

## STATE OF MYSORE &amp; ORS.

A

v.

T. V. SUNDARAM IYENGAR &amp; SONS (P) LTD.

November 13, 1979

[R. S. SARKARIA AND O. CHINNAPPA REDDY, JJ.]

B

*Motor Vehicles Taxation Act, 1957—Section 3(2)—Vehicle passing through a State for short period—If “kept” within the meaning of section.*

The respondent bought new cars and chassis manufactured in Bombay and brought them by road. In the course of their journey from Bombay to Madras the vehicles passed through the territory of the State of Mysore for over 400 miles. The Road Transport Authorities of the State of Mysore demanded payment of road tax on the vehicles under section 3(2) of the Mysore Motor Vehicles Taxation Act, 1957 which provides that taxes are leviable on motor vehicles belonging to or in the possession or control of persons not ordinarily resident in the State of Mysore and kept in the State for periods shorter than a quarter but not exceeding thirty days.

C

Allowing the respondent's writ petition the High Court held that vehicles which passed through the State were not “kept” in the State within the meaning of section 3(2) of the Act and so were not taxable under it.

D

In appeal to this court it was contended on behalf of the appellant that the vehicles passing through the territory of the State over a distance of 400 miles with halts on the way could be said to have been “kept” for use on roads in the State within the meaning of the section and were therefore taxable.

E

Dismissing the appeal,

**HELD:** A vehicle in transit through the State of Mysore or even making necessary halt for short intervals during transit cannot be said to be a vehicle kept for use on roads in the State of Mysore. [6 B-C]

F

The word “kept”, which has not been defined in the Act, has to be interpreted in its ordinary popular sense consistent with the context. In association with the use of the vehicle the word “kept” has an element of stationariness which is something different from a state of transit or a course of journey through the State. A mere state of running through or even halting of the vehicle in the course of the journey through the State for its outside destination, will not be sufficient to constitute “keeping” of that vehicle in the State within the meaning of section 3(2). [4 C-E & 5 E]

G

*Dudley v. Holland* [1963] 3 All. E.R. 732, *Biggs v. Mitchell* (1862), 31 L.J.M.C. 163, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 272 of 1970.

Appeal by Special Leave from the Judgment and Order dated 14-4-1969 of the Mysore High Court in W.P. No. 2889/67.

H

R. N. Nath and M. Veerappa for the Appellant.

**A** *M. Natesan and Mrs. S. Gopalakrishnan* for the Respondent.

The Judgment of the Court was delivered by

**B** SARKARIA, J. Whether a motor vehicle passing through the territory of the State of Mysore on way to its destination in another State is a motor vehicle "kept" in the State of Mysore (now Karnataka) within the contemplation of Section 3(1) of the Mysore Motor Vehicles Taxation Act, 1957 (hereinafter referred to as the Taxation Act), is the short question that falls for consideration in this appeal by special leave directed against a judgment, dated April 14, 1969, of the High Court of Mysore. The material facts bearing on the question are as follows :

**C** The respondent, M/s. T. V. Sundaram Iyengar & Sons. Pvt. Ltd., whose registered office is in the State of Tamil Nadu, is a dealer in motor vehicles which are manufactured at Bombay. Some of those vehicles are sold in Mysore State, while others are sold outside Mysore State. But those vehicles which are sold outside the State of Mysore in other States pass through its territory under temporary registration number plates issued after receipt of token tax by the Bombay Motor Vehicles Authority. Such vehicles enter the State of Mysore at its border in Belgaum District and go out at its border in Kolar District, thus running through the territory of Mysore State by road over a distance of about 400 miles.

**E** The R.T.O., Belgaum, issued a communication, dated September 27, 1966, to the respondent demanding tax on such vehicles (new cars and chassis) passing through the territory of Mysore. After exhausting his remedies under the Taxation Act, the respondent filed a petition under Article 226 of the Constitution, to challenge the validity of the demand notices and the Circular, dated October 10, 1966, issued by the Transport Commissioner, directing recovery of tax at the rates specified in Part B of the Schedule to the Taxation Act, in respect of those vehicles which do no more than pass through the State of Mysore to reach their destination.

**G** The Division Bench of the High Court, who heard the writ petition held that such vehicles which merely pass through Mysore State are not those "kept" in the State of Mysore within the meaning of Section 3(2) of the Taxation Act, and, as such, are not taxable under the Taxation Act. In the result, the High Court allowed the writ petition and quashed the direction of the Commissioner in paragraph 6 of his Circular of October 10, 1966, for the recovery of the tax in question from the respondent. Hence, this appeal by the State.

The material part of Section 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 sub-section (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 and kept in the State of Mysore by such persons for periods shorter than a quarter, but not exceeding thirty days.

(3) .....

The appellant-State maintains that sub-section (2) of the Section was applicable to such vehicles because while passing through the territory of the State they use the roads of the State over a distance of 400 miles during their journey interspersed by halts in the State, and therefore, it can be said that such vehicles are *kept* for use on roads in the State within the meaning of Section 3(2). According to the learned counsel for the appellant the test of whether a vehicle is exigible to tax under Section 3(2) is whether it is suitable for use on roads and, in fact, substantially uses the roads in the State of Mysore. In the present case, the argument proceeds, this test was satisfied because for an appreciable period such vehicles remain in the territory of the State and use its roads, and as such, are taxable under sub-section (2) of Section 3.

