

CRIMINAL REVISION.

Before Guha J.

R. C. CURTIS

v.

EMPEROR.*

1934

Aug. 1, 6.

Motor Vehicles—Token, if to be sent by Taxing Officer—Rules 12 and 13 of Bengal Motor Vehicles Tax Rules, 1933, if ultra vires—Bengal Motor Vehicles Act (Beng. I of 1932), ss. 9, 12.

Rules 12 and 13 of the Bengal Motor Vehicles Tax Rules, 1933, are not *ultra vires* of the Local Government.

It is for the person paying the tax to obtain delivery of the token referred to in rule 10 and it was not intended that the Taxing Officer was to send the token to the person paying the tax.

If, on account of the delivery of the token not having been taken by the person paying the tax, it could not be exhibited as required by rules 12 and 13, he is liable to be convicted for the breach of the said rules.

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Car No. 32817 registered in Calcutta belonged to B. W. Heanly, Assistant Commercial Manager, Bengal Nagpur Railway. He went to England in March, 1933, and left the car with R. C. Curtis, the District Traffic Superintendent in the said railway and a Vice-President of the Automobile Association of Bengal, the accused in this case, to garage it for him. On 30th June, 1933, Curtis tendered through the Secretary of the Automobile Association Rs. 36 by cheque in payment of tax for the period of 1st July, 1933 to 31st March, 1934. This was refused by the Taxing Officer, who demanded payment for one year. On the 5th July, the Secretary of the Association again tendered Rs. 12 for tax for one quarter only, *viz.*, from 1st July, 1933 to 30th September,

*Criminal Revision, No. 385 of 1934, against the order of J. K. Biswas, Addl. Presidency Magistrate, dated 19th March, 1934.

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1933, and the then Taxing Officer accepted the payment on the ground that the car was being used only during the leave of the registered owner. No token, however, was delivered. The car was found on the 22nd August, 1933, being driven on Red Road by the accused's son and the car did not exhibit the token as required by rule 13 of the Motor Vehicle Tax Rules. The matter was reported by the sergeant of the Motor Vehicles Department and the accused was prosecuted. The defence was that no token had been exhibited because none had been granted by the Taxing Officer, and that in lieu of the token, the driver of the car had shown to the police a letter granted by the Secretary, Automobile Association, Bengal, showing that the tax had been paid and no token issued up till then and requesting the holder to show it to the police if and when required. It was proved at the trial that similar authorisations had been given to secretaries of other important associations and Chamber of Commerce, *etc.* The accused was convicted and sentenced to pay a fine of Rs. 10. The accused obtained this Rule.

Narendrakumar Basu (with him *Sudhangshu-shekhhar Mukherji*) for the petitioner. Clause (1) of section 9 of the Act says "The Taxing Officer *shall* at "the time of granting a receipt for the tax deliver to the person paying the tax a token, *etc.*". Clause (2) says "Every person to whom such token is delivered "shall cause it to be exhibited, *etc.*". My submission, therefore, is that where no token is delivered there is nothing to exhibit and you cannot have a conviction.

Rules 10 and 12 of the Bengal Motor Vehicles Tax Rules refer to the token mentioned in section 9 of the Act and must, therefore, refer to a token delivered by the Taxing Officer when the tax is paid.

Here the Taxing Officer issued a receipt, but no token and, therefore, it was physically impossible for the "token" to be exhibited.

If, as the learned magistrate thinks, the rules cast any duty upon the party paying the tax to take steps to obtain delivery of the token, then such rules will be *ultra vires* of the Local Government which is only authorised by section 12 of the Act to prescribe the form of the token, the particulars to be mentioned therein and the manner of exhibiting such token and *not* the method of delivery of the token.

Here the tax was admittedly paid through the Secretary of the Automobile Association of Bengal and a receipt was issued to him but no token. There is no duty cast upon the tax-payer to obtain a token, if one is not delivered; nor can it be said that the car cannot be legally used till such token is obtained. If there was any breach committed it was by the Taxing Officer, not by the accused.

Prabodhchandra Chatterji for the Crown. Rules 12 and 13 of the Bengal Motor Vehicles Tax Rules, 1933, are not *ultra vires*, having been framed by the Bengal Government within the powers conferred on it by section 12 of the Bengal Motor Vehicles Act, 1932. Under rule 3 (a) of the Bengal Motor Vehicles Tax Rules, 1933, the tax (so far as Calcutta is concerned) is to be paid to the Taxing Officer in Calcutta *at his office* and the delivery of the token, as contemplated by rule 10 of the Rules and section 9 of the Act, is to be made at the said office of the Taxing Officer and the person making the payment is to take delivery of the token at the said office. The person paying the tax has to *obtain* the token together with the receipt therefor from the Taxing Officer, who is not placed under any statutory obligation to *send* either the receipt or the token to that person or his agent or representative.

