

**HIGH COURT OF CHHATTISGARH, BILASPUR**

Order reserved on: 23.3.2018

Order delivered on: 20.4.2018

**WPT No.69 of 2017**

Yashwant Kumar Jain S/o Late Daulat Rai Jain, aged about 65 years, Proprietor of M/s Jain Constructions, R/o C-142 Sector-1 Tagore Nagar, Raipur, District Raipur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary Department of Road Transport, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (CG)
2. Regional Transport Officer (RTO), Regional Transport Office, Jagdalpur, District Bastar (CG)
3. Transport Commissioner, C-Block 3<sup>rd</sup> Floor, Indirawati Bhawan, New Raipur, District Raipur (CG)

---- Respondents

**WPT No.282 of 2017**

Pradeep Kumar Chandel S/o Shri Sadhe Lal Chandel, aged about 32 years, R/o Kaling Nagar, F.C.I. Godawn, Ram Nagar, Ward No.19 Raipur, District Raipur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary Department of Road Transport, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (CG)
2. Regional Transport Officer (RTO), Regional Transport Office, Raipur, District Raipur (CG)
3. Transport Commissioner, C-Block 3<sup>rd</sup> Floor, Indirawati Bhawan, New Raipur, District Raipur (CG)

---- Respondents

**WPT No.334 of 2017**

Rajesh Kumar Sahu S/o Shri Parshuram Sahu, aged about 34 years, R/o Village Kuhera, Behind Mantralaya, Naya Raipur, District Raipur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary Department of Road Transport, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (CG)
2. Regional Transport Officer (RTO), Regional Transport Office, Raipur, District Raipur (CG)
3. Transport Commissioner, C-Block 3<sup>rd</sup> Floor, Indirawati Bhawan, New Raipur, District Raipur (CG)

---- Respondents

**WPT No.337 of 2017**

Gopal Yadav S/o Late Firanta Yadav, aged about 42 years, R/o Kotra Bhanta, Sector-17, Naya Raipur, District Raipur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary Department of Road Transport, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (CG)
2. Regional Transport Officer (RTO), Regional Transport Office, Raipur, District Raipur (CG)
3. Transport Commissioner, C-Block 3<sup>rd</sup> Floor, Indirawati Bhawan, New Raipur, District Raipur (CG)

---- Respondents

**WPT No.343 of 2017**

Ashish Agrawal, S/o. Shri Vishnu Prasad Agrawal, aged about 38 years, R/o-Dena Bank, Kharora, Post & Thana-Kharora, Distt-Raipur (CG)

---- Petitioner

Versus

1. State Govt. of Chhattisgarh through the Secretary Department of Road and Transport, Mahanadi Bhawan, New Raipur (CG)
2. Regional Transport Authority, Regional Office, Raipur, District Raipur (CG)

---- Respondents

**WPT No.347 of 2017**

Vishnu Prasad Agrawal, S/o. Shri Har Sai Agrawal, aged about 56 years, R/o-Dena Bank, Kharora, Post & Thana-Kharora, Distt-Raipur (CG)

---- Petitioner

Versus

1. State Govt. of Chhattisgarh through the Secretary Department of Road and Transport, Mahanadi Bhawan, New Raipur (CG)
2. Regional Transport Authority, Regional Office, Raipur, District Raipur (CG)

---- Respondents

**WPT No.349 of 2017**

Kishan Lal Agrawal, S/o. Shri Har Sai Agrawal, aged about 58 years, R/o-Dena Bank, Kharora, Post & Thana-Kharora, Distt-Raipur (CG)

---- Petitioner

Versus

1. State Govt. of Chhattisgarh through the Secretary Department of Road and Transport, Mahanadi Bhawan, New Raipur (CG)
2. Regional Transport Authority, Regional Office, Raipur, District

Raipur (CG)

---- Respondents

**WPT No.314 of 2017**

Toshan Lal Chandrakar S/o Shri Tejram Chandrakar, aged about 55 years, Proprietor of M/s Sonal Construction, R/o D-451/A-1, Sector-1, Vallabh Nagar, Raipur, District Raipur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary Department of Road Transport, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (CG)
2. Regional Transport Officer (RTO), Regional Transport Office, Raipur, District Raipur (CG)
3. Transport Commissioner, C-Block 3<sup>rd</sup> Floor, Indirawati Bhawan, New Raipur, District Raipur (CG)

---- Respondents

**WPT No.353 of 2017**

Rajesh Sharma S/o Shri Sanat Kumar Sharma, aged about 52 years, R/o House No.12/1399, Ashwani Nagar, Near Shreya Aata Chakki, Ward No.65, Sudhir Mukherjee Ward, Raipur, District Raipur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary Department of Road Transport, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (CG)
2. Regional Transport Officer (RTO), Regional Transport Office, Raipur, District Raipur (CG)
3. Transport Commissioner, C-Block 3<sup>rd</sup> Floor, Indirawati Bhawan, New Raipur, District Raipur (CG)

