# M/S Natwar Parikh & Co. Ltd vs State Of Karnataka & Others on 1 September, 2005

## Equivalent citations: AIR 2005 SUPREME COURT 3428, 2005 (7) SCC 364, 2005 AIR SCW 4361, 2005 AIR - KANT. H. C. R. 2748, 2005 (7) SCALE 91, (2005) 8 JT 39 (SC), 2005 (8) JT 39, 2005 (6) SLT 513, (2005) 2 CLR 628 (SC), (2005) 5 CTC 807 (SC), 2005 (8) SRJ 493, (2005) ILR (KANT) 5053, (2005) 4 RECCIVR 61, (2005) 3 ACC 749, (2005) 3 CURCC 213, (2006) 1 GUJ LR 1, (2005) 7 SCJ 196, (2005) 6 SUPREME 97, (2005) 7 SCALE 91, (2006) 1 CIVLJ 532, (2005) 6 KANT LJ 1, (2005) 3 PUN LR 775, (2006) 1 WLC(SC)CVL 382, (2006) 1 ACJ 1

## Bench: S.N. Variava, S.H. Kapadia, Tarun Chatterjee

CASE NO.:
Appeal (civil) 4631 of 2000

PETITIONER:
M/s Natwar Parikh & Co. Ltd.

RESPONDENT:
State of Karnataka & Others

DATE OF JUDGMENT: 01/09/2005

BENCH:
S.N. VARIAVA,S.H. KAPADIA & TARUN CHATTERJEE

JUDGMENT:

J U D G M E N T KAPADIA, J.

The short question which arises for determination in this civil appeal, by special leave, is whether the taxation authority under the Karnataka Motor Vehicles Taxation Act, 1957 was right in taxing the "tractor-trailer" as a separate and distinct vehicle, different from a tractor and denying exemption sought by the appellant under section 16 of the said 1957 Act on the ground that the tractor-trailer was a distinct category of "goods carriage" requiring permit under section 66 of the Motor Vehicles Act, 1988.

The brief facts which are relevant to be noticed as under:

> The appellant are transporters of heavy equipments using mechanized carriage depending upon the items to be transported. During the period 8.12.1989 to 31.3.1990, they were engaged by Central Power Research Institute of India (CPRI) to

transport for them six units of transformers from Madras Port to its site at Bangalore. The goods were to be lifted from Madras Port and transported to CPRI at Bangalore by vehicular transport mode through the States of Tamilnadu, Andhra Pradesh and Karnataka. In the matter of transportation of over-dimensional cargo, the appellant made use of a drawing vehicle, called by the appellant as a tractor to push/pull the trailers loaded with the abovementioned equipments.

Between 8.12.1989 and 11.1.1990, three units of the tractor-trailer carrying transformers entered the State of Karnataka via Tamilnadu and Andhra Pradesh.

On 18.1.1990, on account of the entry of three units of tractor-trailer, the taxation authority issued four demand notices calling upon the appellant to pay a sum of Rs.5.69 lacs as tax under section 3(2) read with item 10 of part B of the schedule to the said 1957 Act on the ground that the said three units were transport vehicles, which required permits under section 66 of the Motor Vehicles Act, 1988 and that the appellant was liable to pay the said tax on the weight(s) of the three units.

Being aggrieved by the confirmation of the demand dated 7.2.1990, the appellant moved the Deputy Commissioner of Transport, in appeal.

By his order dated 30.6.1990, the Deputy Commissioner of Transport held that although the tractor and the trailer were separate independent motor vehicles, separately registrable, the tractor-trailer as a unit was a different category of "goods carriage" requiring permit under section 66 of the Motor Vehicles Act, 1988, which was not obtained and, therefore, the appellant was not entitled to the benefit of exemption under section 16 of the Taxation Act, 1957.

Being aggrieved by the said order dated 30.6.1990, the appellant herein moved the Karnataka High Court by way of writ petition no.17851 of 1990. In the writ petition, the appellant pleaded that its tractors and trailers were registered in the State of Maharashtra as non-transport vehicles and transport vehicles respectively; that they had obtained national permits for their trailers under section 88(12) of the M.V. Act, 1988 which enabled them to ply trailers in the State of Karnataka; that tractors and trailers, though motor vehicles, were separately defined under section 2(44) and under section 2(46) of the M.V. Act, 1988; that under section 46 of the M.V. Act, a certificate of registration was issued in respect of such vehicles which was effective for the whole of the country (including State of Karnataka) and that if the contention of the department is upheld that the tractor-trailer is a distinct and separate vehicle, distinct from the tractor, it would undermine and violate section 46 of the M.V. Act; that the registration of a vehicle in one State shall be effective and in force throughout India.

