

## LETTER PATENT APPEAL

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

BASANT SINGH,—*Petitioner.*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 33 of 1964.

1964

November, 10th 1964 .. *Punjab Passengers and Goods Taxation Act (XVI of 1952) — S. 3 — Vehicles transporting goods from Rajasthan to Delhi and passing through Punjab territory — Whether liable to pay tax to Punjab Government for the distance lying in Punjab State.*

*Held*, that sub-section (3) of section 3 of the Punjab Passengers and Goods Taxation Act, 1952, does not cover the case in which the start of the journey is in one State, the termination in another and part of the journey lies over a road in the Punjab State. As the sub-section stands, the words 'from any place outside the State to any place within the State or from any place within the State to any place outside the State' clearly refer to the starting point and termination of journeys.

*Letters Patent Appeal under clause 10 of the Letters Patent from the order and judgment of the Hon'ble Mr. Justice D. K. Mahajan, in Civil Writ No. 1017 of 1963, decided on 10th January, 1964 — Basant Singh versus State of Punjab and others.*

J. S. WASU, ADVOCATE, for the Appellant.

K. S. NEHRA, ADVOCATE, for the ADVOCATE-GENERAL, for the Respondents.

## JUDGMENT

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FALSHAW, C.J.—This judgment will deal with an appeal filed under clause 10 of the Letters Patent by Basant Singh against the order of a Single Judge dismissing his petition filed under Article 226 of the Constitution and also a petition filed under Article 226 of the Constitution by Mohinder Singh which has been put up with the Letters Patent Appeal because the same point is involved.

Both the appellant and the petitioner are owners of motor trucks, Basant Singh being a resident of Ganga

Nagar in Bikaner part of Rajasthan while Mohinder Singh is a resident of Jaipur. It is not disputed that both of them use their trucks for the carriage of goods from places in the State of Rajasthan to Delhi, and for the purpose of travelling between Rajasthan and Delhi it is necessary to pass for some distance through the territory of the State of Punjab. Basant Singh has a permit from the Bikaner Region Authority Rajasthan State, and countersigned by the Jullundur and Ambala Regional Authorities of Punjab State and of Delhi State. Mohinder Singh's permit is granted by the Regional Authority, Jaipur, and countersigned by the Regional Transport Authority, Ambala, and the Delhi Authority. Both of them have challenged the right of the Punjab State authorities to levy tax on the goods carried by them from Rajasthan to Delhi under the provisions of the Punjab Passengers and Goods Taxation Act of 1952. The levying of the tax is authorised by section 3 of the Act, sub-section (1), of which starts with the words, "There shall be levied, charged and paid to the State Government a tax on all fare and freights in respect of all passengers carried and goods transported by motor vehicles at the rate of one-fourth of the value of the fare of freight." The relevant sub-section is (3), which reads—

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"Where passengers are carried or goods transported by a motor vehicle from any place outside the State to any place within the State, or from any place within the State to any place outside the State, the tax shall be payable in respect of the distance covered within the State at the rate laid down in sub-section (1) and shall be calculated on such amount as bears the same proportion to the total fare or freight as the distance covered in the State bears to the total distance of the journey

Provided that where passengers are carried or goods transported by a motor vehicle from any place within the State to any other place within the State through the intervening territory of another State, the tax shall be levied on the full amount of the fare or freight payable for the entire journey and the owner shall issue a single ticket or receipt, as the case may be, accordingly."

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The contention raised on behalf of both the petitioners is that when they transport goods from Rajasthan to Delhi, or from Delhi to Rajasthan, they are neither transporting goods from a place in the Punjab to a place outside nor transporting goods from a place outside the Punjab to a place within the Punjab although their journey happens to involve passing through the territory of this State, and, therefore, they are not liable to tax in respect of that portion of the journey under sub-section (3).

In the case of the appellant this contention has been rejected by the learned Single Judge, who has held that on the plain reading of the provisions of sub-section (3) these truck proprietors are both carrying goods from outside into a place in the Punjab and from a place in the Punjab to a place outside and so they are liable to tax. He rejected any attempt to draw support for the petitioner's argument from the terms of the proviso, which undoubtedly deals with the converse of the cases of the present petitioners by providing that where the start of the journey is in this State and the termination of the journey is in this State, the whole journey shall be deemed to have been made in the State even if in the course of its journey the truck may have passed through the territory of another State.

It seems to me that if the drafters of the Statute were aware of the existence of the converse case, as they evidently were, they were also aware of cases such as those of the petitioners in which the start of the journey is in one State, the termination in another and part of the journey lies over a road in this State, and it seems to me astonishing that they did not make provision for such a case. It is no doubt tempting to accept the argument that sub-section (3) as it stands covers such cases, but the plain fact is that it does not. As the sub-section stands, the words 'from any place outside the State to any place within the State or from any place within the State to any place outside the State' clearly refer to the starting point and termination of journeys. If the sub-section was intended to cover the cases of goods transported from one State to another State with an intervening passage over Punjab roads, there appears to me to be a clear case of an omission to express this intention and since tax can only be levied when duly authorised by law, and taxing statutes have to be

strictly construed, an omission to cover a particular case amounts virtually to an exemption. It will, therefore, be necessary, if this in fact is the intention of the Legislature, to amend the Act accordingly, which can easily be done either by making a specific provision for proportionate tax to be imposed in such cases, or else by inserting some provision by which a vehicle passing through the Punjab on its way from one State to another State will be deemed to be carrying goods or passengers from a place inside the State to a place outside the State. As sub-section (3) stands at present, I am of the opinion that cases like those of the petitioner and the appellant are not covered by it and I would accordingly accept the appeal of Basant Singh and the writ petition of Mohinder Singh and quash the assessment and recovery proceedings as unwarranted by law. The parties may be left to bear their own costs in both cases.

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H. R. KHANNA, J.—I agree.

B.R.T.