

## REVISIONAL CRIMINAL.

Before Addison J.

HERA CHAND—Petitioner

*versus*

THE CROWN—Respondent.

Criminal Revision No. 494 of 1931.

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May 16.

*Punjab Municipal Act, III of 1911, section 81—Notification—Tax (Octroi Duty) on “articles made wholly or partially of metal” and “carriages”—meaning of—whether includes motor cars—Section 84—Order not appealed against—whether open to revision.*

The question was whether for the purposes of octroi duty motor cars came within the terms of Notification No. 32162, dated 22nd October 1929, clause IX (a) Miscellaneous, subsection 6, declaring (*inter alia*) that “articles made wholly or partially of metal” and “carriages” were taxable (machinery not being so). The petitioner having been ordered under section 81 of the Municipal Act to pay the duty on motor cars imported by him into the Municipality of Dera Ghazi Khan, applied for revision of the order.

*Held*, that as both the expressions “carriage” and “articles made ..... partially of metal” were wide enough to include a motor car, the petitioner could not be said to have been wrongly held liable.

*Taylor v. Goodwin* (1), *Ellis v. Nott Bower* (2), and Halsbury’s Laws of England, Volume 27, page 180, referred to.

*Held also*, that as the petitioner could have appealed to the Deputy Commissioner under section 84 of the Municipal Act, and had not done so, the petition for revision should not be heard.

*Case reported by Mr. T. B. Creagh Coen, District Magistrate, Dera Ghazi Khan.*

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NIHAL SINGH, for MEHTA AMIN CHAND, for Petitioner.

M. L. PURI, for Municipal Committee, Respondent.

The accused, on conviction by *Mian Tasadduq Hussain*, exercising the powers of a Magistrate of the 1st class in the Dera Ghazi Khan District, was sentenced, by order, dated 14th January 1931, under section 81 of the Municipal Act to pay Rs. 468-12-0 to the Municipal Committee, Dera Ghazi Khan, on account of octroi arrears.

*Report of the District Magistrate, Dera Ghazi Khan.*

*The facts of this case are as follows:—*The defendant *Seth Hira Chand* and certain other persons brought motor cars into the Dera Ghazi Khan city for which the Municipal Committee claimed octroi tax, but the defendant refused to pay on the ground that no octroi was payable on the motor cars imported in the city of Dera Ghazi Khan. The Municipal Committee consequently passed a resolution that the recovery should be made under section 81 of the Municipal Act. The Secretary of the Municipal Committee consequently applied to the Magistrate for the recovery of the dues.

*The proceedings are forwarded for revision on the following grounds:—*This is an application under section 439, Criminal Procedure Code, in which a trader of Dera Ghazi Khan, applies for the revision of an order of a magistrate by which he was ordered, under section 81 of the Punjab Municipal Act, to pay octroi duty amounting to Rs. 468-12-0 on motor vehicles imported by him within Dera Ghazi Khan municipal limits at various dates prior to 1930.

The case is in reality a simple one, but it is of importance since it will affect numerous other persons who similarly brought motor vehicles into the Municipality before 1930. By Notification No. 11153, dated the 14th of May 1918, the Punjab Government authorised a schedule of octroi rates for this Municipal Committee. That continued in force until the 1st of February 1930 when a new Notification No. 32162, dated the 22nd of October 1929, came into force. In this later notification Class IX-A.—Miscellaneous (sub-section 6) reads, "conveyances of all kinds, including carriages, carts, Ekkas, baggis, bicycles, tricycles, perambulators, wheel-barrows, motor cycles, motor cars, lorries and other accessories." In the 1918 Notification no reference was made to motor cars in clear terms; but the Municipality rely on two entries. The first reads "all metals wrought and unwrought, and articles made wholly or partially of metal, hardware and cutlery." The second entry is "carriages, carts, bicycles, tricycles, perambulators, trucks, wheel-barrows." It is admitted by both parties that motor cars never were taxed, under the impression that they were not liable to taxation, as being machinery, which being custom-free is also not liable to octroi. A ruling by the Punjab Government to the effect that this interpretation was wrong, and that therefore they were liable to taxation, has resulted in two things, (1) the issue of a revised notification (that of October the 22nd, 1929, referred to above) by which motor cars are clearly included, (2) action by this Municipality to recover octroi from persons who brought motor cars into octroi limits between 1918 and 1930.

It is not in dispute that motor vehicles can lawfully be taxed; the point for decision is whether or not

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motor vehicles were declared liable to octroi in the 1918 Notification, that is, whether they are included in either or both of the terms "articles made wholly or partly of metal," or "carriages, carts." A preliminary objection, however, which may be considered, is that the learned magistrate was right in holding that he had no discretion to consider the merits of the case, and was bound to act purely on his own ministerial capacity. The point is really beyond doubt; the learned magistrate has misunderstood *Lalji v. Municipal Committee, Lahore* (1). There it is clearly pointed out that the point for consideration is whether the tax is legally claimable or not; and by *claimable* is meant that (1) the Committee was legally constituted, (2) that the tax was legally imposed. What the magistrate can do is to inquire, *e.g.*, whether the particular motor was actually brought within a certain area. If it can be shown that the tax was never imposed, the learned magistrate has acted wrongly in refusing to consider the objections of the defendants; and the point is a sufficiently important one for me to move the High Court.