---- Respondents

**WPT No.3 of 2018**

Rajat Mittal S/o Shri Suresh Mittal, aged about 35 years, R/o Kailash Sadan, OT-02-69, Near Water Tank, Rasgarba Maidan, Samta Colony, Raipur, District Raipur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary Department of Road Transport, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (CG)
2. Regional Transport Officer (RTO), Regional Transport Office, Bilaspur, District Bilaspur (CG)
3. Transport Commissioner, C-Block 3<sup>rd</sup> Floor, Indirawati Bhawan, New Raipur, District Raipur (CG)

---- Respondents

**WPT No.18 of 2018**

Arjun Kumar Yadav S/o Shri Gopal Yadav, aged about 32 years, R/o Near Sahu Aata Chakki, Karan Nagar, New Changora Bhata, Raipur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary Department of Road Transport, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (CG)
2. Regional Transport Officer (RTO), Regional Transport Office, Raipur, District Raipur (CG)
3. Transport Commissioner, C-Block 3<sup>rd</sup> Floor, Indirawati Bhawan, New Raipur, District Raipur (CG)

---- Respondents

**WPT No.21 of 2018**

Laleshwar Prasad Yadav S/o Late Shyam Narayan Yadav, aged about 50 years, R/o Near Aata Chakki, Karan Nagar, New Changora Bhata, Raipur, District Raipur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary Department of Road Transport, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (CG)
2. Regional Transport Officer (RTO), Regional Transport Office, Raipur, District Raipur (CG)
3. Transport Commissioner, C-Block 3<sup>rd</sup> Floor, Indirawati Bhawan, New Raipur, District Raipur (CG)

---- Respondents

**WPT No.06 of 2018**

Om Prakash Sadhija S/o Late Prabhudas Sadhija, aged about 59 years, R/o B-25, Ashiyana Phase II, Avanti Vihar, Raipur, District Raipur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary Department of Road Transport, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (CG)
2. Regional Transport Officer (RTO), Regional Transport Office, Raipur, District Raipur (CG)
3. Transport Commissioner, C-Block 3<sup>rd</sup> Floor, Indirawati Bhawan, New Raipur, District Raipur (CG)

---- Respondents

**WPT No.23 of 2018**

Sarvesh Kumar Choubey S/o Ramashankar Choubey, aged

5

about 34 years, R/o Near Sahu Aata Chakki, Karan Nagar, New Changora Bhata, Raipur, District Raipur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary Department of Road Transport, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (CG)
2. Regional Transport Officer (RTO), Regional Transport Office, Raipur, District Raipur (CG)
3. Transport Commissioner, C-Block 3<sup>rd</sup> Floor, Indirawati Bhawan, New Raipur, District Raipur (CG)

---- Respondents

**WPT No.22 of 2018**

M/s V.K. Constructions, Proprietorship Firm, Address:- Near Pali Fuels, Ring Road No.1, Pachpedi Naka, Raipur (CG) through its proprietor Vivek Kumar Dhangar, S/o Shri Jagdish Prasad Dhangar, aged about 43 years, R/o Nandi Chowk, Tikrapara, Raipur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary Department of Road Transport, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (CG)
2. Regional Transport Officer (RTO), Regional Transport Office, Raipur, District Raipur (CG)
3. Transport Commissioner, C-Block 3<sup>rd</sup> Floor, Indirawati Bhawan, New Raipur, District Raipur (CG)

---- Respondents

**WPT No.32 of 2018**

Jaywant Patel S/o. Shri Purshottam Bhai Patel, aged about 35 years, R/o R.K. Plaza Panchpedi Naka Ring Road No.1, Raipur, District Raipur (CG)

---- Petitioner

Versus

1. State Govt. of Chhattisgarh through the Secretary Department of Road and Transport, Mahanadi Bhawan, New Raipur (CG)
2. Regional Transport Authority, Regional Office, Raipur, District Raipur (CG)

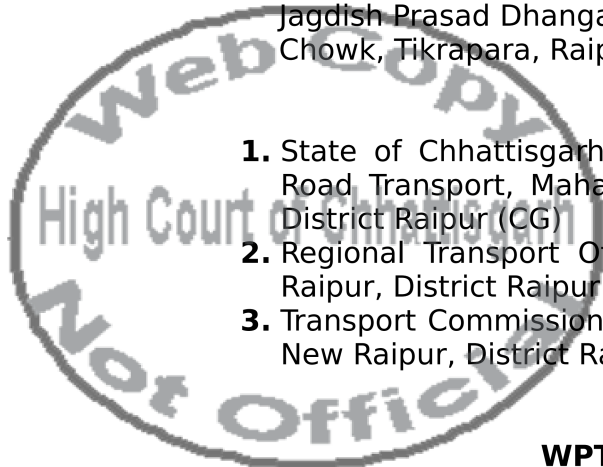
---- Respondents

**WPT No.20 of 2018**

Nitin Verma S/o Lalit Kumar Verma, aged about 31 years, R/o Boriya Road, Santoshi Nagar, Near Vegetable Market, Raipur (CG)