By judgment and order dated 27.3.1998, the learned single judge held that the tractor by itself was not a "transport vehicle" but if it was used for carrying goods or passengers then it became a "goods carriage" as defined under section 2(14) and consequently, a transport vehicle under section 2(47) of the M.V. Act; that the trailer by itself was inert and had to be pulled by some motor vehicle; that if the tractor is used for carrying goods with the aid of a trailer, it will constitute a "goods carriage" under section 2(14) and consequently, a transport vehicle under section 2(47) of the M.V. Act liable

for permit under section 66 of that Act. In the circumstances, the learned single judge dismissed the writ petition.

Aggrieved by the decision of the learned single judge, the appellant carried the matter in appeal to the division bench of the Karnataka High Court by way of writ appeal no.2324 of 1998.

By impugned judgment dated 23.9.1999, the division bench of the High Court held that in the present case, the appellant had obtained national permit for the trailers but did not obtain permits for the tractor-trailer combination under section 66 of the M.V. Act; that, under section 66, permits were required to be obtained for such combinations as they came under the definition of "goods carriage" under section 2(14) and consequently, under definition of "transport vehicle" under section 2(46) of the M.V. Act; that any vehicle though not constructed or adapted to carry goods became a "goods carriage" when it was used for carrying the goods and, therefore, the tractor-trailer combination would attract section 66 of the M.V. Act, requiring the appellant to obtain permits for their combination(s) and since the appellant failed to obtain such permits, the appellant became liable to pay tax under section 3 of the Taxation Act, 1957, notwithstanding registration of tractors and trailers, as separate units, in the State of Maharashtra. For the above reasons, the High Court dismissed the writ appeal filed by the appellant. Hence, this civil appeal.

Mr. Chitale, learned counsel for the appellant submitted that the tractors of the appellant are registered in Maharashtra as "non-transport vehicle" whereas the trailers are registered in Maharashtra as "transport-vehicles"; that the trailers have been given national permits under section 88(12) of the M.V. Act, which enables them to ply as "transport vehicles" in the State of Karnataka; that the word "tractor" is defined in section 2(44) of the said 1988 Act, whereas the word "trailer" is defined in section 2(46) of the said 1988 Act; that a certificate of registration issued under section 46 of the 1988 Act was effective throughout India and if the contention of the taxation authority in the present case is upheld, it shall undermine the guarantee given under section 46 of the said 1988 Act to the effect that registration of a vehicle in one State shall be effective and in force throughout India. Learned counsel submitted that in a zonal meeting of transport commissioners of Maharashtra and Karnataka had agreed to treat the tractor as a non-transport vehicle and, therefore, it was not open to the taxation authority to say that the tractor-trailer was a transport vehicle. Learned counsel submitted that a tractor is used to pull a trailer or several trailers together on one occasion and it can also be used to pull another set on combination of trailers on other occasion and, therefore, the tractor-trailer combination is not a fixed or a permanent combination. Learned counsel submitted that the tractors are of towing type and they differ from "articulative vehicles" inasmuch the trailers are attached by tow bars and are not superimposed on the tractor and accordingly no part of the load of the trailers is carried by the tractor. It was further submitted on behalf of the appellant that the tax authorities have sought to tax the tractor-trailer combination under item 10 of part-B of the schedule to the Taxation Act, 1957. According to the learned counsel, item 10 imposes a tax on motor vehicles used for haulage and does not tax a tractor-trailer combination; that item 10 of Part B does not tax a combination of tractor-trailer per se but only taxes a tractor alone which is in the non-transport category and that if a tractor was a transport vehicle, it would be taxable under item 3 of Part B of the schedule to the Taxation Act. Learned counsel further submitted that section 3 of the Taxation Act is the charging section which levies tax

