Supreme Court of India
The State Of Himachal Pradesh vs Goel Bus Service Kullu on 13 January, 2023
Author: Vikram Nath
Bench: B.R. Gavai, Vikram Nath

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No(s).5534-5594 of 2011

THE STATE OF HIMACHAL
PRADESH AND OTHERS …APPELLANT(S)

VERSUS

GOEL BUS SERVICE KULLU
ETC. ETC. …RESPONDENT(S)

JUDGMENT

Vikram Nath, J.

1. The above set of appeals were referred to larger Bench of three Judges in terms of the order dated 05.03.2020 which reads as follows:

> "Considering the fact that the issue raised in these appeals was referred to a larger Bench of three Judges in terms of order dated 27.02.1998 in Civil Appeal No. 10457/1995 and other connected cases [reported in (1998) 9 SCC 676] but which appeals later on repealed by Rajasthan Signature Not Verified Act, 1951, which is on similar lines with the Digitally signed by provision involved in the present appeals.

Deepak Singh Date: 2023.01.13 16:36:06 IST Reason:

Hence, we deem it appropriate to refer these appeals to a larger Bench of three Judges for an authoritative pronouncement on the questions involved.

Registry is directed to place the matters before Hon'ble the Chief Justice of India for constituting the appropriate Bench for hearing these appeal(s)."

2. The above referred order dated 27.02.1998 passed in Civil Appeal No. 10457 of 1995 and connected matters reported in State of Rajasthan Vs. Khalsa Travels, (1998) 9 SCC 676 is reproduced below:

> "1. These appeals filed by the State of Rajasthan raise questions relating to the constitutional validity of Section 4-B(3) of the Rajasthan Motor Vehicles Taxation Act, 1951 (hereinafter referred to as "the Act") and Rule 4-CC of the Rajasthan Motor

> Vehicles Taxation Rules, 1951 (hereinafter referred to as "the Rules") which make provision of levy of special road tax on a transport vehicle which is used without a valid permit or in any manner not authorized by the permit. By the impugned judgments the High Court has held that Section 4-B(3) is ultra vires the rule- making powers conferred on the State Government under the Act.

2. According to the High Court the imposition, though described as a tax, is, in substance, a fine for an alleged offence of plying the vehicle without a valid permit or in contravention of the conditions of permit and such a penalty cannot be treated as a part of regulatory or compensatory tax. On that view, The High Court has declared that Section 4-B(3) of the Act is ultra vires the powers conferred on the State Legislature under Entry 56 of List II of the Seventh Schedule to the Constitution of India. The question that falls for consideration in these appeals is whether the imposition under Section 4-B(3) is not a tax but a penalty and is ultra vires the legislative powers of the State Legislature under Entry 56 and Entry 57 of List II.

3. Having regard to the importance of the question, we consider it appropriate that these matters are considered by a Bench of three Judges. The matter may, therefore, be placed before the Hon'ble Chief Justice for necessary directions." A careful perusal of the above orders confines the question for consideration to be whether the imposition of additional special road tax levied on transport vehicle used without a valid permit is not a tax but a penalty and is ultra vires the legislative powers of the State Legislature under Entries 56 and 57 of List II (the State List) of the Seventh Schedule to the Constitution.

3. Civil Appeal No.10457 of 1995 was dismissed vide order dated 15.04.1998 for the reason that similar provisions enacted in the State of Rajasthan were repealed by the Rajasthan Finance Act, 1977 and, as such, the question raised was held to be no longer a live issue. The said appeals along with connected appeals were accordingly dismissed, however, the question was left open. The said order dated 15.04.1998 is reproduced hereunder: -

> "These appeals involve the question regarding the validity of Section 4 (B) (3) of the Rajasthan Motor Vehicles Act, 1951 and Rule 4 CC of the Rajasthan Motor Vehicles Taxation Rules. While the matters were pending in this Court the State legislature has enacted Rajasthan Finance Act, 1977 whereby Section 4 (B) (3) has been repealed and since Rule 4 CC was made to give effect to the provisions contained in Section 4 (B) (3) the said rule also has ceased to apply. In view of the aforesaid amendment that has been made by the Rajasthan Finance Act, 1977 the question raised by the appellant in these appeals is no longer a live issue and, therefore, it is not necessary to go into the same. The appeals are accordingly dismissed and the question is left open.

No order as to costs." FACTS:

4. The respondent and several other similarly situate public transport operators challenged the validity of Section 3-A, Section 3-C, Section 4-A, Section 5-A along with Schedule-III under Section

3-A introduced vide the Himachal Pradesh Motor Vehicles Taxation (Amendment) Act, 19991 to be held ultra vires the Constitution of India and further the notifications dated 18.12.1999, 23.12.1999, 31.12.1999, 06.01.2000, 12.02.2000 and 01.04.2000 be quashed and set aside. The relief as claimed in one of the petitions bearing C.W.P. No.32 of 2000 (Goel Bus Service Vs. State of Himachal Pradesh and others) is reproduced below:

> "(i) That the impugned Annexure-PA, PB, PC, PD, PE, dated 18th December, 1999, 23rd December, 1999, In short "HPMVT(A) Act 1999" 6th January, 2000, 12.2.2000 and 31st December, 1999 may kindly be quashed and set aside;
>
> (ii) That Section 3-A, 3-C, 4-A, 5-A along with Schedule-III under Section 3-A may be struck down being ultra vires the Constitution of India.
>
> (iii) Any other relied as may be deemed just and proper keeping in view the facts and circumstances of the case may also be granted in favour of the petitioner."