---- Petitioner

Versus



1. State of Chhattisgarh through the Secretary Department of Road Transport, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (CG)
2. Regional Transport Officer (RTO), Regional Transport Office, Raipur, District Raipur (CG)
3. Transport Commissioner, C-Block 3<sup>rd</sup> Floor, Indirawati Bhawan, New Raipur, District Raipur (CG)

---- Respondents

**WPT No.19 of 2018**

M/s Prayag Enterprises, Proprietorship Firm, Address:-Near Pali Fuels, Ring Road No.1, Pachpedi Naka, Raipur (CG) through its proprietor Smt. Padmini Dhangar W/o Vivek Kumar Dhangar, aged about 41 years, R/o Nandi Chowk, Tikrapara, Raipur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary Department of Road Transport, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (CG)
2. Regional Transport Officer (RTO), Regional Transport Office, Raipur, District Raipur (CG)
3. Transport Commissioner, C-Block 3<sup>rd</sup> Floor, Indirawati Bhawan, New Raipur, District Raipur (CG)

---- Respondents

**WPT No.16 of 2018**

Kumar Singh Thakur S/o Late Ganga Singh Thakur, aged about 45 years, R/o 315, BSNL Tower, Ward No.51, Tikrapara, Raipur, District Raipur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary Department of Road Transport, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur (CG)
2. Regional Transport Officer (RTO), Regional Transport Office, Raipur, District Raipur (CG)
3. Transport Commissioner, C-Block 3<sup>rd</sup> Floor, Indirawati Bhawan, New Raipur, District Raipur (CG)

---- Respondents

**WPT No.17 of 2018**

Shankar Prasad Sharma S/o Late Gokul Sharma, aged about 48 years, R/o Near Naya Talab, Mahesh Colony, Road No.7, Gudhiyari, Raipur, District Raipur (CG)

---- Petitioner

7

Versus

1. State of Chhattisgarh through the Secretary Department of Road Transport, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (CG)
2. Regional Transport Officer (RTO), Regional Transport Office, Raipur, District Raipur (CG)
3. Transport Commissioner, C-Block 3<sup>rd</sup> Floor, Indirawati Bhawan, New Raipur, District Raipur (CG)

---- Respondents

**WPT No.46 of 2018**

Punit Ram Sahu, S/o. Shri Mohan Lal Sahu, aged about 40 years, R/o Village Gourkheda, Chchli, Thana & Post-Kharora, District- Raipur (CG)

---- Petitioner

Versus

1. State Govt. of Chhattisgarh through the Secretary Department of Road and Transport, Mahanadi Bhawan, New Raipur (CG)
2. Regional Transport Authority, Regional Office, Raipur, District Raipur (CG)

---- Respondents

**WPT No.42 of 2018**

AJ Minerals and Continental Services, a partnership firm registered under the Indian Partnership Act through its partner Ashok Jain, S/o Late Inder Kumar Jain, aged about 52 years, R/o New Bus Stand, Baloda Bazar, District-Baloda Bazar-Bhatapara (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Government of Chhattisgarh, Department of Transport, Mahanadi Bhawan, Naya Raipur, Mantralaya, Raipur (CG)
2. Commissioner, Department of Transport, Mahanadi Bhawan, Naya Raipur, Mantralaya, Raipur (CG)
3. Regional Transport Officer cum Taxation Officer / Registering Authority, Baloda Bazar-Bhatapara, District Baloda-Bazar-Bhatapara (CG)

---- Respondents

And

**WPT No.43 of 2018**

Jain Transport, through its proprietor Ashok Jain, S/o Late Inder Kumar Jain, aged about 52 years, R/o New Bus Stand, Baloda Bazar, District-Baloda Bazar-Bhatapara (CG)

---- Petitioner

Versus



1. State of Chhattisgarh, Through Secretary, Government of Chhattisgarh, Department of Transport, Mahanadi Bhawan, Naya Raipur, Mantralaya, Raipur (CG)
2. Commissioner, Department of Transport, Mahanadi Bhawan, Naya Raipur, Mantralaya, Raipur (CG)
3. Regional Transport Officer cum Taxation Officer / Registering Authority, Baloda Bazar-Bhatapara, District Baloda-Bazar-Bhatapara (CG)

---- Respondents

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|                 |   |                                                                                                                                                             |
|-----------------|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For Petitioners | : | Mr.Sachin Singh Rajput, Mr.Shushobit Singh, Mr.Sangeet Kuamr Kushwaha, Mr.Sharad Mishra, Mr.Vishnu Koshta, Mr.Shobhit Koshta and Mr.Somkant Verma, Advocate |
| For Respondents | : | Mr.Gary Mukhopadhyay, Government Advocate                                                                                                                   |

