

## CIVIL MISCELLANEOUS

*Before Inder Dev Dua and Prem Chand Pandit, JJ.*

SURAJ GOODS CARRIERS, PRIVATE LIMITED,—*Petitioner.*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 907 of 1965.

1965

October, 20th.

*Punjab Motor Vehicles Taxation Act (IV of 1924)—S. 7-A(a) and (b)—Whether legal—Punjab Passengers and Goods Taxation Rules (1952)—Rule 9—Whether valid.*

*Held*, that section 7-A of the Punjab Motor Vehicles Taxation Act, 1924 is legal and valid. Firstly the provisions of this section are in no way inconsistent with the provisions of the Punjab Passengers and Goods Taxation Act, 1952 or the rules framed thereunder. Secondly this section applies only to those public carriers who offer to pay the goods tax in a lump sum. Previously the issuance of the token and the licence depended on the payment of the road tax only, but now by the insertion of section 7-A in the Punjab Motor Vehicles Taxation Act, 1924, the payment of the goods tax under the Punjab Passengers and Goods Taxation Act, 1952, has also been made another condition for the grant of the token and the licence. Such a condition could be imposed by the Legislature and it is not invalid. Thirdly the provision in section 7-A that if the registration certificate is either suspended or cancelled, then the licence issued to the public service vehicles and the public carriers will automatically stand suspended or cancelled is not unconstitutional as it is a reasonable restriction on the carrying on of any trade or business in the interests of the general public. The object of section 7-A is to prevent the evasion of the goods tax and the accumulation of its arrears and this restriction has a direct relation to the object which section 7-A seeks to achieve.

*Held*, that Rule 9 of the Punjab Passengers and Goods Taxation Rules, 1952, as amended in 1964, is not invalid. The only effect of the amendment is that the quarterly tax is payable within 30 days of the commencement of the quarter instead of 15 days of the close of the quarter. This rule only applies to those public carriers who offer to pay the goods tax in a lump sum and whether they transport any goods or not during the quarter, they are still liable to pay the tax. Their liability does not depend on their actual transporting the goods. This rule was amended to make both the provisions of section 7-A of the Punjab Motor Vehicles Taxation Act, 1924 and the Punjab Passengers and Goods Taxation Rules, 1952, consistent with each other. This rule is in no way inconsistent with the provisions of sections 3 and 4 of the Punjab Passengers and Goods Taxation Act, 1952.

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued challenging the legality of section 7-A (a) and (b) of the Punjab Motor Vehicles Taxation Act, 1924 and the amended Rule 9 of the Punjab Passengers and Goods Taxation Rules, 1952, which is void.*

LAXMI GROVER AND H. S. SAWHNEY, ADVOCATES, for the Petitioner.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, for the Respondents.

#### JUDGMENT

The judgment of the Court was delivered by—

PANDIT, J.—This petition under Articles 226 and 227 has been filed by Messrs Suraj Goods Carriers Private Limited, Amritsar (hereinafter referred to as the Company) challenging the legality of section 7-A(a) and (b) of the Punjab Motor Vehicles Taxation Act, 1924 (hereinafter called the 1924 Act) and the amended Rule 9 of the Punjab Passengers and Goods Taxation Rules, 1952 (hereinafter called the 1952 Rules).

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According to the allegations of the petitioner-Company, they were public carriers doing the business of goods transport for the last about 30 years and they had got headquarters at Amritsar with branches throughout India. They owned a fleet of vehicles and had been paying the road tax payable under the 1924 Act regularly in respect of all their vehicles. This tax was payable in advance at the beginning of every quarter according to the provisions of this Act and the Rules made thereunder called the Punjab Motor Vehicles Taxation Rules, 1925 (hereinafter referred to as the 1925 Rules). The Licensing Authorities had been issuing licenses in Form III and the token in lieu of the tax paid by them from time to time in respect of all the vehicles as provided in section 7 of the 1924 Act. In 1952 the Punjab Legislature enacted the Punjab Passengers and Goods Taxation Act, 1952 (hereinafter referred to as the 1952 Act), by which the tax on the fare and freight in respect of the passengers carried and goods transported was levied. Under section 3(1) of the 1952 Act as amended from time to time, the rate of tax was 1/4th of the value of the fare or freight as the case might be, but in the case