on all motor vehicles suitable for use on the road; that in the present case, since the motor vehicle was used for a period not exceeding 30 days, the tax became leviable under section 3(2), but for the exemption granted to non-transport vehicle and the reciprocal agreement not to tax transport vehicles. In this connection, learned counsel has placed reliance on the notification issued by the State of Karnataka on 12.10.1959 under section 16 of the 1957 Act. Learned counsel submitted that the tractors are registered in the State of Maharahstra as non-transport vehicles because they cannot carry goods on it and because its purpose is only to draw and haul another goods carriage such as a "trailer". On the other hand, according to the learned counsel, the trailers are registered in the State of Maharashtra as transport vehicles because they carry goods on it; that tractors and trailers are separately registered as motor vehicles; that once the State of Maharashtra has recognized tractors as coming under non- transport category vide registration certificates issued by it, it was not open to the tax authorities in the State of Karnataka to go behind the registration certificates issued by the State of Maharashtra which conclusively established that tractors were non-transport vehicles entitled to exemption under the above notification dated 12.10.1959; that the effect of treating the tractor as transport vehicle while interpreting exemption notification amounts to reopening of the registration made under the said 1988 Act, which was not permissible in law and that the taxation authority under the Taxation Act cannot usurp the authority vested in the registering authority under section 41 of the M.V. Act, 1988. Learned counsel submitted that it was not open to the taxation authority to create a new category of motor vehicles requiring registration which function is that of the registering authority under the M.V. Act, 1988; that once the taxation authority was satisfied that the tractor was registered in the State of Maharashtra in the non-transport category then the same ought to have been accepted by the taxation authority under section 16 of the 1957 Act.

Learned counsel next urged that the tractors are of two types. The first type of tractor is designed and constructed by the manufacturer for exclusive use of towing, pulling or hauling. These are classifieds as non-transport vehicles by the Central Government vide notification dated 19.6.1992. These types of tractors are not required to take permits under section 66 of the 1988 Act as they are not transport vehicles. The second type of tractors are called prime movers. They are designed and constructed to carry part of the load of the trailer. They are articulative vehicles. They require permit and fitness certificates applicable to transport vehicles. Learned counsel submits that if the argument of the department in the present case is accepted, the distinction between "articulative vehicle"

> and a "tractor" of the first type which is designed only to pull/haul would be obliterated. Learned counsel further submitted that the Central Government has issued notification dated 19.6.1992 under section 41(4) of the 1988 Act by which it has classified motor vehicles into transport and non-transport vehicles; and that under the said notification, trailers have been classified as transport vehicles whereas tractors have been classifieds as non-transport vehicles. Learned counsel submitted that the said notification is binding on the taxation authority and, therefore, the taxation authority was not entitled to embark upon the classification of motor vehicles in the process of interpreting exemption notification under the Taxation Act. The learned counsel, therefore, submitted that the taxation authority under the

Taxation Act was not entitled to create a new category of vehicle and insist on compliance of section 66 of the M.V. Act while denying exemption to the appellant.

At the outset, we may point out that we are concerned with the period 1989-90 in this matter.

To appreciate the above arguments, we have to consider the Schemes of the Taxation Act, 1957 and the M.V. Act, 1988.

The Taxation Act has been enacted to consolidate and amend the law relating to the levy of tax on motor vehicles in the State of Karnataka. Under section 2(b) "taxation authority"

is defined to mean such officer as may be pointed out by the State Government to exercise the powers and functions of the Taxation Authority under the Act. Under section 2(j), it is provided that the words and expressions used but not defined in the Taxation Act shall have the meaning assigned to them in the M.V. Act, 1988. Section 3 is in Chapter II, which deals with levy of tax. It is a charging section. It states that a tax shall be levied at the rates specified in part A of the schedule to the Act. It is a levy on all motor vehicles suitable for use on roads. Under the second proviso, it is laid down that Tractors and Trailers owned by the agriculturists or exclusively used for agricultural operations shall be liable to pay tax at the rates specified in part A2 of the schedule. Section 3(2) begins with a non-obstante clause. It states that notwithstanding anything contained in section 3(1), taxes at the rates specified in part B of the schedule shall be levied on motor vehicles suitable for use on roads, which are in the State for periods shorter than a quarter, but not exceeding thirty days. In section 3(3), it is inter alia laid down that in the case of motor vehicles in respect of which reciprocal agreement relating to taxation is entered into between the Government of Karnataka and any other State Government, the levy of tax shall, notwithstanding anything contained in the Act, be in accordance with the terms and conditions of such reciprocal agreement. Section 4 deals with payments of tax. It inter alia provides that the tax levied under section 3 shall be paid in advance by the registered owner or person having possession or control of the motor vehicle, for a quarter, half-year or full year at his choice. It shall be paid in advance within fifteen days from the commencement of such quarter, half-year or year as the case may be. Under section 6, every registered owner of a motor vehicle liable to tax under the Act is required to sign a declaration in the prescribed form, giving the prescribed particulars to the taxation authority and shall pay to such authority the tax in respect of such vehicle. Under section 6(2), when a motor vehicle liable to tax under the Act is altered, the registered owner or person in possession of such vehicle shall be liable to pay additional tax under section

8. The owner is also required to fill up and sign addition declaration in the prescribed form showing the nature of alteration made and containing the prescribed particulars. Section 7 deals with refund of tax. Section 8 deals with payment of additional tax.