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**C.A.V. Order**

1. Since common question of law and fact is involved in these batch of writ petitions, they were heard together and are being disposed of by this common order.
2. The petitioners are owners of crane and mechanical excavator vehicle commonly known as JCB. They are required to pay quarterly tax as per Second Schedule of the Chhattisgarh Motoryan Karadhan Adhiniyam, 1991 (hereinafter called as "the Act of 1991") on the basis of unladen weight of their above-stated vehicle(s). The Chhattisgarh Motoryan Karadhan (Sansodhan) Ordinance, 2016 (hereinafter referred as "Ordinance 2016") was promulgated and became operative w.e.f. 15.2.2016 by which Second Schedule was amended and after Serial No.1 of Second Schedule of the said Ordinance, Entry No.8 was inserted and as per amended provision life



time road tax of 7% of cost of the vehicle was said to be imposed on crane and mechanical excavator. Thereafter, the Chhattisgarh Motoryan Karadhan (Sanshodhan) Adhiniyam, 2016 was passed repealing above-stated Ordinance 2016. Further case of the petitioners is that they are already paying quarterly road tax under the Act of 1991 on the basis of unladen weight of their vehicle and on the basis of amended provision, life time road tax is being demanded by the respondents, which is prospective in nature. It is further their case that the respondents have discontinued to accept quarterly road tax being to be paid paid by the petitioners and the respondents have directed the petitioners to pay life time road tax of 7% on the total cost of vehicle, which is contrary to law.

- 3.** Feeling aggrieved against demand of 7% life time road tax on total cost of vehicles w.e.f. 15.2.2016, the petitioners have filed this batch of writ petitions stating inter-alia that amendment brought into force w.e.f. 15.2.2016 directing recovery of life time road tax on vehicle of the petitioners on the strength of the Act of 2016 is prospective and not applicable to the petitioners as that would amount to levy the tax retrospectively, which is impermissible and bad in law.
- 4.** Return has been filed by the respondents relying upon First Proviso to sub-section (1) of Section 3 and Second Proviso to sub-section (2) of Section 5 of the Act of 1991 stating inter-alia that total amount of tax paid by the petitioners prior to

the commencement of this amended provision shall be deducted from the life time tax specified in II Schedule. Therefore, levy of tax on the vehicles owned by the petitioners is strictly in accordance with law.

**5.** Rejoinder has been filed by the petitioners opposing the averments made in the return.

**6.** Mr.Sachin Singh Rajput, leading arguments on behalf of the writ petitioners, would submit that new legislation is always prospective unless and until it is specifically provided in statute that it will be applicable retrospectively. He would further submit that in the instant case, Act has been amended w.e.f. 15.2.2016, the date on which the said Ordinance was came into force and that makes it clear that the said Ordinance is prospective in nature and charging of tax on the vehicles owned by the petitioners is wholly contrary to the said Act. He would also submit that the Act of 2016 be held to be prospective in nature and the respondents be directed to accept quarterly tax payable by the petitioners as usual in accordance with the provisions contained in the Act of 1991.

**7.** Mr.Gary Mukhopadhyay, learned Government Advocate for the respondents/State, would submit that by virtue of the provisions contained in First Proviso to sub-section (1) of Section 3 and Second Proviso to sub-section (2) of Section 5 of the Act of 1991, the petitioners are required to pay life time road tax on the vehicles (JCB) and the vehicles which were registered prior to the amendment of the Act, quarterly tax on

those vehicles which has been paid prior to the amendment would be deducted from the amount of life time tax. In the case of the petitioners, quarterly tax already paid has been deducted while counting life time tax as per amended provision, which is apparent from the notice dated 28.12.2016 filed along with return, as such, the writ petitions deserve to be dismissed.

8. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

9. In order to consider the plea raised at the Bar, it would be appropriate to notice the provisions contained in the Act of 1991 relating to levy of tax on crane and mechanical excavator (JCB). Section 3 of the Act of 1991 provides for levy of tax on Motor Vehicle which reads as under:-

**"3. Levy of tax on Motor Vehicle.-** (1) A tax shall be levied on every motor vehicle used or kept for use in the State at the rate specified in the First Schedule:

Provided that the life time tax shall be levied at the rates specified in the Second Schedule in respect of motor vehicles specified therein:

Provided further that in respect of a motor vehicle passing through the State from a manufacturer to a dealer under a temporary certificate of registration for a period not exceeding one month, the rate of tax shall be one third of the tax payable for a quarter.

(2) A Transport vehicle of which the certificate of registration is current, shall for the purposes of this Act, be presumed to have been in use-or kept for use, notwithstanding the expiry of the certificate of fitness in case of such transport vehicle."

10. Proviso to sub-section (1) of Section 3 was inserted in

the Act of 1991 with effect from 01.05.2001 by Chhattisgarh Act No. 22 of 2001 providing that life time tax shall be levied at the rates specified in the Second Schedule in respect of motor vehicles specified therein. Second Schedule was also inserted with effect from 01.05.2001 in the Act of 1991 imposing life time tax on the vehicles mentioned therein. Cranes and mechanical excavator vehicle were included in the Second Schedule for the purpose of life time tax by Chhattisgarh Act No. 24 of 2016 with effect from 15.02.2016.