5. The above provisions, validity of which was sought to be declared as ultra vires, were introduced vide HPMVT(A) Act 1999 as also vide HPMVT(A) Act 2001. Consequent to insertion of the said provisions, State of Himachal Pradesh issued several notifications referred to above, which were also assailed in a large number of writ petitions. The High Court, vide impugned judgment dated 06.07.2007, upheld the validity of all the Sections except Section 3A (3) under challenge as not offending either Part III or any other provision of the Constitution of India. With respect to Section 3-A (3) it was held that in substance it imposes a penalty and as such could not be treated as regulatory or compensatory tax and was, therefore, beyond the legislative competence of the State Legislature. It, further quashed the two notifications dated 06.01.2000 and 01.04.2000 being not in consonance with the scheme of the Constitution. It also struck down the decision dated 01.01.2000 based upon negotiations held on 31.12.1999 relating to special Toll Tax, as they were held to be against statutory provisions of the Act. The operative portion of the impugned judgment reads as follows:

> "On account of the above reasoning and the findings, we are of the view that Sections 3-A (1), (2), (4) and Section 3-C do not offend either the fundamental rights or any other provision of the Constitution of India, therefore, these are held not ultra vires of the Constitution. Since Section 3-A (3) in substance imposes a fine as held above, therefore, such a nature of penalty can neither be treated as regulatory nor compensatory tax and is out of the legislature competence of the State and the subordinate legislation, that is the notifications dated 6.01.2000 and 1.04.2000 are based upon lump sum charges of the levy thus are not in consonance with the scheme of the Constitution, therefore, these are held to be ultra vires. Further, the decision dated 1.1.2000 based upon negotiations held on 31.12.1999 relating to SRT is against the statutory provisions of the Act as stated above. Therefore, it is struck down being contrary to law.
>
> All the petitions are disposed of in the aforesaid terms. No orders as to costs.

All the Misc. applications in the writ petitions are also disposed of."

6. The State of Himachal Pradesh is in appeal against the aforesaid judgment of the High Court.

7. We have heard Sri Abhinav Mukerji, learned counsel for the appellant-State of Himachal Pradesh and Sri Siddharth Bhatnagar, learned Senior Counsel appointed as Amicus Curiae to assist the Court on behalf of the respondent-operators.

SUMMARY OF SUBMISSIONS:

8. Submissions advanced on behalf of appellants are summarized as under:

• The constitutional Courts must restrain from interfering in the matters of economic/tax legislation until and unless the offending provision is manifestly unjust or glaringly unconstitutional. • Laws relating to economic activities should be viewed with greater latitude and more play should be given to the Government in comparison to other laws relating to civil rights.

• Reliance was placed upon the following judgments in support of the above submissions:

"(i) R.K. Garg etc. vs. Union of India & Others reported in (1981) 4 SCC 675 (Para 7, 8, 16 & 2018).

(ii) Bhavesh D. Parish & Others vs. Union of India & Another reported in (2000) 5 SCC 471 Para 26)).

(iii) Indian Oil Corporation vs. State of Bihar reported in (2018) 1 SCC 242 (Para 25-28)." • Lump sum tax could be levied as it would be compensatory in nature.

• The wisdom of the State legislature should be read in the broadest possible terms and merely because the levy is payable in lump sum or on one time basis would not make it invalid or unconstitutional. Such levy could be for administrative reasons and the manner & mode of collection, cannot be the conclusive test to decide the nature of levy. • Quashing of the notifications dated 06.01.2000 and 01.04.2000 were also bad in law as imposition of lump sum tax is by now well recognized by the Courts.

• Reliance was placed upon the following judgments, in support of the above submissions:

(i) State of T.N. vs. M. Krishnappan and Anr. (2005) 4 SCC 53 (Para 18-23).

(ii) Commr. Of Agricultural Income Tax vs. Netley 'B' Estate (2015) 11 SCC 462 (Para 20-22).

(iii) Ashok Leyland Ltd. vs. State of T.N. (2004) 3 SCC 1 (Para 65 to 71).

(iv) Aas Mohammad vs. State of

Rajasthan (2020 2 RLW 1567 (Raj) (Para 22 to 26).

• The tax imposed under Section 3(A)3 of the 1972 Act is regulatory and compensatory in nature. The appellant-State being a hilly State with difficult terrains, in order to maintain roads and bridges which are the life-line of hilly terrains, a sizeable part of the budget is spent on the construction, development, repair, upkeep and maintenance of roads and bridges.

• Reference was made to the counter affidavit filed by the State before the High Court and also referred to in the impugned judgment, enumerating special circumstances for imposition and upholding of a compensatory or a regulatory tax as valid. In this connection, reliance has been placed upon the following judgments:

(i) Ranjit Singh vs. Taxation Officer, Rampur and etc (2002 SCC Online All 75 (Para 14,15, 22 and 23)

(ii) In State of Himachal Pradesh and Ors. Vs. Yash Pal Garg (Dead) by LRs and Ors. (2003) 9 SCC 92 (Para 11-13,20 and

23)

(iii) State of Uttar Pradesh and Ors. vs. Sukhpal Singh Bal (2005) 7 SCC 615 (Para 11 to 19).

(iv) B.A. Jayaram and Ors. vs. Union of India (UOI) and Ors. (1984) 1 SCC 168 (Para 9-11).

(v) Bolani Ores Ltd. vs. State of Orissa (1974) 2 SCC 777 (Para 15 & 29)

(vi) Sharma Transport Rep. by D.P. Sharma vs. Government of Andhra

Pradesh and Ors. (2002) 2 SCC 188 (Para, 1,8 and 11)).

(vii) State of Maharashtra and Ors. vs. Madhukar Balkrishna Badiya and Ors.

(1988) 4 SCC 290 (Para 6 & 10).

(viii) Rajeev Suri vs. Delhi Development Authority and Ors. (2021 SCC Online SC 7 (Para 220 to 226).

(ix) Janhit Manch and Anr. vs. The State of Maharashtra and Ors. (2019) 2 SCC 505 (Para 13).

• The High Court, though upheld the power of the State legislature to enact provisions for levy of special road tax under Sections 3-A(1)(2)(4), but at the same time erred in holding the provisions under Section 3-A(3) to be ultra vires being unconstitutional. • The appeals be allowed, the judgment of the High Court impugned be set aside and the writ petitions be dismissed.

9. On the other hand, Shri Siddharth Bhatnagar, learned Amicus Curiae made the following submissions:

> • The offences and penalties in respect of using vehicles without permit is covered under Chapter XIII of the Motor Vehicles Act, 1988 and in particular Section 192-A thereof.

