

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 926 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SHREE LAKHAVI FINANCIAL

SERVICE PVT LTD

Versus

STATE OF GUJARAT

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Appearance:

MR BK PARIKH for Petitioner

MR MR ANAND, GP WITH HARSHA DEVANI, AGP For Respondents

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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 29/02/96

ORAL JUDGEMENT

1. Rule. Service of rule is waived by learned counsel for the respondents.
2. Heard learned counsel for the parties.
3. The petition is for interpreting Section 3A of the Bombay Motor Vehicles Act, 1958 which reads as under:

"3A. Levy of additional tax (1) On and from the 1st day of April, 1982 there shall be levied and collected (on all omnibuses which are used or kept for use in the State exclusively as contract carriages) thereafter in this section, referred to as "the omnibus" a tax (hereinafter referred to as "the omnibus") in addition to the tax levied under Section 3, at the rates fixed by the State Government, by notification in the Official Gazette, but not exceeding the maximum rates specified in the table below:

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Description of	Maximum rate of additional tax.
1	2
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A. Ordinary	(i) Monthly rate of Rs.240 per omnibuses passenger permitted to be carried.
	(ii) Weekly rate of Rs.80 per passenger permitted to be carried.
	(iii) Daily rate of Rs.16 per passenger permitted to be carried.
B. Luxury or	(i) Monthly rate of Rs.360 per passenger permitted to be carried.
	(ii) Weekly rate of Rs.120 per passenger permitted to be carried.
	(iii) Daily rate of Rs.24 per passenger permitted to be carried.
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(2) The additional tax levied under subsection (1) shall be paid in advance by every registered owner or any person having possession or control of the omnibus.

(i) monthly at the rate specified in the table in subsection (1), or  
(ii) for any period less than a month, weekly or daily at the rates specified in the table in subsection (1).

(3) Except as otherwise provided in subsections (1) and (2) the provisions of this Act and the rules made thereunder shall, so far as may be, apply in relation to the additional tax leviable under subsection (1) as

they apply in relation to the tax leviable under Section 3."

4. The Contention of the petitioner is that the petitioner is a person engaged in transport and plies buses from Bombay which is in State of Maharashtra to Nadol in State of Rajasthan. During this journey buses pass through the State of Gujarat and make short halts on its destination to the adjoining State, in the present case, Rajasthan and Maharashtra. The motor vehicles which merely passes through the roads of Gujarat for the duration of their journey in the State of Gujarat cannot be considered to be a taxing event of vehicle being used or kept in use within the State of Gujarat, for the purpose of attracting levy of tax under the aforesaid provision. According to learned counsel for the petitioner the word 'kept for use' is the substance of taxing event and that has an element of being 'stationary'. It is something different from a mere state of transit or a course of journey through the State. It is something more than a mere stoppage or halt in the course of transit from place of origin to the place of destination. He places reliance on the decision of the Supreme Court in the case of State of Mysore and Others v. Sundaram Motors Pvt. Ltd. reported in AIR 1980 SC 148.

5. Learned Asst. Government Pleader for the State contends that the submission of learned counsel for the petitioner is not well founded and the decision rendered by the Supreme Court in the context of Mysore Motor Vehicles Act, 1957 is not applicable to the facts of the present case which concerns the provisions of Bombay Motor Vehicles Act. The scheme of the provision of the Bombay Act is entirely different. While a 'taxing event' under the Mysore Motor Vehicles Act was keeping of the vehicle in a the State of Mysore, the taxing event under the Bombay Motor Vehicles Tax Act is keeping of vehicle for use within the State of Gujarat and alternatively use of the vehicle in the State of Gujarat. It cannot be said and urged that while a vehicle passes through the State of Gujarat it is not used in the State of Gujarat within the meaning of Section 3A of the Bombay Motor Vehicles Tax Act. Once it can be legitimately said that one of the alternative taxing event has occurred, the levy of tax is within the authorisation. Learned counsel places reliance on the later decision of Supreme Court in M/s. International Tourist Corporation etc. etc. v. State of Haryana and others reported in AIR 1981 SC 774 which also noticed its earlier decision in Sundaram Motors case referred to above.