- 11.** Section 5 of the Act of 1991 provides for payment of tax which states as under:-

**“5. Payment of Tax.** – (1) The tax levied under this Act shall be paid in advance by the owner of the motor vehicle, at his choice, quarterly, half yearly or annually on a token to be obtained by him for that quarter, half year or year, within fifteen days from the commencement of the quarter, half year or year, as the case may be. Tax for a half yearly token shall not exceed twice and tax for an annual token shall not exceed four times the tax for a quarterly token:

Provided that the tax shall be paid in respect of a motor vehicle used or kept for use for any period expiring on the last day of a quarter and not exceeding two months, at two thirds of the quarterly tax or one-third of such tax accounting to the period exceeds or does not exceed one month:

Provided further that whenever the rates of tax specified in the First Schedule are enhanced and the owner of a motor vehicle becomes liable to pay the tax at the enhanced rate, then such owner shall deposit the difference of amount of tax at the time of payment of tax for the subsequent period in respect of that motor vehicle:

Provided also that the tax levied in respect of a stage carriage, plying on a route other than a

city route or a contract carriage other than a motor cab shall be paid in advance monthly, quarterly, half yearly or annually within ten days from the beginning of the month, quarter, half year or year, as the case may be."

Thus, Section 5 of Act of 1991 provides for manner of making payment of tax levied under Section 3 of the Act of 1991 i.e., quarterly, half yearly or annually by the owner of vehicle.

- 12.** Prior to the aforesaid amendment, cranes and mechanical excavator vehicle were taxed on periodical basis on the basis of unladen weight of said vehicle as per Clause-IX of the First Schedule which states as under:-

"IX. ALL OTHER MOTOR VEHICLES NOT INCLUDED IN ANY OF THE CLASS OF VEHICLES SPECIFIED IN THIS SCHEDULE

The unladen weight of which-

(i) to (vi) \*\*\*\* \*\*\*\* \*

(VII) Exceeds 6000 Kgs. but does not exceed 7000 Kgs.

- Rs. 871.00 per quarter.

(VIII) and thereafter for each additional 1000 Kgs. or part thereof

- Rs. 254.00 per quarter.

- 13.** Second Schedule of the Act was amended by The Chhattisgarh Motoryan Karadhan (Sanshodhan) Ordinance, 2016 with effect from 15.02.2016 which states as under:-

"4. After serial number 7 of Part-I of SECOND SCHEDULE of the principal Act, the following entries in corresponding columns shall be added, namely:-

14

"8. Crane and Mechanical excavator vehicle (with a shovel at the front and a digging arm at the rear or otherwise installed working machinery) popularly known as JCB or excavator made by other Manufacturers."

- 14.** The aforesaid Ordinance 2016 was repealed by The Chhattisgarh Motoryan Karadhan (Sansodhan) Adhiniyam, 2016 w.e.f. 15.02.2016 which states as under:-

"3. After serial number 7 of Part-I of Second Schedule of the principal Act, the following entries in corresponding columns shall be added, namely:-

"8.Crane and Mechanical excavator vehicle (with a shovel at the front and a digging arm at the rear or otherwise installed working machinery) popularly known as JCB or excavator made by other Manufacturers."

- 15.** Thus, Second Schedule of the Act of 1991 has been amended w.e.f. 15.02.2016 providing that the cranes and mechanical excavator vehicles popularly known as JCB or excavator shall be liable to pay life time tax that is 7% of the cost of the vehicle. The petitioners, who are owners of crane and mechanical excavator vehicles, are presently paying quarterly tax on the basis of unladen weight of the vehicles as provided in Clause-IX, Entry No. 7 & 8 of the First Schedule.

- 16.** The twin question for consideration would be:

(i) Whether the respondents-authorities are entitled to recover one time life time road tax on the cranes and mechanical excavator owned by petitioners which has been registered with the respondent-department prior to coming into force of the Chhattisgarh Motoryan Karadhan (Sanshodhan)

Adhiniyam, 2016 w.e.f. 15.02.2016 ?

(ii) Whether the provisions of the Chhattisgarh Motoryan Karadhan (Sanshodhan) Adhiniyam, 2016 for the purposes of imposition of 7% life time road tax on the cost of vehicle (Crane and mechanical excavator) would apply prospectively to the new vehicles which are registered on or after 15.02.2016 or it would apply retrospectively to the vehicle purchased by the petitioners prior to 15.02.2016 ?

**17.** In order to unlock the question so posed for consideration, it would be appropriate to consider the Principles of Statutory Interpretation:-

(16.1) The legislature has plenary power of legislation within the fields assigned to them, it may legislate prospectively as well as retrospectively. It is a settled principle of statutory construction that every statute is *prima facie* prospective unless it is expressly or by necessary implications made to have retrospective operations. Legal Maxim "*nova constitutio futuris formam imponere debet non praeteritis*", i.e. 'a new law ought to regulate what is to follow, not the past', contain a principle of presumption of prospectivity of a statute.