• The Motor Vehicles Act, 19882 being a Central Act is relatable to Entry 35 of List III of the Seventh Schedule to the Constitution.

• The penalty for use of vehicle without permit is already provided in Section 192-A of the 1988 Act. The 1988 Act provides a complete mechanism in respect of laws relating to motor vehicles including its violations, consequences and penalties thereon. The said provision specifically deals with the act of a transport vehicle being used without a permit. • The Himachal Pradesh Motor Vehicle Taxation Act relates to Entry 57 of the List II of the Seventh Schedule of the Constitution. It is subject to two limitations (i) that the vehicle be suitable for use on roads and (ii) any law made under this entry would be subject to any law made under Entry 35 of list III. the 1988 Act • Any enactment by the State which encroaches on or overlaps with the provisions of the 1988 Act would be invalid to that extent.

• Reliance is placed upon the judgment of the Supreme Court in State of West Bengal Vs. Kesoram Industries Ltd. & Others, (2004) 10 SCC 201. • The tax sought to be levied under Section 3A (3) is in the nature of penalty which cannot be done in view of the provisions contained in the 1988 Act. Reliance was placed upon the following two decisions of the Supreme Court:

> (i) M.P. AIR Permit Owners Association and Another Vs. State of Madhya Pradesh, (2004) 1 SCC 320,
>
> (ii) Hardev Motor Transport Vs. State of M.P. and Others, (2006) 8 SCC 613.

• The impugned judgment does not suffer from any infirmity in holding that the special tax sought to be levied under Section 3A (3) is a penalty. The appeals are, thus, liable to be dismissed.

Relevant Constitutional & Legal provisions:

10. Before proceeding to deal with the submissions advanced, a brief reference to statutory and constitutional provisions may be noted.

11. Article 246 of the Constitution lays down the subject matters of the laws to be made by the Parliament and by the Legislatures of States. According to it, three lists of the Seventh Schedule would be determining the subjects over which the Parliament may have exclusive power to make laws (List I also referred to as the Union List), subjects over which the State would have exclusive power to make laws (List II also referred to as the State List) and also the subjects where the Parliament as also the Legislature of States would have power to make laws covered by List III (referred to as the Concurrent List). Additional power is given to the Parliament under sub- Article 4 to make laws with respect to any matter for any part of the territory of India not included in a State even though such matter is enumerated in the State List. Article 246 is reproduced hereunder:

> "(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").
>
> (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
>
> (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").
>
> (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

12. Article 254 of the Constitution of India provides for the effect in case of inconsistency between laws made by the Parliament and the laws made by the Legislature of States. The same is reproduced hereunder: "(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

13. As already noted above, the Seventh Schedule flowing out from Article 246 has three lists, which gives power to the Parliament and the State Legislatures to make laws on the subjects enumerated therein. It would be relevant to mention that List I (the Union List) does not cover any subject relating to motor vehicles or taxation relating to it. List II (the State List) has two entries viz. 56 and 57 which refer to subjects relating to taxes on goods and passengers and taxes on vehicles. Both the above entries of List II are reproduced below:

> "56. Taxes on goods and passengers carried by road or on inland waterways.

57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III." The above subjects fall within the domain of Legislature of the State to make laws.

14. Under List III (the Concurrent List), Entry 35 spells out the subject as mechanically propelled vehicles and also the principles on which taxes on such vehicles can be levied. Under this entry both the Parliament and the Legislatures of State could frame laws. The said Entry 35 of List III is reproduced hereunder:

> "35. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied."

15. The first enactment relating to motor vehicles in India was the Indian Motor Vehicles Act, 1914. It was replaced by the second enactment which came in 1939 as Motor Vehicles Act, 1939. After the coming of the Constitution in 1950, a new Motor Vehicles Act was enacted by the Parliament in 1988, the Motor Vehicles Act, 1988. The Parliament enacted the 1988 Act drawing its source from Entry 35 of the List III (the Concurrent List). The subject covered by the above entry is mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied. The Parliament as also the Legislature of States were thus competent to make laws regarding the mechanically propelled vehicles including the principles on which taxes could be levied on such vehicles. Thus, the Concurrent List, insofar as taxes concerned, is limited to the principles on which taxes are to be levied. But the power to frame laws relating to imposition of tax exclusively vests with the State Legislatures under Entries 56 and 57 of List II. Entry 56 covers the subject of laying down law on imposition of taxes on goods and passengers being carried by road or on inland waterways. Whereas Entry 57 covers laws related to taxation on vehicles, whether mechanically propelled or not however such vehicles being suitable for use on roads. The laws so framed would remain subject to the provisions of entry 35 of List III.

16. Chapter V of the 1988 Act deals with Control of Transport Vehicles. Section 66 makes it mandatory for owners of motor vehicles to use such vehicles as a transport vehicle whether actually carrying passengers or goods only with a valid permit granted as provided therein. Section 66 reads as follows:

"66. Necessity for permits.—(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any

passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used: Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage: Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not: Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) The holder of a goods carriage permit may use the vehicle, for the drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed: 1[Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailor.]"

17. Chapter XIII of the 1988 Act lays down the provisions for Offences, Penalties and Procedure. Section 192A introduced in 1994 provides that any motor vehicle being driven in contravention of the provisions of sub-section (1) of Section 66 or in contravention of any condition of permit relating to the road on which or the area in which or the purpose for which the vehicle may be used would be a punishable offence which will result into imprisonment for a term which may extend to six months and fine of Rs.10,000/- for the first offence and for subsequent offences the imprisonment could extend to one year but would not be less than six months or with fine of Rs.10,000/- or with both.

18. Sub-section (2) thereof provides for an exception where a motor vehicle may be used in an emergency for carrying persons suffering from sickness or injury or for supply of food or materials or medical supplies to relieve distress. Other offences and penalties prescribed under Chapter XIII are not relevant for the present controversy, as such the same are not being referred to. Section 192A reads as follows:

"(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of section 66 or in contravention of any condition of a permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees and for any subsequent offence with imprisonment which may extend to one year but shall not be less than three months or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both: Provided that the court may for reasons to be recorded, impose a lesser punishment.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injury or for the transport of materials for repair or for the transport of food or materials to relieve distress or of medical supplies for a like purpose: Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.