Basu, in reply.

Cur. adv. vult.

GUHA J. The petitioner was tried before the Additional Presidency Magistrate, Calcutta, for

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having committed an offence on account of contravention of rules 12 and 13 of the Bengal Motor Vehicles Tax Rules, 1933,* in not exhibiting the token, as enjoined by those rules, on a motor car. The magistrate found him guilty of breach of the rules 12 and 13, and sentenced the petitioner to pay a fine of Rs. 10. According to the magistrate, there was, on the evidence, an omission on the part of the petitioner, and a neglect of obvious duty in not demanding the token from the person, by whom tax was paid on the petitioner's behalf, and which tax was accepted by the Taxing Officer; the petitioner should have demanded the token from the person, who paid the tax on his behalf, within a reasonable time and exhibited the same on the car as required by the rules. On the findings arrived at by the magistrate, the delivery of the token was not taken after payment of tax; and the token was not exhibited on the car in question, as required by the rules.

This Rule was issued by this Court, calling upon the Chief Presidency Magistrate, Calcutta, to show cause why the conviction of and sentence passed upon the petitioner should not be set aside. The grounds urged in support of the Rule were that the magistrate was wrong in law in holding that a person is guilty of breach of rules 12 and 13 even where no token has been delivered to him, on payment of the tax, and that, even if the magistrate's interpretation of rules 12 and 13 were correct, they would be *ultra vires* of the Local Government, having regard to sections 9 and 12 of the Bengal Motor Vehicles Tax Act, 1932.

*The rules are as follows :—

12. *Token to be exhibited.*—The token shall be attached to and carried on the vehicles or trailer in the manner provided in rule 13 at all times when the vehicle or trailer is in use.

13. *Manner of exhibiting token.*—The token shall be carried in a holder made of metal and of weather-proof construction. The holder shall be circular and conform to the following specifications :—

* * * * *

The decision of the questions arising for consideration in the case, therefore, depends mainly, if not solely, upon the interpretation to be put on the words "shall deliver," as used in section 9 of the Act and rule 10 of the rules framed by the Local Government.* Was there any duty cast upon the person paying the tax to obtain delivery of the token, which the Taxing Officer is required to deliver? There is no question that the person paying the tax is entitled to get a receipt as also a token from the Taxing Officer, as soon as payment has been made. Delivery of the token might be made by doing anything, which had the effect of putting the same in the possession of the person paying the tax, or of any person authorised by him to receive delivery. In the case before me, the person paying the tax did not obtain delivery of the token at the time when the tax was paid, resulting in the fact that delivery of the token was not and could not be made by the Taxing Officer. The token not having been obtained, its delivery not having been taken, it could not be, and was not exhibited on the car as required by rules 12 and 13.

In my judgment, it was for the person paying the tax to obtain delivery of the token at the time when the tax was paid to the Taxing Officer under the Bengal Motor Vehicles Tax Act, 1932. So far as the Taxing Officer was concerned, the requirements of the law were fulfilled if he did anything, which had the effect of putting the token in the possession of the person paying the tax or of any person authorised by him. It was not intended by the provisions of the statute and the rules framed under the statute, which were not in any way *ultra vires*, that the Taxing Officer was to send the token to the person paying

*Rule 10 runs as follows :—

10. *Grant of token.*—When the Taxing Officer is satisfied that the tax has been paid for a period not yet expired and that the registration of a motor vehicle for which it is paid is valid, he shall deliver to the person who has paid the tax a token in Form D (Bengal Form 330E).

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the tax. I am clearly of opinion, as already indicated above, that there is nothing contained in rules 10, 12 and 13 of the rules, which is *ultra vires* of the Local Government, having regard to sections 9 and 12 of the Bengal Motor Vehicles Tax Act, 1932, by which it is clearly intended that delivery of the token has to be obtained and the token exhibited on the car in the manner provided by the rules.

In the above view of the questions arising for consideration in the case before me, the failure on the part of the petitioner to exhibit the token on the car resulting from his not obtaining delivery of the same from the Taxing Officer, after tax had been paid, was an offence under the law, and the petitioner was rightly convicted by the magistrate for breach of rules 12 and 13 of the Bengal Motor Vehicles Tax Rules, 1933.

The Rule is discharged. The conviction of the petitioner and the sentence passed on him are affirmed.

Rule discharged.