials shall forbear from taking action to levy and collect additional tax u/s 3-A of the Act till a notification is

issued in accordance therewith and a machinery is provided by law not only for its adjudication but also for its collection. The amounts, if any, paid

by the petitioners pursuant to the interim orders of this Court shall be refunded to them.

42. The writ petitions are, accordingly, disposed of. However, in the circumstances, without costs.