(3) The court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order made by the court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made.]"

19. The State of Himachal Pradesh, exercising the powers drawn from Entries 56 and 57 of List II of the Seventh Schedule enacted the Himachal Pradesh Motor Vehicles Taxation Act 19723. In the said Act various amendments were brought from time to time. Vide Amending Act No.15 of 1999, Sections 3A, 3B and 3C were incorporated. The object and reasons as spelled out for bringing out the Amending Act of 1999 was mainly to augment finances/funds for development, construction and maintenance of roads and bridges being a vital part of expanding and developing trading facilities in the State. It also mentioned that Himachal Pradesh being a hilly State, substantial amount of its budget was spent on construction, maintenance and development of roads and bridges. Objects and reasons as reflected in the Bill No. 10 of 1999, is reproduced here under:

> "Developed roads and bridges constitute arteries of a healthy economy. Himachal Pradesh being a hill HPMVT Act 1972 State, the importance of roads, their construction and maintenance can hardly be over emphasized as a vital trading facility. Each year, the government has to incur considerable part of its budget on construction, maintenance and development of roads and bridges in the State. Since it is essential to finance these activities, it is considered necessary to levy road tax on transport vehicles used or kept for use on public roads in Himachal Pradesh."

20. In the original Act of 19724, Section 3 provided for levy and collection of taxes on all motor vehicles which were to be used or kept for use in the State of Himachal Pradesh. Section 3 reads as follows:

> "SECTION-3** LEVY OF TAX.
>
> *(1) Subject to the other provisions of this Act, on and from the commencement of the Himachal Pradesh Motor Vehicles Taxation (Amendment) Act, 2004, there shall be levied, charged and paid to the State Government, a tax on all motor vehicles specified in column (2) of Schedule-I, used or kept for use in Himachal Pradesh, at the rate as may be specified by the State Government, by notification, but not exceeding the rates specified in column (3) of Schedule-I..

**(2) On and from the commencement of the Himachal Pradesh Motor Vehicles Taxation (Amendment) Act,2004, there shall be levied, charged and paid to HPMVT Act 1972 the State Government, a tax on motor cycles/scooters or personal vehicles, used or kept for use in Himachal Pradesh, for a period of fifteen years from the date of issue of certificate of registration under sub-section (3) of section 41 of the Motor Vehicles Act, 1988, (59 of 1988) at the rates as may be specified by the State Government, by notification, on the basis of the price of such motor cycle/scooter or personal vehicle, subject to the maximum of ten percent of the price thereof.

**(3) Notwithstanding anything contained in sub- sections (1), on and from the commencement of the Himachal Pradesh Motor Vehicles Taxation (Amendment) Act, 2004, there shall be levied, charged and paid to the State Government, a tax on motor cabs or maxi cabs which are allowed to be converted as personal motor vehicles, and on second hand personal motor * Substituted vide H.P. Motor Vehicles Taxation (Amendment) Act, 2004. * Substituted vide H.P. Motor Vehicles Taxation (Amendment) Act, 1999. 6 vehicles which are to be registered in the State of Himachal Pradesh for the first time, used or kept for use in Himachal Pradesh, at the rates as may be specified by the State Government, by notification, subject to the maximum of ten percent of the price of such motor vehicles to be determined by the taxation authority after deducting eight percent depreciation per annum from the original price of the motor vehicle provided that:- (a) in the case of motor vehicles having original price upto two lacs fifty thousand rupees, the floor price shall not be less than fifty thousand rupees, or (b) in the case of motor vehicles having original price more than two lacs fifty thousand rupees but not exceeding five lacs fifty thousand rupees, the floor price shall not be less than one lac rupees, or (c) in the case of motor vehicles having original price more than five lacs fifty thousand rupees but not exceeding ten lacs rupees, the floor price shall not be less than two lacs rupees, or (d) in the case of motor vehicles having original price more than ten lacs rupees, the floor price shall not be less than four lac rupees, or (e) in the case of two wheelers, the floor price shall not be less than five thousand rupees."

21. By the Amending Act of 1999, Section 3A was introduced which carries a heading: Levy of Special Road Tax. This special road tax was in addition to the tax levied under Section 3. The special road tax was also levied and charged on all transport vehicles used or kept for use in Himachal Pradesh specified in column 2 of Schedule 3 and the rate of tax was to be not exceeding the rates specified in column 3 of Schedule 3 of the Act. Section 3A is reproduced hereunder:

"3-A. Levy of special road tax.-

(1) In addition to the tax levied under section 3, on and from the commencement of the Himachal Pradesh Motor Vehicles Taxation (Amendment) Act, 1999, there shall be levied, charged and paid to the State Government, a special road tax on all transport vehicles specified in column (2) of Schedule-III, used or kept for use, in Himachal Pradesh, and, at such rates as may be specified by the State Government, by notification, but not exceeding the rates specified in column (3) of Schedule-III of this Act. 2 [(2) The rates of special road tax, as may be specified under subsection (1), in respect of stage carriages shall be applicable to and charged on the entire distance covered as per time table fixed by the Regional Transport Authority and shall be payable monthly by such date as may be notified by the State Government from time to time.] (3) Where a transport vehicle is plied without a valid permit or in any manner not authorised by the permit to be plied, there shall be levied, charged and paid to the State Government further special road tax in addition to the tax payable under sub-section (1), on such vehicles at the rates as may be specified by the State Government, by notification, but not exceeding the rates specified in column (3) of Schedule-III of this Act.

(4) Where a transport vehicle is registered in a State other than the State of Himachal Pradesh, enters and is used on any public road, or kept for use, in the State of Himachal Pradesh, the special

road tax shall become chargeable, on such entry in the prescribed manner.

Explanation.- For the purpose of special road tax levied under this Act, transport vehicles shall include non-transport vehicles when used as transport vehicles by the owner. ”

22. Challenge before the High Court was also to the validity of a few other provisions. However, the High Court upheld the validity of all other provisions and it only declared sub-section (3) of Section 3A as ultra vires. What is, thus, required to be decided in this reference is whether the High Court was right in declaring Section 3A(3) as ultra vires.

