THE REGIONAL TRANSPORT OFFICER-CUM-TAXING AUTHORITY, ROURKELA AND ORS. A

*v.*

STEEL AUTHORITY OF INDIA LTD.

NOVEMBER 9, 1995 B

[MADAN MOHAN PUNCHHI AND SUJATA V. MANOHAR, JJ.]

*Orissa Motor Vehicles Taxation Act, 1975 :*

*Sections 10 and 15—Schedule—Items 3, 4 and 6.* C

*Motor Vehicles—Use by Employer for carrying employees—Payment of tax under item 3—Later employer required to pay higher tax under item 4—Employer's case that tax was leviable under Item 6—Consensus between parties—Held till relief was sought under sections 10 and 15 vehicles exigible to tax—Corrective measures for changing rates of tax under items 3 to 6—Liberty to State to come to a different conclusion after a fact finding enquiry.* D

**The Respondent-Authority was paying tax, under Item 3 of the Schedule to the Orissa Motor Vehicles Taxation Act, 1975, on the buses employed by it for carrying its employees from its township to its factory. Later it was required to pay higher tax under Item 4 of the Schedule whereunder tax rates are prescribed for Motor Vehicles plying for hire and used for conveyance of passengers. The respondent contested the levy contending that as no charges were recovered from employees for use of vehicles the tax liability *per se* was not attracted under Item 4 but may fall under Item 6 subject to claim of relief under Sections 10 and 15 of the Act. The High Court assumed that the change effected was from Item No. 6 to Item No. 4 of the Schedule.** E F

**In appeal to this Court the respondent-authority conceded that an inquiry may be held on the footing that tax was exigible on its fleet of vehicles but the change effected from Item 3 to Item 4 was uncalled for.** G

**Disposing of the appeal, this Court**

**HELD : 1. The State cannot be permitted to act arbitrarily in choosing the Item of taxation and leave it to the subject to disprove** H

**liability. State should examine the facts and then apply the charging Item on the plain language of the provision obviating any unjust imposition.**

**[34-A-B]**

**2. The appellant has failed to justify as to how straightaway jump in the rate of tax could be made without the necessary fact establishment. So till relief can successfully be sought by the Respondent-Authority under section 10 and/or 15 of the Act, it is exigible to tax and the corrective measures presently can be for changing the rates of tax under Item No. 3 to Item No. 6, reserving the right to the appellant-State to come to a different conclusion after a fact finding inquiry, in which the respondent should be associated. Till such stage is arrived at, there is no occasion for the appellant-State to demand tax over and above which in any event is due to it under Item No. 6. As this opinion is only embedded in the area of consensus it shall not be taken to be a pronouncement on the applicability of Item No. 6. [33-G-H; 34-A; B-C]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8286 of 1995.

From the Judgment and Order dated 18.6.92 of the Orissa High Court in O.J. C. No. 847 of 1991.

Jayant Kr. Das and P.N. Misra for the Appellants.

Altaf Ahmed, Additional Solicitor General, Fazlin Anam, Dhruv Mehta and S.K. Mehta for the Respondent.

The following Order of the Court was delivered :

The Steel Authority of India, the sole respondent herein, employs a fleet of buses meant to carry its employees from its township to its factory at Rourkela. This has been so for over three decades. For some inexplicable reasons, the Steel Authority of India Ltd. was all along being made to pay tax under Item 3 of the Schedule to the Orissa Motor Vehicles Taxation Act, 1975 on buses kept by it on the footing of being goods carriers. As is the case of both sides, Item 3 was hardly applicable and yet tax was kept asked and paid. With effect from 19.12.1990, the appellant herein, i.e., State of Orissa and its officers, put to change the head of taxation and required the respondent to pay higher tax under Item 4 of the Schedule, whereunder rates of tax are prescribed for motor vehicles plying for hire and used for conveyance of passengers, including motor

cabs. Challenging such step the respondent - Steel Authority of India, moved the High Court of Orissa in a writ petition under Article 226 of the Constitution. A

Right at the outset, the High Court in dealing with the controversy fell into a factual error in assuming that the change effected was from Item No. 6 to Item No. 4 of the Schedule. Item No. 6, however, is a residuary item and covers up the cases of motor vehicles other than those liable to tax under the earlier provisions of the Schedule. Since the case of the respondent - Steel Authority of India Ltd. is that the vehicles kept by it are for use of its employees for the purpose stated above, without obligating them to pay hire charges, it was a facility extended to the employees, and thus *per se*, would not attract exigibility under Item No. 4 but may fall under Item No. 6, subject to the right of the respondent to claim relief under Sections 10 and 15 of the aforesaid Act. The High Court, in these circumstances, pronounced on certain legal aspects of the matter on the supposition that the respondent - Steel Authority of India Ltd. had to prove its facts to claim that it was not liable to pay tax at all on the vehicles in question and thereby effected a remand of a sort. That aspect apparently was in the area where relief could be sought under sections 10 and/or 15 of the Act. As we have been able to examine the judgment, the question whether the Steel Authority of India Ltd. - the respondent herein, was liable to pay tax under Item 6 or Item 4 of the Schedule was not gone into. B C D E

Having heard learned counsel for the parties in detail, we do not feel inclined to pronounce upon the correctness or otherwise, of the judgment of the High Court, when it is conceded by learned counsel for the Steel Authority of India Ltd. that an inquiry may be held on the footing that the tax is exigible from the Authority for keeping its fleet of vehicles. And further, the change effected straightaway from rates under Item No. 3 to Item No. 4 was uncalled for without there being a categorical finding by the taxing authorities that those vehicles were being run for hire. The appellant on the other hand, has demonstrably not been able to justify before us how straightaway that jump in the rate could be made without the necessary fact establishment. So we go through a limited area of consensus to say that till reliefs (if due) can successfully be sought by the Steel Authority of India Ltd. under sections 10 and/or 15 of the Act, it is exigible to tax and the corrective measure presently can be for changing the rates of tax under Item No. 3 to Item No. 6, reserving the right to the F G H

A appellant-State to come to a different conclusion after a fact finding inquiry, in which of course, the respondent would be associated. The State cannot be permitted to act arbitrarily in choosing the Item of taxation and leave it to the subject to disprove liability. It is the State which has to examine the facts and then apply the charging Item on the plain language of the provision obviating any unjust imposition. Till such stage is arrived B at, there is no occasion for the appellant-State to demand tax over and above which in any event is due to it under Item No. 6. Nonetheless, we make it clear, that this opinion of ours is only embedded in that area of consensus and shall not be taken to be a pronouncement on the applicability of Item No. 6, in the facts and circumstances of the case.

C

The appeal stands disposed of accordingly. No costs.

T.N.A. Appeal disposed of.