

where in relying upon the judgment of the apex Court in *M/s Jethanand and Sons v. State of Uttar Pradesh* (2), it was held that none of the orders passed by the Tribunal allowing the amendment of the appellant's petition was a final order within the meaning of Section 34(1) of the Act and that the appellant cannot, in the circumstances of this case, cross even the second hurdle provided by Section 34(1) of the Act, namely, that the order against which an appeal lies must be one whereby any matter has been determined under the provisions of this Act.

(7) It was further observed in the aforesaid authority in *Bhagwan Singh's case* that the decision to permit amendment or not to do so is one under the Code of Civil Procedure as applied to the proceedings under the Act. It is a mere procedural matter and does not by itself decide the real matter in controversy between the parties.

(8) For the foregoing reasons, we are of the considered view that no appeal lies against the impugned order passed by the Tribunal before this Court under the Act. The present appeal is not maintainable and is dismissed as such with no order as to costs.

S.C.K.

Before : S. S. Sodhi & Ashok Bhan, JJ.

M/S HOSHIARPUR EXPRESS TRANSPORT COMPANY LTD.,
HOSHIARPUR,—Appellant.

versus

THE STATE OF PUNJAB,—Respondents.

General Sales-tax Reference No. 8 of 1985

13th August, 1991.

Punjab General Sales Tax Act, 1948—S. 5 (1-A)—Punjab General Sales Tax Rules, 1949—Rl. 29 (xi) & (xii)—Notification dated March 30, 1966—Sale of old buses—Chasis and buses are different and distinct commodities—Purchase value of Chasis cannot be deducted from the gross turnover of the Assessee—Chasis is not the same thing

(2) A.I.R. 1961 S.C. 794.

M/s Hoshiarpur Express Transport Company Ltd., Hoshiarpur v.
The State of Punjab (S. S. Sodhi, J.)

as bus for the purpose of S. 5 (1-A) & (b) of the Act—Interpretation of taxing statutes—Entry ‘Motor Vehicle’—Even though chasis and buses may fall in the ambit of the expression ‘Motor Vehicle’, yet they are distinct commodities and required to be treated as such.

Held, that when a chasis is purchased and bus is built upon it and then sold, it would indeed be straining ones credibility to hold that what is sold is precisely what had been bought. There can be no manner of doubt that chasis and buses are two different and distinct commodities and must indeed be treated as such even though they may both come within the ambit of the expression “Motor Vehicle” in the relevant notification. It is a well-settled rule that even in the interpretation of taxing Statutes, the plain and ordinary meaning has to be taken unless the statute or the context prescribes otherwise, which is not the case here. The Tribunal was thus clearly correct in holding that a chasis was not the same thing as a bus for the purposes of S. 5 (1-A) and (b) of the Punjab General Sales Tax Act, 1948. The first question must thus be answered in the affirmative in favour of the revenue and against the assessee.

(Para 3)

Held further, that as regards the other question, the judgment mentioned therein namely M/s Jawahar Lal Siri Chand v. Union Territory, Chandigarh and others, 1973 R.L.R. 52 is clearly not applicable and no relief is therefore available to the assessee by virtue thereof. This question is thus answered accordingly.

(Para 4)

General Sales Tax Referance under Section 22(i) of the Punjab General Sales Tax Act 1948 arising out of the order dated 6th November, 1984, passed by Shri Paramjit Singh, Presiding Officer Sales Tax Tribunal Punjab Misc. Reference No. 123, 124 and 125 of 1983-84. Sales Tax Tribunal referred the following question of law to the High Court for opinion:

- (1) *Whether on the facts and circumstances of the case, the Tribunal was right in holding that chasis “is not the same thing as a Bus for the purpose of Section 5(1-A)” ?*
- (2) *Whether the Tribunal was right in holding that ratio of the judgment of the Punjab and Haryana High Court in 1973 R.L.R. 52 was applicable to the present cases and no relief was available to the assessee for the tax already paid by him when he purchased those goods as an unregistered dealer; and if the answer be in the negative, what would be the effect on tax liability of the assessee ?*

(These two questions referred by to the Hon'ble Punjab and Haryana High Court for their opinion under Section 22 of the Punjab General Sales Tax Act.)