23. The High Court was of the opinion that the tax imposed by Section 3A(3) was in the nature of penalty and for which the State Legislature had no power to make laws. According to the High Court it was penalty because a further special road tax was leviable where a transport vehicle was plied without any valid permit or in any manner not authorized by the permit to be plied. The High Court opined that imposition of such an additional special road tax for a default or a wrong committed with respect to a transport vehicle would amount to a penalty and not a tax. The finding recorded by the High Court is reproduced hereunder:

> “Further, the powers of State Legislature under the entry aforesaid being subject to Entry 35 of List III, if there is an existing law made by the Parliament laying down the principles on which taxes on mechanically propelled vehicles should be levied, then any State Legislation enacted under this entry must conform to these principles as laid down in the existing laws or the earlier law made by the Parliament. If the provisions of the State Laws are repugnant to those principles, the Law made by the State Legislature must fail to the extent of repugnancy, unless reserved for the consideration of and assented to by the President. The tax under this entry is leviable by the State Legislature or all vehicles suitable for use on roads, which are kept in the State, but such tax must have some nexus with the vehicles using the public roads of the State because it is compensatory in nature, even though registered under the Motor Vehicles Act. Contra the State Legislature is not competent to levy, under the present entry, an impost which is not in substance a regulatory or compensatory tax for the transport of the vehicle along the road, but a fine , for example using a vehicle without a valid permit or for issuing it in a manner not authorized by the permit, is beyond the competence of the State Legislature, thus ultra vires.

(Please See AIR 1992, Rajasthan 181 DB). Further on the perusal of Section 3-A (3), it transpires that the tax specified therein is in substance a fine for the alleged offence of plying a vehicle without a valid permit or in any manner not authorized by the permit to be plied. Such a penalty cannot be treated as a part of regulatory or compensatory tax and is out of the legislature competence of the State. The nature of penalty without providing any mechanism for show cause, adjudication or the appellate authority by not providing any such mechanism, also offends the principle of natural justice. Therefore, it is held ultra vires the powers conferred in the State Legislature under Entry 56 to 57 of List-II. For this, we put our reliance on AIR 1992 Rajasthan 181 (DB).” (Emphasis added)

24. The High Court had also quashed the notifications dated 06.01.2000, 01.04.2000 as also the decision dated 01.01.2000 being contrary to statutory provisions. Quashing of the notifications would be dealt with at a later stage after first dealing with the issue relating to declaration of Section 3A(3) as ultra vires. ANALYSIS:

A: Scope of Interference in Fiscal Statutes:

25. It is by now well settled that any tax legislation may not be easily interfered with. The Courts must show judicial restraint to interfere with tax legislation unless it is shown and proved that such taxing statute is manifestly unjust or glaringly unconstitutional. Taxing statutes cannot be placed or tested or viewed on the same principles as laws affecting civil rights such as freedom of speech, religion, etc. The test of taxing statutes would be viewed on more stringent tests and the law makers should be given greater latitude. It would be useful to refer to a couple of judgments on the above proposition.

26. In the case of R.K. Garg etc. vs. Union of India and others, (1981) 4 SCC 675, the Constitution Bench was judging the constitutionality of economic legislation wherein challenge was to the validity of the provisions of Special Bearer Bonds (Immunities and Exemption Act, 1981) on the grounds of discrimination and violation of Article 14. P.N. Bhagwati J., speaking for himself, Chief Justice Chandrachud, A.C. Gupta, S. Murtaza Fazal Ali and A.N. Sen, J.J., observed in paragraph 7 regarding the presumption in favour of constitutionality of the statute and that the burden is on the person who attacks it, to establish that there has been clear transgression of the constitutional principles. In paragraph 8, it was laid down that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. The views of Justice Frankfurter in the case of Morey vs. Doud, 354 US 457 was relied upon. The same is reproduced hereunder:

> “In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events - self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.”

27. In case of Bhavesh D. Parish and others vs. Union of India and another, (2000) 5 SCC 471, the challenge was to the validity of section 9 of Reserve Bank of India Act as amended by the Amendment Act 1997 on the ground that it was violative of Article 14 and Article 19(1)(g) of the Constitution. This Court dismissed the challenge to the said provision in paragraph 26 of the report. It observed that matters of economic policy should be best left to the wisdom of the legislature. Further, it went on to state that in the context of a changed economic scenario the expertise of the people dealing with the subject should not be lightly interfered with. It was also observed that while dealing with economic legislation, this court would interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all.

28. In the case of Indian Oil Corporation Limited vs. State of Bihar and another, (2018) 1 SCC 242, provisions of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act 1993, was under challenge. Justice Nariman speaking for the Bench observed in paragraph 25 that when it comes to taxing statute, the law laid down by this Court is clear that it can be said to be breach only when there is perversity or gross disparity resulting in clear and hostile discrimination without any rational justification for the same.

SPECIAL ROAD TAX IS REGULATORY OR COMPENSATORY IN NATURE

29. The arguments raised before the High Court by the respondent Transport operators (original writ petitioners before the High Court) was that the fine imposed by Section 3(A)(3) was in the nature of a penalty and the State Legislature had no power to impose a penalty. The High Court had accepted the said contention and accordingly struck down the said provision.

30. The object and reasons for offending enactment is already reproduced in the earlier part of this judgment. At the cost of repetition, it is stated that the appellant State being a hilly State, the roads and bridges are its lifeline. The State has to allocate sizeable part of its budget for the construction, development, repair, upkeep and maintenance of roads and bridges. It was with this object in the background that the offending provisions were brought in by way of amendments in 1999 and 2001 which are described as special road tax.

31. This Court in a number of cases dealing with similar provisions has upheld the same. It has withheld that tax charged for non-fulfilment of any obligation would also be compensatory and regulatory in nature. Distinction was carved out between a penalty imposed for breach of statutory duty and penalty imposed being a subject matter of a complaint that would require adjudication. The view expressed consistently is that it would be compensatory or regulatory where it is imposed for breach of a statutory duty.