On examination of the provisions of the Taxation Act, we find that the principle underlying therein is, that, it is the use of the motor vehicle on the given occasion which determines the category of the

motor vehicle, whether it is adapted for that purpose or not.

Under section 3, levy of tax is on all motor vehicles suitable for use on the roads. Therefore, under the proviso, tractors and trailers used in the farms are excluded as they are not used on the roads. The expression "suitable for use on roads" finds place in section 3(1) as well as in entry 57 list II of the seventh schedule to the Constitution. Therefore, tramways, railways and farm machinery though mechanically propelled are excluded as they are not suitable for use on roads. Moreover, section 3 of the Taxation Act and its explanation have to be construed on their own force. The combined effect of sections 3, 4, 6, 7 and 8 of the Taxation Act is that the State is empowered to levy tax on all motor vehicles which are designed and manufactured for use on the roads.

In the case of State of Mysore v. Syed Ibrahim reported in AIR 1967 SC 1424, the owner of a motor vehicle carried eight passengers in his car and collected Rs.5/- from each of them. He was charge-sheeted under section 42(1) of the M.V. Act, 1939 (section 66 of the MV Act, 1988) for having used the car as a "transport vehicle" without the permit required under section 42(1). The State contended before this Court that though the motor vehicle was registered as a motor-car, if it was used for a purpose mentioned in section 42(1), namely, carrying passengers for hire, the motor vehicle on that occasion must be said to have been used as a transport vehicle and if so used without a permit, there would be a breach of section 42(1). [Underlining supplied by us]. Accepting this contention, this Court held that the levy of tax under section 3 on motor vehicles depended upon the use of the vehicle to which the vehicle was put; that the tax was leviable on the basis of the actual or intended use; that it is the use of the motor vehicle on the given occasion, which decided the category of the motor vehicle, whether it is adapted for that purpose or not. Therefore, even if a motor vehicle was occasionally used as "goods carriage", it must be regarded when so used as a "goods carriage" and, therefore, a "transport vehicle" and if it was so used in breach of section 42(1), the owner or the person who uses it would be liable to punished under section 42(1) of the M.V. Act, 1939, which, as stated above, requires every owner of a motor vehicle to obtain a permit.

In the case of State of Karnataka v. K. Gopalakrishna Shenoy & Anr. reported in AIR 1987 SC 1911, this Court held that section 3(1) of the Taxation Act confers a right upon the State to levy a tax on all motor vehicles which are designed for use on the roads, at the rates prescribed, without reference to the road worthy conditions of the vehicle or otherwise. In the said judgment, it has been further held that the explanation to section 3(1) contains a deeming provision and its effect is that so long as the certificate of registration of a motor vehicle is current, it must be deemed to be a vehicle suitable for use on the roads, which expression finds place in entry 57 of list II of the seventh schedule to the Constitution. It has been further held that the consequence of the said explanation to section 3(1) is that the owner is obliged to pay the tax in advance as long as the certificate of registration is current, irrespective of the condition of the vehicle for use on the roads and irrespective of the fact whether the vehicle has a certificate of fitness under the Motor Vehicles Act. In the said judgment, it has been laid down that section 3(1) of the Taxation Act and its explanation have to be construed on their own force and not with reference to section 38 of the M.V. Act, 1939 (section 56 of the MV Act, 1988) which dealt with certificate of fitness read with section 22 of the M.V. Act, 1939 (section 39 of the MV Act, 1988) which dealt with the certificate of registration. Therefore, one has to read sections 3 and 4 of the Taxation Act on their own force and not with reference to the provisions of the M.V. Act

dealing with registration of motor vehicles and issuance of fitness certificate.

