

## CASE NO.:

Appeal (civil) 6216-6222 of 1997  
Appeal (civil) 8866-8869 of 1997  
Appeal (civil) 1542 of 1998  
Appeal (civil) 2779 of 1998

## PETITIONER:

BOSE ABRAHAM

Vs.

## RESPONDENT:

STATE OF KERALA &amp; ANR.

DATE OF JUDGMENT: 01/02/2001

## BENCH:

S. Rajendra Babu &amp; Y.K. Sabharwal.

## JUDGMENT:

L...I...T.....T.....T.....T.....T.....T.....T...J  
RAJENDRA BABU, J. :

Before the Kerala High Court petitions under Article 226 of the Constitution were filed challenging the exigibility of excavators and road rollers to tax under the Act. The facts stated are as follows : The Entry Tax Act came into force on 5.7.1994. Under Section 3, tax is levied and collected on the entry of any motor vehicle into any local area for use or sale therein which is liable for registration in the State under the Motor Vehicles Act, 1988 at such rate or rates as may be fixed by the Government by notification. Constitutional validity of the Entry Tax Act was challenged before the High Court of Kerala but was upheld.

The Entry Tax Act defines a motor vehicle as is defined under the Motor Vehicles Act. The High Court was influenced by the fact that registration is done under the Motor Vehicles Act and also requires licence for driving under that Act and these aspects clearly indicate that the vehicle is a motor vehicle. So long as such vehicle is capable of being adapted for use on roads, it has necessarily to be held to be motor vehicle and is liable to be taxed under the Act. On the contention that Section 18 of the Act which enables the registering authority to collect the tax even before the registration is not permissible is also rejected stating that the amount of entry tax paid under the Act is liable to be deducted out of the general sales tax payable by the appellant for the purchase of the vehicle, and dismissed the writ petitions.

The short question that arises for consideration in these appeals is whether motor vehicle as defined in Section 2(28) of the Motor Vehicles Act would include excavators and road rollers so as to attract the levy under Kerala Tax on Entry of Motor Vehicles into Local Areas Act [hereinafter referred to as the Act]. The learned counsel for the appellant submitted that

[i] the excavators and road rollers are not motor vehicles to fall under the definition of motor vehicle under Section 2(j) of the Act;

[ii] even if the excavators and road rollers are construed to be motor vehicles for the purpose of the Motor Vehicles Act in order to regulate the usage thereof will not be a motor vehicle in the sense it is adaptable to be used on road inasmuch as excavators are used in an enclosed area while road rollers are used for the purpose of making roads and not as a vehicle on road;

[iii] incidence of payment of entry tax before the registration is not proper. In support of the first contention, the learned counsel for the appellant relied upon the decision of this Court *Bolani Ores Ltd. v. State of Orissa*, 1974(2) SCC 777, wherein this Court dealt with dumpers, rockers and tractors. In *M/s Central Coal Fields Ltd. v. State of Orissa & Ors.*, 1992 Supp. (3) SCC 133A, and again in *Goodyear India Ltd. v. Union of India Ors.*, 1997 (5) SCC 752, the position has been clarified. The learned counsel also relied upon the decision in *Diamond Sugar Mills Ltd. & Anr. v. The State of Uttar Pradesh & Anr.*, 1961(3) SCR 242, in support of the contentions aforesaid. It is submitted that in respect of the excavators and road rollers the circumstance that they were used solely for the purpose of the owner or that they were used in closed premises, or permission of the authorities was needed to move them from one place to another, or that they were not intended to be used or were incapable of being used for general purposes, or that they had an unladen and laden capacity depending upon their weight and size, was of no consequence inasmuch as these vehicles are of a special type adapted for use only for a factory or in any other enclosed premises.

In the light of the conclusions reached by the High Court and the contentions urged on behalf of the appellant before us, what we have to bear in mind is the scope of Entry 52 of List II of the Seventh Schedule to the Constitution which provides for tax on entry of goods into local area for sale, use or consumption. This Court in the decisions referred to by the learned counsel to which we have adverted to earlier was concerned only with those cases where tax arising under motor vehicles tax enactments coming under Entry 57 of List II of the Seventh Schedule to the Constitution fell for consideration. Under Entry 57 of List II of the Seventh Schedule to the Constitution, what is required to be considered is a tax on vehicle which is suitable for use on roads. But the incidence of taxation in the context of Entry 52 of List II of the Seventh Schedule to the Constitution is entry of goods into a local area for sale, use or consumption therein. The essential features thereof being

[i] the entry of goods into a definite local area;

[ii] the goods must be for the purpose of consumption, use or sale therein.

Section 2(j) of the Act defines motor vehicle to mean a motor vehicle as defined in Section 2(28) of the Motor Vehicles Act, 1988 [Central Act 59 of 1988]. Subject to the provisions of the Act, Section 3 of the Act enables the levy and collection of tax on the entry of any motor vehicle into local area for use or sale therein which is liable for registration in the State under the Motor Vehicles Act at such rate as may be fixed by the Government. Therefore, in order to attract tax under the provision of Section 3 of the

Act, a motor vehicle must have entered into a local area for use or sale therein and secondly which is liable for registration under the Motor Vehicles Act.

We hold that the excavators and road rollers are motor vehicles for the purpose of the Motor Vehicles Act and they are registered under that Act. The High Court has noticed the admission of the appellants that the excavators and road rollers are suitable for use on roads. However, the contention put forth now is that they are intended for use in the enclosed premises. Merely because a motor vehicle is put to a specific use such as being confined to an enclosed premises, will not render the same to be a different kind of vehicle. Hence, in our view, the High Court has correctly decided the matter and the impugned order does not call for any interference by us. However, the question whether any motor vehicle has entered into a local area to attract tax under the Entry Tax Act or any concession given under the local Sales Tax Act will have to be dealt with in the course of assessment arising under the Entry Tax Act. Appeals are accordingly dismissed.

JUDIS