(16.2) Justice G. P. Singh in "Principles of Statutory Interpretation" (14<sup>th</sup> Edition, in Chapter 6) while dealing with operation of fiscal statute elaborates the principles of statutory interpretation in the following words:

"Fiscal legislation imposing liability is generally



governed by the normal presumption that it is not retrospective and it is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication. The above rule applies to the charging section and other substantive provisions such as a provision imposing penalty and does not apply to machinery or procedural provisions of a taxing Act which are generally retrospective and apply even to pending proceedings. But a procedural provision, as far as possible, will not be so construed as to affect finality of tax assessment or to open up liability which had become barred. Assessment creates a vested right and an assessee cannot be subjected to re-assessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective. A provision which in terms is retrospective and has the effect of opening up liability which had become barred by lapse of time, will be subject to the rule of strict construction. In the absence of a clear implication such a legislation will not be given a greater retrospectivity than is expressly mentioned; nor will it be construed to authorize the Income-tax authorities to commence proceedings which, before the new Act came into force, had by the expiry of the period then provided become barred. But unambiguous language must be given effect to, even if it results in reopening of assessments which had become final after expiry of the period earlier provided for reopening them. There is no fixed formula for the expression of legislative intent to give retrospectivity to a taxation enactment.....”

- 18.** Their Lordships of the Supreme Court in the matter of **Govind Das and Ors. v. the Income Tax officer and another**<sup>1</sup>., noticing the settled Rules of interpretation laid down the law as under:-

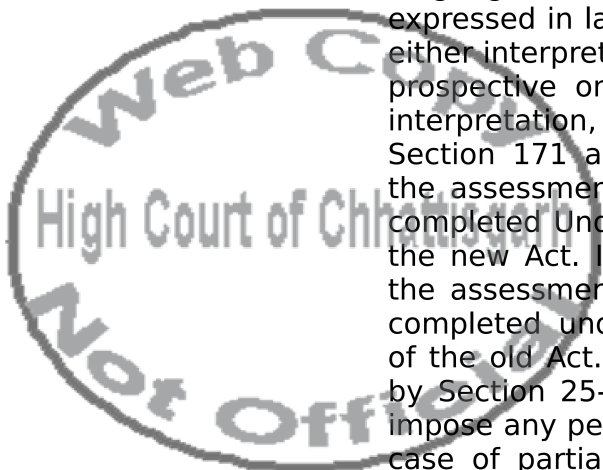
“11. Now it is a well settled Rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily

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1 1976(1) SCC 906

require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general Rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that

"all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective" and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. If we apply this principle of interpretation, it is clear that Sub-section (6) of Section 171 applies only to a situation where the assessment of a Hindu undivided family is completed Under Section 143 or Section 144 of the new Act. It can have no application where the assessment of a Hindu undivided family is completed under the corresponding provisions of the old Act. Such a case would be governed by Section 25-A of the old Act which does not impose any personal liability on the members in case of partial partition and to construe Sub-section (6) of Section 171 as applicable in such a case with consequential effect of casting of the members personal liability which did not exist Under Section 25-A, would be to give retrospective operation to Sub-section (6) of Section 171 which is not warranted either by the express language of that provision or by necessary implication. Sub-section (6) of Section 171 can be given full effect by interpreting it as applicable only in a case where the assessment of a Hindu undivided family is made Under Section 143 or Section 144 of the new Act. We cannot, therefore, consistently with the Rule of interpretation which denies retrospective operation to a statute which has the effect of creating or imposing a new obligation or liability, construe Sub-section (6) of Section 171 as embracing a case where assessment of a Hindu undivided family is made



under the provisions of the old Act. Here in the present case, the assessments of the Hindu undivided family for Assessment Years 1950-51 to 1956-57 were completed in accordance with the provisions of the old Act which included Section 25-A and the Income Tax Officer was, therefore, not entitled to avail of the provision enacted in Sub-section (6) read with Sub-section (7) of Section 171 of the new Act for the purpose of recovering the tax or any part thereof personally from any members of the joint family including the Petitioners.”

- 19.** Recently, a Constitution Bench of the Supreme Court speaking through Dr. Justice A. K. Sikri, in the matter of **The Commissioner of Income Tax(Central-1 New Delhi) v. Vatika Township Pvt. Ltd.**<sup>2</sup>, while considering as to whether Proviso inserted in Section 113 of Income Tax Act w.e.f. 01.06.2002 is prospective or clarificatory/retrospective noticed the general principles concerning retrospectivity of a statute and observed as under:-

“28. of the various Rules guiding how legislation has to be interpreted, one established Rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the Rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit*: law looks forward not backward. As was observed in Phillips v. Eyre, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when

introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal Rule as was observed in *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd.* Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

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33. A Constitution Bench of this Court in Keshavlal Jethalal Shah v. Mohanlal Bhagwandas<sup>3</sup>, while considering the nature of amendment to Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act as amended by Gujarat Act 18 of 1965, observed as follows: (AIR p. 1339, para 8)

8. ... The amending Clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the amendment derived from Section 115 of the Code of Civil Procedure, and the legislature has by the amending Act not attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act."

