

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16908,16771 to 16777
of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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 concerned : NO
Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

EASTERN FREIGHT CARRIERS PVT LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16908 of 2004
MR MEHUL SHARAD SHAH for Petitioner No. 1
MR PRADIP BHATE, AGP for Respondent No. 1
..... for Respondent No. 2-3
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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 30/12/2004

COMMON ORAL JUDGEMENT

#. Rule. Shri Pradip Bhate, learned A.G.P. waives service of rule on behalf of the respondent.

#. In response to the order passed by this Court, Mr.P.V.Trivedi, Commissioner of Transport is present in the Court. He submitted that considering various judgments and orders passed by this Court, necessary instructions are already issued to the concerned officer of the concerned check-post to consider GVW mentioned in the Certificate of Registration. He further submitted that necessary circular will be issued and sent to all the check posts with regard to not to levy penalty if the truck carries weight mentioned as per the GVW mentioned in the Certificate of Registration. He submitted that necessary circular will be issued within a period of one week from today and necessary press note, if necessary, will be given in the newspaper having wide publication.

#. In these petitions, the petitioners are the owners of Motor Vehicle No.PB 13 M 5132, PB 13M 4741, PB 13M 5134, PB 13M 5136, HR 38K 5284, HR 38K 5288, HR 38K 5289, HR 38K 5290, HR 38K 5292, NL 01D 0407, NL 01D 0417, NL 01D 0487 and NL 01D 0447, HR 46B 3015, HR 46E 6272, HR 46D 4668, HR 46D 2525, HR 63B 1240, HR 63A 1240, HR 63 7324, registered with different registration authorities under the Motor Vehicles Act, 1988 and the petitioners have challenged the action of the respondents in ignoring GVW mentioned in RC books for recovering overload charges and compounding fees. It is the contention on behalf of the petitioners that in spite of the fact that the load in the vehicle do not exceed the GVW mentioned in the RC book, the respondent authorities are compelling the petitioners to pay the overload charges and compounding fees. It is also further submitted that the Government notification issued by the Joint Director of Transport, Gujarat State dated 9.8.2002 has been quashed and set aside by this Court vide judgment and order dated 25.10.2004 (Coram : K.S.Jhaveri, J) in SCA No.1290 of 2003 and other cognate matters. Learned advocate appearing on behalf of the petitioners has relied upon the judgment and order passed by the learned Single Judge of this Court dated 25.10.2004 in SCA No.1290 of 2003 and other cognate matters.

#. In response to the notice issued by this Court, Shri Pradip Bhate, learned A.G.P. appears on behalf of the respondent. He is not in a position to dispute that the facts of the petitioners' cases are not covered by the judgment of the learned Single Judge of this court dated 25.10.2004 passed in SCA No.1290 of 2003. Considering the aforesaid facts and circumstances and for the reasons

stated in the judgment and order dated 25.10.2004 (Coram : K.S.Jhaveri, J) passed in SCA No.1290 of 2003 and other cognate matters, the following order is passed :

O R D E R

These petitions are partly allowed. It is declared that if the aforesaid vehicles whose numbers have been mentioned in para 1 of this order are carrying gross laden weight as per the certificate of registration, the respondents shall not take any penal action in respect of the aforesaid vehicles. However, the prayer regarding the refund of penalty or fine already paid by some of the petitioners is not granted is concerned, it is clarified that if the certificate is not issued in accordance with the provisions of the Act, it will be open for the respondents to take appropriate action after following proper procedure as contemplated under the Act. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

Office is directed to place a copy of the order in all the connected matters.

(M.R.Shah,J)

(pathan)