On reading the aforestated judgment, it is clear that the categorization of motor vehicle for taxation under the 1957 Act will depend upon the use of the motor vehicle on the given occasion, whether it is adapted for that purpose or not. Therefore, in our view, the categorization of tractor-trailer by the taxation authority has been rightly made based on the use of the motor vehicle on the given occasion and, therefore, there is no merit in the argument advanced on behalf of the appellant that the taxation authority cannot go behind the certificate of registration issued by the authorities in the State of Maharashtra. In this connection, we may further point out that a tractor-trailer consists of a tractor which contains a cab or a driver's seat and a compartment with a sleeping berth, the engine and the hood carried on two axles or four axles, as the case may be. The trailer is a separate box car attached to the tractor by what is called as the fifth wheel. This meaning is given in the technical dictionary. The point to be noted here is that the Motor Vehicles Act, 1988 replaced the 1939 Act in order to rationalize certain definitions with the additions of new definitions of new types of vehicles. Under section 61 of the 1988 Act, which comes within Chapter IV dealing with registration of motor vehicles, registration of trailers is made compulsory. Under section 61(2), the registration mark assigned to a trailer is required to be displaced on the side of the drawing vehicle. In the present case, we are not concerned with tractors in the conventional sense. Even the legislature has used the word "drawing vehicle" in place of tractors. Under section 61(3), it is provided that no person shall drive a motor vehicle to which a trailer is attached unless the registration mark of the motor vehicle is displayed on the trailer. Similarly, under section 66 in Chapter V which refers to control of transport vehicles, no owner of a motor vehicle can use the vehicle as a transport vehicle carrying passengers or goods without a permit. Under section 66(2), the holder of a goods carriage permit may use the vehicle for drawing any trailer. Therefore, under the M.V. Act, 1988, the Parliament has kept in mind the existence of a vehicle classifiable as "tractor-trailer".

Lastly, it can be pointed out that the M.V. Act, 1988 is an Act to consolidate and amend the law relating to the motor vehicles. It deals with various topics like registration of motor vehicles, licensing of drivers of motor vehicles, control of transport vehicles etc. However, the taxation is not the subject matter of the M.V. Act, 1988. Taxation is governed by the Taxation Act, which falls under entry 57 list II of the seventh schedule to the Constitution. Taxation is governed by a separate Code which in the present case happens to be the Karnataka Motor Vehicles Taxation Act, 1957 and as held by this Court in the case of K. Gopalakrishna Shenoy (supra), the provisions of sections 3 and 4 of the Taxation Act have to be construed on their own force and not with reference to the provisions of registration or fitness certificate under the M.V. Act, 1988.

The question still remains as to whether the taxation authority was right in categorizing tractor-trailer as a separate assessable entity and whether that authority was right in calling upon the appellant to obtain permit under section 66 of the M.V. Act, 1988.

In order to answer this issue, we have to examine briefly section 2, which is the definition section in the M.V. Act, 1988. In that connection, we reproduce herein below the following:

> 2. Definitions.- In this Act, unless the context otherwise requires, (14) "goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;

(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres;

(44) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;

(46) "trailer" means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle;

(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle."

Section 2(28) is a comprehensive definition of the words "motor vehicle". Although, a "trailer" is separately defined under section 2(46) to mean any vehicle drawn or intended to be drawn by motor vehicle, it is still included into the definition of the words "motor vehicle" under section 2(28). Similarly, the word "tractor" is defined in section 2(44) to mean a motor vehicle which is not itself constructed to carry any load. Therefore, the words "motor vehicle" have been defined in the comprehensive sense by the legislature. Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles etc. A combined reading of the aforestated definitions under section 2, reproduced hereinabove, shows that the definition of "motor vehicle" includes any mechanically propelled vehicle apt for use upon roads irrespective of the source of power and it includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor- trailer would constitute a "goods carriage" under section 2(14) and consequently, a "transport vehicle" under section 2(47). The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to another. When a vehicle is so altered or prepared that it becomes apt for use for transporting goods, it can be stated that it is adapted for the carriage of goods. Applying the above test, we are of the view that the tractor-trailer in the present case falls under section 2(14) as a "goods carriage" and consequently, it falls under the definition of "transport vehicle"

> under section 2(47) of the M.V. Act, 1988.
>
> In the present matter, we were concerned with taxing of tractor-trailer unit and not with the question as to whether such a vehicle would fall under item 3 or 10 of part B

of the schedule to the Taxation Act. Hence, we are not required to go into that question.

Accordingly, we find no infirmity in the impugned judgment and consequently, we dismiss this civil appeal with no order as to costs.