**20.** Similarly, the Supreme Court, speaking through Dr.

Justice A.K. Sikri in the matter of **Jayam and co. v. Assistant**

<sup>3</sup> AIR 1968 SC 1336

**Commissioner and Ors.**<sup>4</sup>, again reiterated the broad legal principles while testing a retrospective statute in Paragraphs 14 and 18 which is to the following effect:-

“14. With this, let us advert to the issue on retrospectivity. No doubt, when it comes to fiscal legislation, the legislature has power to make the provision retrospectively. In R.C. Tobacco (P) Ltd. v. Union of India<sup>5</sup>, this Court stated broad legal principles while testing a retrospective statute, in the following manner:

(i) A law cannot be held to be unreasonable merely because it operates retrospectively;

(ii) The unreasonability must lie in some other additional factors;

(iii) The retrospective operation of a fiscal statute would have to be found to be unduly oppressive and confiscatory before it can be held to be unreasonable as to violate constitutional norms;

(iv) Where taxing statute is plainly discriminatory or provides no procedural machinery for assessment and levy of tax or that is confiscatory, courts will be justified in striking down the impugned statute as unconstitutional;

(v) The other factors being period of retrospectivity and degree of unforeseen or unforeseeable financial burden imposed for the past period;

(vi) Length of time is not by itself decisive to affect retrospectivity. (Jayam and Co. case, SCC Online Mad para 85)

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18. The entire gamut of retrospective operation of fiscal statutes was revisited by this Court in a Constitution Bench judgment in CIT v. Vatika Township (P) Ltd.<sup>6</sup> in the following manner:

33. A Constitution Bench of this Court in Keshavlal Jethalal Shah v. Mohanlal

4 (2016) 15 SCC 125

5 AIR 2005 SC 4203

6 2014 AIR SCW 5674

Bhagwandas, while considering the nature of amendment to Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act as amended by Gujarat Act 18 of 1965, observed as follows:

8. ... The amending Clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the amendment derived from Section 115 of the Code of Civil Procedure, and the legislature has by the amending Act not attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act.

34. It would also be pertinent to mention that assessment creates a vested right and an Assessee cannot be subjected to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective. (See CED v. M.A. Merchant.)

35. We would also like to reproduce hereunder the following observations made by this Court in Govind Das v. ITO<sup>8</sup>, while holding Section 171(6) of the Income Tax Act to be prospective and inapplicable for any assessment year prior to 1-4-1962, the date on which the Income Tax Act came into force:

‘11. Now it is a well-settled Rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general Rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that

“all statutes other than those which are merely

<sup>7</sup> AIR 1989 SC 1710

<sup>8</sup> AIR 1977 SC 552



declaratory or which relate only to matters of procedure or of evidence are *prima facie* prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.”

**21.** Thus, it is quite settled principle of statutory construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective effect.

**22.** In the present case, amendment made in the Second Schedule to the Act of 1991 by notification dated 11.2.2016 states as under:-

“In exercise of powers conferred by sub-section (2) of Section -1 of the Chhattisgarh Motoryan Karadhan (Sanshodhan) Ordinance, 2016 (No. 1 of 2016), the State Government, hereby, appoints on 15<sup>th</sup> February, 2016 as the date on which said ordinance shall come into force.”

**23.** The aforesaid notification by which amendment was brought into force w.e.f. 15.02.2016 was reaffirmed by the Act No. 24 of 2016 repealing the Ordinance, 2016 by providing as under:-

“(2) It shall deemed to have come into force on the 15th day of February, 2016.”

**24.** Thus, the amendment of the Second Schedule of the Act



of 1991 imposing life time tax on the crane and mechanical excavator vehicle in place of periodical tax imposed quarterly has been brought into force with effect from 15.02.2016. In the matter of **C.I.T., Bombay v. Scindia Steam Navigation Co. Ltd.**<sup>9</sup> the Supreme Court has held that tax liability is computed according to the law in force at the beginning of the assessment year, *i.e.*, the first day of April, any change in law affecting tax liability after that date though made during any currency of the assessment year, unless specifically made retrospective, does not apply to assessment for that year.

25. Similarly, in the matter of **State of Kerala v. Alex George**<sup>10</sup>, the Supreme Court has held revision of schedule to the Kerala Plantation Tax Act, 1960 by the Kerala Finance Act, 1987 with effect from 01.07.1987 which revised the tariff categories as well as the tariff structure, to be applicable only in the next financial year viz. 1988-89 and not in the financial year 1987-88.

26. Likewise, the Supreme Court in the matter of **P. Nageswara Rao v. Government of Andhra Pradesh**<sup>11</sup> has held as under:-

“4. .... When the government order itself expressly mentions that the liability to pay the tax operates on and from 27.04.1993, its operation cannot be preponed to an earlier date by placing construction on the order.....”

27. Going by the Principles of Statutory Interpretation for

9 AIR 1961 SC 1633

10 (2005) 1 SCC 299

11 (1994) Supp (2) SCC 693

interpreting retrospectivity of a fiscal statute and in the light of principles of law flowing from judgments of the Supreme Court noticed hereinabove and looking to the nature and purpose of the amendment by amending Act No. 24 of 2016 imposing life time tax on the crane and mechanical excavator vehicle (JCB), I am of the considered opinion that levy of life time tax on the said vehicles (JCB) is intended to operate prospectively w.e.f. 15.02.2016 and it is imposed to a above-stated class of vehicle registered on or after 15.2.2016 and it cannot be made applicable to the petitioners' JCB registered prior to said date.