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of public carriers the Government had agreed to accept the tax in lump-sum as provided in provisos to section 4 of the 1952 Act read with Rule 9 of the 1952 Rules. The petitioners had been paying the goods tax payable under the 1952 Act, also regularly at the end of every quarter in accordance with the provisions of the 1952 Act and the Rules made thereunder. By the Punjab Taxation Laws (Amendment) Act (5 of 1963), section 7-A (a) and (b) had been inserted in the 1924 Act. The effect of this amendment was to make the petitioners pay the goods tax payable under the 1952 Act in advance at the beginning of the quarter, which was hitherto being paid at the end of the quarter in accordance with the provisions of the 1952 Act. Rule 9 of the 1952 Rules had also been amended by the Punjab Passengers and Goods Taxation (First Amendment) Rules, 1964, according to which, the petitioners were made liable to pay the goods tax within 30 days of the commencement of the quarter to which the payment related instead of 15 days of the close of the quarter. In pursuance of the amended Rule 9, the Excise and Taxation Officer (Enforcement), Jullundur, respondent No. 3, directed the petitioners to pay the goods tax in advance in respect of all their vehicles and the Licensing Officer, Amritsar, respondent No. 2, in pursuance of the said insertion of section 7-A (a) and (b) in the 1924 Act refused to issue tokens in lieu of the road tax paid under the 1924 Act, unless he was satisfied that the goods tax under the 1952 Act had also been paid for such quarterly period. This necessitated the filing of the present writ petition.

Learned counsel for the petitioner-company has challenged the legality of section 7A of the 1924 Act and the amended Rule 9 of the 1952 Rules on the following grounds :—

- (1) Section 7-A was inconsistent with the provisions of the 1952 Act, because under this Act the petitioners were entitled to pay the goods tax at the end of each quarter, but by the insertion of section 7-A in the 1924 Act, they had been made liable to pay this tax in advance at the commencement of the quarter.
- (2) The scope of 1924 Act was limited to the imposition of the road tax on the motor vehicles,

whereas section 7-A, which was inserted therein, dealt with the goods tax, which was leviable under the 1952 Act. If the petitioners had paid the road tax, they were entitled to the issuance of the license and the token under the 1924 Act and were, under the law, authorised to use the public highways for the period for which they had paid that tax. The license and the token could not be refused, if the goods tax was not paid by them. The grant of the license and the token could thus not be made dependent on the payment of the goods tax.

- (3) Section 7-A, according to the learned counsel, imposed unreasonable restrictions on their right to carry on their trade inasmuch as on the cancellation or suspension of the registration certificate under the 1952 Act, their license under the 1924 Act stood automatically cancelled or suspended. This provision was, consequently, hit by Article 19(1) (g) of the Constitution.

So far as the amended Rule 9 was concerned, learned counsel submitted that it was unconstitutional, because it was inconsistent with the provisions of sections 3 and 4 of the 1952 Act, inasmuch as the goods tax was leviable on the freight in respect of the goods actually transported. It would be illegal to demand this tax when actually no goods had been carried by the petitioners. This Rule was also beyond the rule-making power given to the legislature under section 22 of the 1952 Act. This was because the State Government could frame rules prescribing the manner in which and the intervals on which the goods tax shall be paid under sections 3 and 4 of the 1952 Act. This manner and the intervals could be prescribed in case the petitioner-company had incurred the liability to pay the tax, which arose only after the goods had actually been transported by them. Learned counsel argued that the petitioner-company could not be made to pay the goods tax, before it was realised from the owners of the goods by them. The petitioner-company could not know how much tax they had to realise, unless they had actually transported the goods. Under these circumstances, the amount of the goods tax could also not be calculated.

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It is common ground that the petitioner-company was paying the goods tax in lump sum, as provided in the first proviso to section 4 of the 1952 Act. It is not their case that they had ever approached the authorities that they did not want to pay the tax in lump sum, but in accordance with the provisions of Rule 9(i) and (ii).