The contention does not stand a close examination. Sub-section (2) is to be read with sub-section (1). Thus read, it is plain that in order to be taxable under the Section a Motor vehicle must be capable of use on road, and further it must be *kept* in the State of Mysore, though in the case of vehicles belonging to persons not resident in the State, the duration of such 'keeping' may be for a

- A period shorter than a quarter but not exceeding thirty days. In the present case, there is no dispute that the vehicles concerned are capable of use on roads, and in fact, they journey by road through the State. The problem thus resolves itself into the issue: Whether the motor vehicles of the respondent which merely pass through the State of Mysore are 'kept' for the duration of their journey in the State of Mysore within the meaning of Section 3(2)? In our opinion, the High Court has rightly answered this question in the negative.

- C The word 'kept' has not been defined in the Taxation Act. We have, therefore, to interpret it in its ordinary popular sense, consistently with the context. The word 'kept' has been repeatedly used in the Section. In sub-section (1), it occurs in association with the phrase "for use on roads". In that context the ordinary dictionary meaning of the word 'keep in' is 'to retain', 'to maintain' or cause to stay or remain in a place 'to detain', 'to stay or continue in a specified condition, position etc.' In association with the use of the vehicle, therefore, the word 'kept' has an element of stationariness. 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 for rest food or refreshment etc., in the course of transit through the territory of the State.

- E The unsoundness of the contention of the appellant's counsel, viz., that a vehicle capable for use on roads, owned by a non-resident, remaining for one or two days in the territory of Mysore State in course of transit, will also be exigible to tax under section 3, can be demonstrated by taking an example. Supposing the respondents take their vehicles (capable for use on road) by rail through the territory of Mysore State to their outside destination, and in the course of that journey, the train halts for a week, in all, at stations in Mysore State, then, if the wide interpretation demanded by the appellant is adopted such vehicles will be exigible to tax. This indeed will be an absurd result. Such an interpretation of the word 'kept' will be wholly beyond the ken of the Legislature.

In the view we take, we can derive support from two decisions of the English Courts.

- II In *Dudley v. Holland*,<sup>(1)</sup> the appellant carried on a garage business adjoining a public road. He had bought a motor car in the course of

(1) [1963] 3 All. E.R. 732.

his business and was offering for sale in the garage showroom. He moved that car into the public road in order to allow the showroom to be rearranged. There was no excise licence in force for the car. It was found there by a police constable. The appellant was charged with unlawfully keeping on a public road a mechanically propelled vehicle for which an excise licence was not in force, contrary to Section 7 of the Vehicles (Excise) Act, 1962. The question for the opinion of the Court was whether the mere presence of a stationary mechanically propelled vehicle on a public road, constitutes "keeping" the vehicle on the road within the meaning of Section 7 of the Vehicles (Excise) Act, 1962. Lord Parker, C.J., who delivered the leading judgment of the Court, answered this question in the negative, in these terms :

"I approach the word 'keeps' in what seems to me the ordinary meaning of some continuing process; not a mere isolated moment, but a keeping of the car there, at any rate for some interval of time. It is no doubt a matter of degree and fact in every case. . . . In my judgment, 'keeping' means something more than that, both according to its ordinary meaning and when it appears in conjunction with the other word 'uses'."

The principle is applicable to the present case. A mere state of running through or even halting of the vehicle in the course of the journey through the State of Mysore for its outside destination, will not be sufficient to constitute 'keeping' of that vehicle in the State within the meaning of Section 3.

The other case is *Biggs v. Mitchell*.<sup>(1)</sup> The ratio of this case has been extracted in words and Phrases Legally Defined, Vol. 3 at page 116. In *Biggs v. Mitchell*, the interpretation of the word 'keep', as used in Section 11 of Statute (1772) 12 Geo. 3 c. 61, came up for consideration. That Section enacted that no person or persons should have or 'keep' at any one time, being a dealer or dealers in gunpowder, more than 200 lb. of gunpowder, and not being such more than 50 lb. of gunpowder in any house, mill, etc., occupied by the same person or persons within certain limits. The question before the Court was whether a person who receives powder in the course of transit, and makes a necessary halt, instead of sending it on immediately, can be said to be "keeping" the same within the meaning of Section 11. Crompton, J. answered this question thus :

(1) [1862] 31 L.J.M.C. 163.

A        "It seems to me that it is not made out that the mere halting in London, for the purpose of sending from one railway to another, when it is necessary that there should be halting in some place or other, is a 'keeping'.... I think there can be no keeping within s. 11, when it is in course of transit."

B        On parity of reasoning, a vehicle in transit through the State of Mysore or even making a necessary halt for a short interval during transit, cannot be said to be a vehicle 'kept' for use on roads in the State of Mysore.

C        In the light of all that has been said above, we uphold the interpretation put by the High Court on Section 3 of the Taxation Act, and answer the question posed at the commencement of this judgment in the negative, and dismiss this appeal, leaving the parties to pay and bear their own costs in this Court.

P.B.R.

*Appeal dismissed.*