6. Having carefully considered the rival contentions, I am of the opinion, the petition must fail. The question of interpreting the provision like the one in question in this case is no more res integra. It may be noticed that in

Sundaram Motors case, the Supreme Court was dealing with Section 3 of the Mysore Motor Vehicles Tax Act, which read as under:-

"The material part of Sec. 3 reads as follows:

"S.3 Levy of Tax - (1) A tax at the rates specified in Part A of the Schedule shall be levied on all motor vehicles suitable for use on roads, kept in the State of Mysore:

Provided that in the case of motor vehicles kept by a dealer in or manufacturer of such vehicles for the purpose of trade, the tax shall only be levied and paid by such dealer or manufacturer on vehicles permitted to be used on roads in the manner prescribed by rules made under the Motor Vehicles Act, 1939.

Explanation - A motor vehicle of which the certificate of registration is current shall, for the purpose of this Act, be deemed to be a vehicle suitable for use on roads.

(2) Notwithstanding anything contained in subsection (1), taxes at the rates specified in Part B of the Schedule shall be levied on motor vehicles belonging to or in the possession or control of persons, not ordinarily residing in the State of Mysore by such persons for periods shorter than a quarter, but not exceeding thirty days.

(3)....."

7. Reading of the two provisions in comparison to each other makes it abundantly clear that the condition for levy of tax under the Mysore Act was that motor vehicle should be suitable for use on roads and secondly it should be 'kept' in the State of Mysore. No other condition was required. Under the provisions with which we are concerned, the additional tax is levied on all omnibuses which are 'used or kept for use in the State. Therefore apart from the condition of being kept for use within the State in order to attract the tax liability mere user of the vehicle in the State of Gujarat results in taxable event inviting the levy.

8. In International Tourist Corporation case referred to above, the Apex Court has noticed the distinction between the two provisions and have clearly explained the ambit and scope of the two provisions by holding that where the provision runs like "there shall be levied and collected on all motor vehicles 'used or kept for use in the State', the tax at the rate fixed by the State Government, the decision in Sundaram

Motors case has no application." The court held as under:

"In the remaining cases, apart from the principal points which we have discussed above some other points also were raised which we shall now proceed to consider. One of the submissions of Shri Mridul who appeared in the Special Leave Petitions was that Section 4 and 5A of the Uttar Pradesh Motor Vehicles Taxation Act stipulated two cumulative taxable events both of which had to be satisfied before tax could be levied on a vehicle plying under a permit granted by an authority having jurisdiction outside Uttar Pradesh. The two taxable events according to Shri Mridul were (1) user within the territories of Uttar Pradesh and (2) user in any public place in Uttar Pradesh. The argument was that since the vehicles did not pick up or set down passengers or goods at any place within the State of Uttar Pradesh there was no user as contemplated by Ss.4 and 5A and therefore, the taxable events had not taken place. Reliance was placed by the learned counsel on our decision in the State of Mysore v. Sundaram Motors P. Ltd., AIR 1980 SC 148. We do not think that the case relied on by Shri Mridul is of any assistance to him. The question there was whether a motor vehicle passing through the territory of the State of Mysore and making short halts for rest, food etc. during transit on the way from Bombay to its destination in Tamil Nadu was a motor vehicle 'kept' in the State of Mysore. Our answer depended on the meaning to be given to the word 'kept', since under the Mysore Motor Vehicles Taxation Act motor vehicles had to be 'kept in the State of Mysore' if tax was to be levied. We held that the vehicles which merely passed through the State of Mysore were not 'kept in the State of Mysore'. The language of Sections 4 and 5A of the Uttar Pradesh Motor Vehicles Taxation Act is entirely different from the language of the Mysore Act. The Uttar Pradesh tax is levied on the vehicles on the basis of their user in the State of U.P. and not because they are 'kept' in the State of Uttar Pradesh. There is no force in this submission of Shri Mridul."