I now deal with the question whether or not motor cars were included in the 1918 Notification. I may say at the outset that I do not see how any reasonable interpretation of the English language can force motors to be included in the term "carriages or carts." Motors were rare but not unknown in Dera Ghazi Khan in 1918; I am told by counsel, and it is admitted by both sides, that Mr. Currie, Sub-Divisional Officer, Rajanpur, brought a motor car to Dera Ghazi Khan District as early as 1911 or 1912. The point whether or not they may be included in articles

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(1) 1 P. R. (Cr.) 1891.

made wholly or partly of metal is more important; it cannot be denied that a motor car is in fact made partly of metal; and what has to be decided therefore is whether an interpretation so forced as this can be accepted, having in view the fact that motor cars were afterwards expressly included as articles apart in the 1929 Notification. Counsel for the defendants has quoted several rulings all of which go to show that when an article has an obvious and well-known description, it is not correct to consider it taxable, simply because it may be included in a generic term which is entered in the schedule of taxable articles. In this connection he refers me to *Ratansi Hirji v. Emperor* (1), in which the Bombay High Court hold that while *Ghi* was undoubtedly a milk-product, it would not be fair to suppose that by milk products *Ghi* was meant, in view of the fact that *Ghi* is so well-known and distinct an article. Similarly in *Jiwan Das v. Income Tax Commissioner, Lahore* (2), the present Chief Justice quotes Lord Buckmaster as saying "It is important to remember the rule which the Courts ought to obey, that when it is desired to impose a new burden by way of taxation, it is essential that the intention should be stated in plain terms." This seems to me exactly to fit the case. Against this, counsel for the respondents quotes me schedule II, part 2, of the Indian Tariff Act, in which under the generic headline "carriages and carts" motor cars and motor cycles and motor scooters are included. However, I do not think that a mere title in a schedule of another Act can be quoted as proof of intention on the part of the Punjab Government in its Notification of 1918, made in virtue of a rule-making provision in the Punjab Municipal Act of 1911.

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(1) 1929 A. I. R. (Bom.) 274. (2) (1929) I. I. R. 10 Lah. 657-666 (F.B.).

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For the above reasons I consider that the case is one which should be brought to the notice of the Hon'ble Judges of the High Court, with a view to their setting aside the order; and I therefore direct that under section 438, Criminal Procedure Code, the file of the case with the relevant Notification be forwarded to the High Court for orders.

Meanwhile the collection of the tax is suspended, pending the orders of the High Court.

#### ORDER OF THE HIGH COURT.

ADDISON J.

ADDISON J.—I am not prepared to interfere. It is laid down at page 180 of Halsbury's Laws of England, Volume 27, that "the language of a statute imposing a tax must receive a strict construction. If the person sought to be taxed comes within the letter of the law, he must be taxed. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however much within the spirit of the law a case might otherwise appear to be. There can be no equitable construction admissible in a taxing statute." The question is whether a motor car comes within the term "carriage" or is "an article made wholly or partially of metal." If it is, it is liable to octroi duty in the Dera Ghazi Khan Municipality. Apparently it is an article made partially of metal. It thus comes within the letter of the notification and is taxable. Again, a motor car is undoubtedly a 'carriage.' It was held in *Taylor v. Goodwin* (1), that the word "carriage" was large enough to include a bicycle. Lush J. remarking that it was quite immaterial what the motive power might be. Again, in *Ellis v. Nott Bower* (2), it was held that a bicycle

(1) (1878) L. R. 4 Q. B. D., 228.

(2) (1896) 13 T. L. R. 35.

was a vehicle. These authorities sufficiently establish that the term "carriage" is wide enough to include a motor car. I see no reason to set aside the order complained of.

In any case there was an appeal under section 84 of the Municipal Act to the Deputy Commissioner and no appeal was preferred. That seems to me a reason why this criminal revision should not be heard.

For the reasons given I direct that the records be returned.

N. F. E.

*Revision dismissed.*

### APPELLATE CIVIL

*Before Addison and Coldstream JJ.*

PUNJAB MARWARI CHAMBER OF  
COMMERCE, LTD. (DEFENDANT) Appellant

*versus*

RAM LAL-LILU SHAH (PLAINTIFF) Respondent.

Civil Appeal No. 1268 of 1931.

*Indian Arbitration Act, IX of 1899, section 4 (a)—“Court”—whether refers to Court having cognizance of the case or District Court—order by former refusing to stay suit—whether appealable—or open to revision—Civil Procedure Code, Act V of 1908, sections 89 (1) and 104 (1) (e), (f).*

In two suits instituted at Delhi the defendant filed applications for stay of proceedings under section 19 of the Arbitration Act, 1899, but the trial Judge holding that the definition of "Court" in section 4 (a) of that Act precluded any Court in Delhi other than the District Court from entertaining the applications, dismissed them. On appeal the following questions were raised; (1) whether an appeal lies against the order of the lower Court refusing to stay proceedings, (2) if not, whether a petition for revision may be entertained against it, and (3) if so, whether it is only the District

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