**28.** There is one more reason for holding so. Section 39 of the Motor Vehicle Act, 1988 provides necessity for registration of vehicles. Section 41 provides the manner of making registration. Sub-section (7) (8) (9) & (10) of Section 41 provides for life of the vehicle and renewal of certificate of registration which state as under:-

“(7) A certificate of registration issued under sub-section (3), whether before or after the commencement of this Act, in respect of a motor vehicle, other than a transport vehicle, shall, subject to the provisions contained in this Act, be valid only for a period of fifteen years from the date of issue of such certificate and shall be renewable.

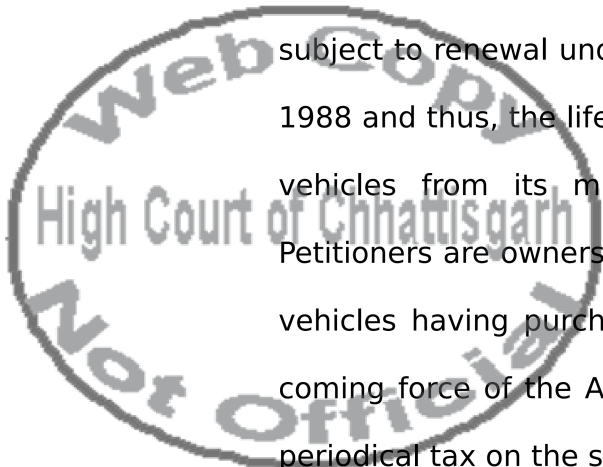
(8) An application by or on behalf of the owner of a motor vehicle, other than a transport vehicle, for the renewal of a certificate of registration shall be made within such period and in such form, containing such particulars and information as may be prescribed by the Central Government.

(9) An application referred to in sub-section (8)

shall be accompanied by such fee as may be prescribed by the Central Government.

(10) Subject to the provisions of Section 56, the registering authority may, on receipt of an application under sub-section (8), renew the certificate of registration for a period of five years and intimate the fact to the original registering authority, if it is not the original registering authority."

**29.** Thus, the taxing event of imposing road tax is at the time of registration of vehicle under Section 41 of the Act of 1988 and certificate of registration issued under Section 41 (7) shall be valid for a period of fifteen years and shall be subject to renewal under Section 41(8) to 41(10) of the Act of 1988 and thus, the life time road tax should be payable to the vehicles from its minimum (zero life) to maximum life. Petitioners are owners of the crane and mechanical excavator vehicles having purchased the said vehicles much prior into coming force of the Act of 2016 and they are paying regular periodical tax on the said vehicles on quarterly basis. There is no provision in the Act of 1991 or in the amending Act of 2016 for adjustment of periodical quarterly road tax already paid by the petitioners from the date of registration/purchase till the date of coming into force *i.e.* 15.02.2016 of amended provision levying life time road tax to the extent of 7% of cost of the vehicle. If the amended provision levying life time road tax is allowed to be recovered from the petitioners, it would amount to double taxation as the court may lean in favour of a construction which will avoid double taxation based on



principle of avoidance of double taxation. [See **Premier Tyres Ltd. v. Collector of Central Excise<sup>12</sup>**].

**30.** Faced with this situation, learned State Counsel would rely upon first proviso to Section 5(2) of the Act of 1991 which states as under:-

“(2)Notwithstanding anything contained in sub-section (1), the tax levied under the first proviso to sub-section (1) of Section 3 shall be for the life time of the motor vehicle and shall be paid in advance in lump-sum by the owner:

Provided that-

(i) in case of a motor vehicle specified in the first proviso to sub-section (1) of Section registered in Madhya Pradesh, the total amount of tax paid prior to the commencement of this Act shall be deducted from the amount of life time tax specified in the Second Schedule.”

**31.** In the considered opinion of this Court, the said proviso is not attracted in the present case and particularly to the levy impugned as it was applicable to a case where the tax was paid prior to the commencement of the Act of 1991 w.e.f. 21.09.1991 and life time tax paid as specified in the Second Schedule was liable to be deducted. In the instant case, provision for levy of life time tax came into force w.e.f. 15.02.2016, but the legislature has deliberately and consciously omitted to insert any provision like proviso (i) to sub-section 5(2) of the Act of 1991 directing deduction of quarterly tax paid by the petitioners from the date of purchase till 15.02.2016 *i.e.* date of coming into force of the Act of 2016 imposing life time tax on the crane and

<sup>12</sup> (1987) 1 SCC 697

mechanical excavator vehicles, therefore, to hold the life time tax payable by the petitioners would be contrary to law.

**32.** As a fallout and consequence of the above-stated discussion, it is held that amendment to the Second Schedule to the Act of 1991 w.e.f. 15.02.2016 inserting entry No. 8 in Part-I of Second Schedule imposing life time tax on crane and mechanical excavator vehicles is intended to operate prospectively. Consequently, the respondents are directed to accept quarterly tax from the petitioners in accordance with law and act of the respondents directing recovery of life time tax is unauthorized in law and they are restrained from recovering life time tax from the JCB owned by the petitioners.

**33.** The writ petitions are allowed to the extent sketched hereinabove leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)  
Judge