32. In the case of the State of U.P and others vs. Sukhpal Singh Bal, (2005) 7 SCC 615, Justice Kapadia speaking for the Bench held that section 10(3) of U.P. Motor Vehicles Taxation Act, 1997, which provided for charging of such tax or additional tax along with penalty where transport vehicles were found plying in Uttar Pradesh without payment of tax or additional tax under the said Act to be valid as being regulatory and compensatory.

33. The High Court had struck down the said provision. This Court allowed the appeal of the State. After referring to the judgments in the case of Bhavesh D. Parish and R.K. Garg, this Court went on to hold that section 10(3) was enacted to protect public revenue and as a deterrent for tax evasion. Deterrence was the main theme and object behind the imposition of penalty under Section 10(3) as such would be regulatory in nature. Paragraphs 15 and 16 of the report in the case of Sukhpal Singh Bal (supra) are reproduced below:

“15. In the light of the above judgments as applicable to the provisions of the said 1997 Act, we are of the view that the High Court had erred in striking down section 10(3) as ultra vires articles 14 and

19(1)(g) of the Constitution. "Penalty" is a slippery word and it has to be understood in the context in which it is used in a given statute. A penalty may be the subject- matter of a breach of statutory duty or it may be the subject-matter of a complaint. In ordinary parlance, the proceedings may cover penalties for avoidance of civil liabilities which do not constitute offences against the State. This distinction is responsible for any enactment intended to protect public revenue. Thus, all penalties do not flow from an offence as is commonly understood but all offences lead to a penalty. Whereas the former is a penalty which flows from a disregard of statutory provisions, the latter is entailed where there is mens rea and is made the subject-matter of adjudication. In our view, penalty under section 10(3) of the Act is compensatory. It is levied for breach of a statutory duty for non-payment of tax under the Act. Section 10(3) is enacted to protect public revenue. It is enacted as a deterrent for tax evasion. If the statutory dues of the State are paid, there is no question of imposition of heavy penalty. Everything which is incidental to the main purpose of a power is contained within the power itself. The power to impose penalty is for the purpose of vindicating the main power which is conferred by the statute in question. Deterrence is the main theme of object behind that imposition of penalty under section 10(3).

16. In the case of State of Tamil Nadu v. M Krishnappan & Another reported in (2005) 4 SCC 53, this Court has held that entry 57 of list II of the seventh schedule to the Constitution provides a field to the State legislature to impose tax in respect of every aspect of a vehicle. The State has to find funds for making new roads and for maintenance of existing roads. The Motor Vehicles Act is regulatory and compensatory in nature in the sense that it is imposed to meet the increasing costs of maintenance and upkeep and to that extent it is not plenary. In the said judgment, it has been held that imposition of higher burden of tax on vehicles based on intelligible reasoning and differentia will not make the impugned levy discriminatory, arbitrary or unreasonable so as to violate article 14 of the Constitution. ”

34. From the very object and reasons of the Amending Act 1999, it is apparent that the special road tax was introduced as a compensatory measure. The object and reasons as spelled out in the original bill at the cost of repetition is reproduced below:

> “Developed roads and bridges constitute arteries of a healthy economy. Himachal Pradesh being a hill State, the importance of roads, their construction and maintenance can hardly be over emphasised as a vital trading facility. Each year, the government has to incur considerable part of its budget on construction, maintenance and development of roads and bridges in the State. Since it is essential to finance these activities, it is considered necessary to levy road tax on transport vehicles used or kept for use on public roads in Himachal Pradesh.”

35. What is to be seen is whether the tax imposed will have identifiable object and a nexus between the subject and the object of the levy. The power has been given to the States to make its own legislations by imposing tax on motor vehicles as also the goods being transported in order to compensate itself for the services, benefits and facilities provided by it.

36. This Court in B.A. Jayaram and Ors. vs. Union of India (UOI) and Ors. (supra) laid down the proposition that to uphold a tax claim to be compensatory tax, there must be existence of a specific identifiable object behind the levy. It further laid down that the levy must have a nexus between the subject and the object of levying. In the said case the challenge was to a notification issued by the State of Karnataka dated 31 May, 1981 withdrawing the exemption granted under Section 63(7) of the 1939 Act. The said exemption was granted to promote tourist traffic on an inter-state basis. This Court, after considering the object behind the compensatory and regulatory levy, held that such tax fell outside Article 301 of the Constitution of India and withdrawal of the exemption granted would neither be discriminatory nor arbitrary and, accordingly, upheld the withdrawal. In this context, it would be useful to reproduce paragraphs 9 and 10:

> "9. By virtue of the power given to them by Entries 56 and 57 of List Il each one of the States has the right to make its own legislation to compensate it for the services, benefit and facilities provided by it for motor vehicles operating within the territory of the State.

Taxes resulting from such legislative activity are by their very nativity and nature, cast (sic caste) and character, regulatory and compensatory and, are therefore, not within the vista of Article 301. unless, as we said, the tax is a mere pretext designed to injure the freedom of inter-State trade, commerce and intercourse. The nexus between the levy and the service is so patent in the case of such taxes that we need say no more about it. The Karnataka Motor Vehicles Taxation Act and the Motor Vehicles Taxation Acts of other States are without doubt regulatory and compensatory legislations outside the range of Article 301 of the Constitution.

10. It is true that the object of enacting Section 63(7) by the Parliament was to promote all-India and inter- State tourist traffic.