Romesh Kumar, Advocate, for the Appellant.

Rajiv Raina, AAG, Punjab, for the Respondents.

JUDGMENT

S. S. Sodhi, J.

(1) The Hoshiarpur Express Transport Company, as the name proclaims, is a Transport Company engaged in the business of running buses for the general public. In furtherance thereof, it purchases chassis and after getting bodies built thereon, uses them as buses for carrying on its business. When such buses lose their utility to the assessee, they are sold.

(2) It was the plea of the assessee-Company that a chassis with a body built upon it for use as a bus retains its identity and character as chassis and as chassis was included in the entry "Motor Vehicle" in the notification of March 30, 1966, in terms of rule 29 (xi) and (xii) of the Punjab General Sales Tax Rules (hereinafter referred to as 'the Rules') the purchase value of the chassis had to be deducted from the gross turnover of the assessee. In other words, a chassis with or without a body built upon it was a 'Motor Vehicle' and therefore, when a bus is sold, it must be treated as sale of a chassis and so considered on its sale, it was entitled to the benefit of rule 29 (xi) and (xii) of the Rules. This contention was, however, negated by the Tribunal. It is in this context that two questions came to be referred for our opinion. These being:—

"(1) Whether on the facts and circumstances of the case, the Tribunal was right in holding that 'Chassis' is not the same thing as a Bus for the purpose of Section 5 (1-A) ?

(2) Whether the Tribunal was right in holding that ratio of the judgment of the Punjab and Haryana High Court in 1973 R.L.R. 52 was applicable to the present cases and no relief was available to the assessee for the tax already paid by him when he purchased those goods as an un-registered dealer; and if the answer to be in the negative, what would be the effect on tax liability of the assessee ?"

National Insurance Company Ltd., Chandigarh v. R. Harcharan
Singh Bhullar and others (A. P. Chowdhri, J.)

(3) In dealing with the point in issue, it must be appreciated that when a chasis is purchased and bus is built upon it and then sold, it would indeed be straining ones credibility to hold that what is sold is precisely what had been bought. There can be no manner of doubt that chasis and buses are two different and distinct commodities and must indeed be treated as such even though they may both come within the ambit of the expression "Motor Vehicle" in the relevant notification. It is a well-settled rule that even in the interpretation of taxing Statutes, the plain and ordinary meaning has to be taken unless the statute or the context prescribes otherwise, which is not the case here. The Tribunal was thus clearly correct in holding that a chasis was not the same thing as a bus for the purposes of Section 5 (1-A) and (b) of the Punjab General Sales Tax Act, 1948. The first question must thus be answered in the affirmative in favour of the revenue and against the assessee.

(4) As regards the other question, the judgment mentioned therein namely: *M/s Jawahar Lal Siri Chand v. Union Territory, Chandigarh and others* (1), is clearly not applicable and no relief is therefore available to the assessee by virtue thereof. This question is thus answered accordingly.

(5) This reference is disposed of in the manner indicated. There will, however, be no order as to costs.

R.N.R.

Before A. P. Chowdhri, J.

NATIONAL INSURANCE COMPANY LTD.,
CHANDIGARH,—*Petitioner.*

versus

R. HARCHARAN SINGH BHULLAR AND OTHERS,—*Respondents.*

Civil Revision No. 1458 of 1991.

30th August, 1991.

Code of Civil Procedure, 1908—O. 39, rls. 1 & 2—Tenancy created by an instrument—Premises let described in detail—No presumption that upbuilt terrace forms part of tenanted premises—Landlord seeking interim injunction to raise construction on terrace—Balance of convenience in favour of landlord.

(1) 1973 R.L.R. 52.