The court went on to say -

Based on our judgement in State of Mysore v. Sundaram Motors P. Ltd. (AIR 1980 SC 148), it was argued in some of the cases that where the motor vehicle merely passed through the State, no taxable event occurred and therefore, tax could not be levied. In the Motor Vehicle Taxation Acts of several States the charging

section generally runs as follows: "There shall be levied and collected on all motor vehicles used or kept for use in the State a tax at the rate fixed by the State Governments...." In these cases the taxable event is keeping for use and alternatively user within the State. Once the motor vehicle is used within the State. Once the motor vehicle is used within the State the taxable event occurs and the tax is attracted. The decision in State of Mysore v. Sundaram Motors P. Ltd. has no application to such cases as already pointed out by us while dealing with a similar submission of Shri Mridul in the Uttar Pradesh cases"

9. Learned counsel for the petitioner vehemently urged that in International Tourist Corporation case, the court has not ruled out the applicability of the decision of the Mysore Act but has kept the issue open to be decided in each case in the light of in use in particular State. He places strong reliance on the observations of the Supreme Court.

"In some States, the Motor Vehicles Taxation Acts provide for payment of tax in the event only of vehicles being "kept for use in the State" and provide for no other alternative taxable event. In such cases the principle of our decision in State of Mysore v. Sundaram Motors P. Ltd., may be attracted. It will depend on an interpretation of the provisions of the relevant statutes. But we do not propose to say anything more about such cases as we cannot give any relief, even if we agree with the petitioners, in applications under Art. 32 of the Constitution."

10. Having carefully considered learned counsel's contention and closely examining the ratio of the decision in International Tourist Corporation, this contention cannot be upheld. The ratio of the decision of the Supreme Court in International Tourist Corporation in so far as the present controversy is concerned, it spells out clearly that it is covered under three types of phrases used in different statutes. While in the Mysore Act, the only taxing event was keeping of the vehicle within the State. In some cases, the taxing events are 'used or kept for use in the State', and yet, another statute may have the provision only like 'kept for use in the State'. A statute which provides the taxing event to be mere keeping of the vehicle within the State the decision in Sundaram Motors covers the field. The court rules out the applicability of the decision in Sundaram Motors's case where the statute uses the phraseology 'used or kept for use in the State' and in the third circumstance where the statute provides for payment of tax in the event only of

vehicles being kept for use in the State and provide for no alternative taxable event, the matter has been left upon to be decided depending on the interpretation of the provisions of particular statute.

11. As has been noticed above, present is a case where the taxing event described in the statute is 'used or kept for use' indicating that taxable event in such cases is keeping for use alternatively user within the State. In such classes of cases, the court has clearly opined that once the motor vehicle is used in a State, the taxable event occurs and tax is attracted, then, in such cases the decision in State of Mysore v. Sundaram Motors Pvt. Ltd., has no application.

12. Another contention of the learned counsel is that the State Government had no authority to levy tax on passengers which have neither boarded nor alighted in the State of Gujarat. He places reliance on that that as the tax has been provided with reference to the capacity of the passengers which can be carried in the omnibus, it is a passenger tax. I am unable to accept this contention also. Taxes on goods and passengers had different character than the tax on vehicles. Entries 56 and 57 of List II of the 7th Schedule provide separately for tax on goods and passengers carried by road or inland waterways and taxes on vehicles and taxes on vehicles whether mechanical or stable used on roads only subject to the provisions of Entry 35 of List III. The perusal of Section 3A quoted above goes to show that the taxes are levied on vehicles for the user of the roads within the State. The fact that measure of tax has been provided with reference to the capacity of passengers which the vehicle can carry does not convert a tax on vehicle to be a tax on passengers.

13. Accordingly petition fails and is hereby dismissed.  
Rule discharged.

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