But taxes on vehicles... suitable for use on roads is a State legislative subject and it is for the State Legislature to impose a levy and to exempt from the levy. True again, Entry 57 of the State List is subject to Entry 35 of the Concurrent List and, as explained by us at the outset, it is therefore open to the Parliament to lay down the principles on which taxes may be levied on mechanically propelled vehicles. But the Parliament while enacting Section 63(7) of the Motor Vehicles Act refrained from indicating any such principles, either expressly or by necessary implication. The State's power to tax and to exempt was left uninhibited. It may be that a State legislation, plenary or subordinate, which exempts "non-home- State tourist vehicles" from tax would be advancing the object of Section 63(7) of the Motor Vehicles Act and accelerating inter-State trade, commerce and intercourse. But merely by Parliament legislating Section 63(7), the State Legislatures are not obliged to fall in line and to so arrange their tax laws as to advance the object of Section 63(7), be it ever so desirable. The State is obliged neither to grant an exemption nor to perpetuate an exemption once granted. There is no question of impairing the freedom under Article 301 by refusing to exempt or by withdrawing an exemption. Not to pat on the back is not to stab in the back. True, straw by straw, the burden of taxation on tourist vehicles increases as each State adds its bit of straw, but, then, each State is concerned with its coffers and has the right to tax vehicles using its roads; and, the contribution which a tourist carriage is required to make to its treasury is no more than what other contract

carriages are required to make. We are firmly of the view that there is no impairment of the freedom under Article 301. The special submission on behalf of the 'Karnataka Operators' that the withdrawal by the Karnataka Government of the exemption granted to 'outsiders has resulted in the 'Karnataka Operators' having to pay tax in every State in the country and, therefore, the withdrawal has impaired the freedom under Article 301 is but the same general submission, seen through glasses of a different tint. It does not even have the merit that the withdrawal of the Karnataka exemption affects them directly. The submission is rejected."

37. Similarly, in the case of Bolani Ores Ltd. vs. State of Orissa (supra), a question arose with regard to the taxes imposed under Entry 57 of List II being in the nature of regulatory and compensatory measures. The appellants in the said case were companies engaged in mining operations and were seeking a declaration that rockers, dumpers and tractors were not taxable under the Bihar and Orissa Motor Vehicles Taxation Act 1930 as they were not motor vehicles defined under the Act. The contention of the appellants was that the tractors, dumpers and rockers were not using any roads but were only plied within the premises of the mining area which was privately owned by the companies, and would not be liable to any tax so long as they are within the premises. However, if they use the roads, then the tax component will be applicable. In para 29 of the report, this Court again explained the nature of the State Legislation relating to taxation on motor vehicles as being regulatory measure and compensatory in nature to raise revenue. Relevant extract is reproduced hereunder:

> "The Taxation Act is a regulatory measure imposing compensatory taxes for the purpose of raising revenue to meet the expenditure for making roads, maintaining them and for facilitating the movement and regulation of traffic. The validity of the taxing power under Entry 57 List I of the Seventh Schedule read with Article 301 of the Constitution depends upon the regulatory and compensatory nature of the taxes. It is not the purpose of the Taxation Act to levy taxes on vehicles which do not use the roads or in any way form part of flow of traffic on the roads which is required to be regulated. The regulations under the Motor Vehicles Act for registration and prohibition of certain categories of vehicles being driven by persons who have no driving licence, even though those vehicles are not plying on the roads, are designed to ensure the safety of passengers and goods etc. etc. and for that purpose it is enacted to keep control and check on the vehicles. Legislative power under Entry 35 of List III (Concurrent List) does not bar such a provision. But Entry 57 of List Il is subject to the limitations referred to above, namely, that the power of taxation thereunder cannot exceed the compensatory nature which must have some nexus with the vehicles using the roads viz. public roads."

38. The argument by Mr.Bhatnagar, learned amicus that the offending provision contained in Section 3A(3) being repugnant to the central legislation, will have to give way and cannot be sustained. His submission is that the power to impose penalty is given in Section 192 A of the 1988 Act. According to him, Entry 57 of List II being subject to the provisions of Entry 35 of List III under which the 1988 Act has been enacted, Section 192A provides for penalty being imposed on vehicles being used without permit or in contravention of the provisions of sub-section (1) of Section 66

(providing for necessity for permits). According to him once the central Act contains a penal provision for such a violation of imprisonment as also fine, the State could not have imposed a tax for the same violation. This submission of Shri Bhatnagar can be sustained only if any repugnancy or any conflict can be established between the State law and the Central law. The provisions under Section 192A are in no way violated or conflicted by imposing an additional special tax for violation of use of vehicles without permit. It can be said to be in addition to the penalty provided in Section 192A of the 1988 Act. This Court, in the case of Sukhpal Singh Bal (supra) has already upheld that such imposition of tax for violation of statutory provisions, is to be treated as a regulatory measure and only to work as a deterrent of the vehicle owners' violating the law. Such a tax would be regulatory in nature and would only check violations of the statutory provisions. In the case of Sharma Transport Rep. by D.P. Sharma vs. Government of Andhra Pradesh and Ors. (supra), a similar issue was considered and this Court was of the view that under Entry 35 of List III the permission is to lay down the principles on which the tax may be levied whereas the State had a right to levy such tax. Paras 8 and 11 of the said report dealing with the aforesaid aspect are reproduced hereunder:

> "8. This is not a case where the theory of occupied field can be made applicable. The Taxation Act essentially deals with fares charged from passengers and freight collected from them. On the contrary, the Act deals with levy on vehicles. They are conceptually different. Whatever has been stated above in the background of Article 73 is equally applicable to Articles 256 and 257 of the Constitution. Article 256 provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

This article has application only when any law has been made by Parliament and the executive power of the State is made subservient to it by requiring it to ensure compliance with such laws.

Where it appears to the Government of India that it is so necessary to do, directions can be issued. Article 257 provides that the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union. Where the Government of India feels it so necessary to do so, it can issue a direction. At the cost of repetition it may be noted that there is no law specifying the principles of taxation on the subject-matter of controversy so as to bring in application of either Article 256 or Article 257 of the Constitution.

11. Power to levy taxes on vehicles, whether mechanically propelled or not vests solely in the State Legislature, though it may be open to Parliament to lay down the principles on which the taxes may be levied on mechanically propelled vehicles in the background of Entry 35 of List III. To put it differently, Parliament may lay down the guidelines for the levy of taxes on such vehicles, but the right to levy such taxes vests solely in the State Legislature. No principles admittedly have been formulated by Parliament. In that sense, the Government of India's communication dated 30-8-1993 does not in any sense violate the power of the State Legislature or its delegate to levy or

exempt taxes from time to time."

39. Mr. Mukerji, learned counsel for the appellants, has referred to a number of judgments of this Court relating to levy of tax being compensatory and regulatory in nature. The same are not being discussed in detail to unnecessary burden the judgment. However, a reference has already been made to the said judgments quoted earlier.