So far as the first ground urged by the learned counsel for the petitioner-company is concerned, there is no force in the same, because the 1952 Act nowhere lays down that the goods tax has to be paid at the end of each quarter. It was, however, mentioned in Rule 9 of 1952 Rules, as it stood before 1964 amendment, that this tax could be paid within 15 days of the close of the quarter. This rule after the amendment provided that the quarterly tax shall be payable within 30 days of the commencement of the quarter. This amendment, as is held by me in the later part of my judgment, was quite valid in law. Therefore, it cannot be said that the provisions of section 7-A were in any way inconsistent either with the 1952 Act or the 1952 Rules.

As regards the second ground, it may be stated that section 7-A of the 1924 Act applies only to two types of vehicles, namely, the public service vehicles and the public carriers as mentioned in section 2(i) of the 1952 Act. This section was inserted in the 1924 Act with a view to prevent evasion of the payment of the goods tax and accumulation of its arrears. The Legislature had intended that the goods tax should be paid in advance, before the token showing the payment of the road tax for the relevant quarter was issued. By virtue of the provisions of section 4 of the 1952 Act, the public carriers can pay Goods tax in lump sum. Rule 9 of 1952 authorises such public carriers to pay this tax in quarterly instalments also. Section 7-A (b), therefore, applies to those public carriers, who offer to pay the goods tax in a lump sum. Previously, the issuance of the token and the license depended on the payment of the road tax only, but now by the insertion of section 7-A in 1924 Act, the payment of the goods tax under the 1952 Act has also been made another condition for the grant of the token and the license. Such a condition could be imposed by the Legislature and it has not been shown to be invalid in law, by the learned counsel of the petitioner. The

token will not be granted to a public carrier if only the road tax is paid, because the second condition for its grant, that is, the payment of the goods tax, has also to be fulfilled. So long as both the conditions are not complied with, a public carrier, like the petitioner, who had offered to pay the goods tax in a lump sum, would not be granted the token. There is, thus, no merit in this ground as well.

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Coming to the third ground, the Legislature by the insertion of section 7-A (a) desired that if the registration certificate was either suspended or cancelled, then the license under the 1924 Act issued to the public service vehicles and the public carriers would automatically stand suspended or cancelled. In other words, the Legislature had in a way imposed this condition also for the grant of the license under the 1924 Act. This the Legislature was empowered to do and there is nothing unconstitutional in imposing this condition. It is undisputed that reasonable restrictions can be imposed on a person who is carrying on any trade or business, in the interests of general public. The petitioner is not challenging the legality of the imposition of the goods tax under the 1952 Act. That means that the petitioner had no objection to pay this tax. The object of inserting section 7-A in the 1924 Act was, as already mentioned above, to prevent the evasion of the goods tax and the accumulation of its arrears. The effect of section 7-A was that if the registration certificate was either suspended or cancelled, the license under the 1924 Act would also stand suspended or cancelled. The registration certificate would be suspended or cancelled, if there was breach of the provisions of the 1952 Act by the non-payment of the goods tax, which, admittedly, had to be paid under the law. In case somebody did not pay that tax and, consequently, his registration certificate was cancelled, then the cancellation of his license under the 1924 Act cannot be called an unreasonable restriction, because this restriction had a direct relation to the objection which section 7-A sought to achieve. The petitioner was, undoubtedly, liable to pay the goods tax. If some legislation merely asked him to discharge that obligation, otherwise his license would be cancelled, it could not be said that it was an unreasonable restriction on the carrying on his trade or business.

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This apart, section 7-A was inserted by the Punjab Laws Taxation (Amendment) Act, 1963, which was published in the Punjab Gazette, dated March 29, 1963. This law was enacted during the continuance of the emergency, which was declared by the President of India under Article 352 of the Constitution by a notification, dated 26th October, 1962. The rights under Article 19 of the Constitution got suspended during this emergency and, as such, no argument on the basis of Article 19 would be available to the petitioner. The third ground, therefore, also fails.

With regard to the last ground relating to the amended Rule 9, it may be stated that this Rule provides that the goods tax, which previously used to be paid within 15 days of the quarter, would now be payable in equal quarterly instalments within 30 days of the commencement of the quarter to which the payment related. This provision only applies to those public carriers, like the petitioner, who had offered to pay the goods tax in a lump sum. It may be mentioned that the learned counsel for the State had conceded that they could not force any public carrier to pay this tax in a lump sum. On the other hand, if the public carriers offered to pay the same in a lump sum, the Government might accept it in lieu of the tax chargeable on freight. The public carriers, who had offered to pay the goods tax in a lump sum, had to do the same in equal quarterly instalments. The lump sum rates have been prescribed in Rule 9 of the 1952 Rules and those rates are not being challenged by the petitioner. The only effect of this 1964 amendment was that the quarterly tax was being demanded within 30 days of the commencement of the quarter instead of 15 days of the close of the quarter. The argument of the learned counsel that since the petitioner-company had not actually transported the goods and, therefore, no freight had been realised by them from the owners of the goods and, consequently, the goods tax could not be levied upon them in advance, has no substance whatsoever. The reason is simple, because they themselves had offered to pay this tax in lump sum in their own interest, as provided in section 4 of the 1952 Act, the legality of which is not being challenged by the petitioner. Even if they did not transport any goods during that quarter, still they were liable to pay the tax. Their liability did not depend on their

actual transporting the goods. Therefore, so far as such public carriers are concerned, this argument is not available to them and this Rule is in no way inconsistent with the provisions of sections 3 and 4 of the 1952 Act. It had been made by virtue of the power given to the State Government under section 22 of the 1952 Act. Sub-section (1) thereof authorised the State Government to make rules consistent with this Act for securing the payment of tax and for the purpose of carrying into effect the provisions of this Act. Sub-section (2) (a) of this section also empowered the State Government to make rules prescribing the manner in which and the intervals at which the goods tax shall be paid under sections 3 and 4 of the Act. The amendment in Rule 9 was made so that the public carriers may not delay and evade the payment of the goods tax. This tax was either not being paid by them at all or its payment was being delayed and arrears were accumulating. In order to remedy this defect, section 7-A was inserted in the 1924 Act and the consequent amendment was made in Rule 9 in the 1952 Rules to make both the provisions of the 1924 Act and the 1952 Rules consistent with each other. This ground is also without any substance.

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It may be mentioned that the learned counsel for the petitioner-company, during the course of arguments, submitted, that his client could cease to be a public carrier and merely use the vehicles for transporting their own goods. In that case they would not be liable to pay any goods tax, but even then argued the learned counsel, the token would not be issued to them and their license would be cancelled.

In the first place, no such position is taken in the writ petition and secondly the learned counsel for the State submits that the petitioner-company can make such a prayer to the authorities concerned and suitable action will then be taken thereon. Learned counsel for the State also concedes that if the petitioner wishes to withdraw the offer of paying the goods tax in a lump sum, they can make an application in that behalf to the Department concerned. That too will be dealt with according to law and the goods tax can then be recovered from them in the other modes prescribed by the statute.



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In view of what I have said above, this writ petition fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs in these proceedings.

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B.R.T.

APPELLATE CRIMINAL

Before D. Falshaw, C.J. and H. R. Khanna, J.

MUNICIPAL COMMITTEE, AMRITSAR,—Appellant.

versus

BUTA SINGH,—Respondent.

Criminal Appeal No. 605 of 1964.

1965

October, 21st.

*Prevention of Food Adulteration Act (XXXVII of 1954)—S. 17—Offences committed by a firm—Whether all partners equally liable.*

*Held*, that according to section 17 of the Prevention of Food Adulteration Act, 1954, which deals with the offences under the Act committed by companies, firms and other association of individuals, it is the duty of the prosecution to prove that the person sought to be made liable under the Act was, at the time of the commission of the offence, in charge of, and was responsible to, the company or firm for the conduct of its business. It is only when that initial onus is discharged by the prosecution in respect of a person, that the onus of proving the fact, referred to in the proviso that the offence was committed without his knowledge or that he exercised all due diligence for the prevention of such offence, would shift on to him. A director or partner can, however, escape liability if he can prove that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

*Appeal from the order of Shri N. K. Jain, Magistrate, 1st Class, Amritsar, dated the 26th February, 1964, acquitting the respondent.*

RUP CHAND, ADVOCATE, for the Appellant.

J. K. KHOSLA, ADVOCATE, for the Respondent.

JUDGMENT

Khanna, J.

KHANNA, J.—Amarjit Singh, his father Buta Singh and Chattar Singh were tried in the Court of Magistrate, First Class, Amritsar, for an offence under section 16 of