40. In the above backdrop of the legal position, the validity of Section 3A(3) of the 1972 Act introduced vide Amending Act of 1999 is being discussed hereunder.

41. Section 3 of the 1972 Act provided for levy of taxes on all motor vehicles kept or used in the State of Himachal Pradesh as per the schedules appended to the said Act. Insertion of Section 3A provided for levy of special road tax. The special road tax as provided under sub-sections (1), (2) and (4) of Section 3A have been upheld by the High Court. It is only the levy of special road tax under sub- section (3) which has been struck down. Testing the provisions of the offending section with regard to the settled principles of interpretation of taxing statutes, it is to be ascertained on the following three aspects: (1) Whether it is manifestly unjust or glaringly unconstitutional;

(2) Whether it is regulatory or compensatory in nature; and (3) Whether there is any repugnancy with the provisions in the Central enactment.

Manifestly unjust or glaringly unconstitutional:

42. The Legislatures of the State have not only the power to make laws on the taxation to be imposed on motor vehicles as also the passengers and goods being transported by motor vehicles but also the power to lay down principles on which taxes on vehicles are to be levied. In the absence of any principles having been laid down by the Parliament, no fault could be found in the law enacted by Legislature of the State of Himachal Pradesh. The offending provision is regulatory in nature and therefore within the competence of the Legislature of State of Himachal Pradesh. There is nothing on record to indict the offending provision as being manifestly unjust or glaringly unconstitutional.

Regulatory or Compensatory:

43. The objects and reasons for bringing in the 1999 Amendment was clearly compensatory in nature. The object was to augment funds and finance for construction, maintenance, repair and upkeep of the roads in the State of Himachal Pradesh which has a totally hilly terrain. The offending section only provided that if any vehicle used without a valid permit or in any manner not authorised by the permit, further special road tax would be levied, charged and paid to the state government in addition to the tax payable under sub-section (1) at such rates as may be specified by the state government by notification. However, the restriction was that the same would not exceed the rates specified in column 3 of Schedule 3 of the Act.

44. Imposition of such additional special road tax was only to keep a check or a discipline on the transport vehicle operators to use their vehicles in accordance with the statutory provisions. This

could work as a deterrent for the transport operators to not commit any breach and to follow the mandate of the law. Such additional special road tax could be termed as regulatory in nature so as to regulate other statutory provisions being implemented and strictly followed.

45. This Court in the case of Sukhpal Singh Bal (supra) relating to challenge to Section 10(3) of the U.P. Motor Vehicles Taxation Act, 1997 where a similar provision was incorporated and even though termed as penalty, was held to be regulatory and compensatory in nature. The High Court had struck down the said provision but this Court held that such penalty imposed under Section 10(3) to protect public revenue and as a deterrent for tax evasion. In view of the above, it cannot be said that levy of such an additional special road tax would be said to be manifestly unjust or glaringly unconstitutional. It was, in effect, to ensure payment of the chargeable taxes and use of the vehicles as per the terms of the permit.

Repugnancy, if any, with Central enactment:

46. Entry 35 of List II conferred the power on the Parliament as also the State Legislatures to make laws relating to mechanically propelled vehicles of all kinds and also to lay down the principles on which taxes on such vehicles are to be levied. The central enactment i.e. the law made by the Parliament has not laid down any principles for levy of taxes. The State Legislatures had the power to levy taxes not only under Entries 56 and 57 of List II but also to lay down the principles under Entry 35 of List III. Therefore, no repugnancy of any kind could be alleged or pleaded or proved in the absence of there being any central law laying down principles of levy of tax. In view of the above, no repugnancy or conflict of the State enactment with the central enactment could be sustained.

47. The next argument of the learned amicus with respect to the 1988 Act containing Section 192A wherein violation of Section 66(1) would constitute a criminal offence punishable with sentence and also fine, as such the offending section being repugnant to the said provision, cannot be sustained. Under Section 192A a punishment of imprisonment along with fine is provided whereas under the offending section, an additional special road tax is being charged for such a violation of using vehicle without permit or in contravention of the terms of the permit. The offending section was incorporated with a view to augment more revenue in order to construct and maintain the roads of the state which uses a large chunk of its finances being a state having a completely hilly terrain. The additional special road tax chargeable under Section 3A(3) would be in addition to any sentence or fine imposed under Section 192A. Punishment for offence is with an object to create deterrence and curtailing such offences as it creates a fear in the mind of offender likely to commit the offence. The same is the object of the additional special road tax to make it work as a deterrent from the transport operators in plying vehicles without permit and in contravention of the terms of the permit. As such there is no repugnancy or any conflict caused by the offending provision with the central enactment.

48. For all the reasons recorded above, the validity of Section 3A(3), in our opinion, has been wrongly held to be ultra vires by the High Court. The tax imposed under Section 3A(3) is regulatory in character and is not a penalty.

Lumpsum taxation:

49. The High Court had also quashed the notifications issued by the State for levy of the taxes under Section 3A(3) holding that lumpsum taxes could not be levied on general assessment and it had to be levied as per actual default. Levy of lumpsum tax has been upheld by a three Judge Bench of this Court in the case of State of Tamil Nadu vs. M. Krishnappan and Anr. reported in (2005) 4 SCC 53. We find no reason to take a different view. It may also be noted that the learned Amicus Curiae has also not advanced any arguments on this point.

50. In view of the above, it would not be a futile exercise to send the matters back to the regular Bench as we have held that said Section 3A(3) of the 1972 Act being within the legislative competence of the State Legislature, and lumpsum tax could be levied. Nothing further remains to be examined by the regular Bench in these appeals.

51. We, accordingly, allow the appeals, set aside the impugned judgment and order of the High Court and further dismiss the writ petitions.

52. There shall be no order as to costs.

53. Pending application(s), if any, are disposed of.

.....J.

[SANJAY KISHAN KAUL] .....J.

[ABHAY S. OKA] .....J.

[VIKRAM NATH] NEW DELHI JANUARY 13, 2023.