

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A No. 630 of 2022

STEEL AUTHORITY OF INDIA LIMITED, a Government Company within the meaning of Section 617 of the Companies Act, Colliery Division, Chasnala, having its office at Chasnala, P.O. & P.S. Chasnala, District Dhanbad, through its General Manager (Law) & Constituted Attorney, namely, Rajesh Kumar son, aged about 52 years, son of Shri B.B. Sinha resident of Q. No. 6068, Sector-4D, P.O. Sector 4 P.S. Sector 4 Bokaro Steel City, District Bokaro Steel City, Dhanbad, Jharkhand.

.... **Appellant**

Versus

1. The State Jharkhand, through the Transport Commissioner, Department of Transport, having its office at Jharkhand Mantralaya, Project Bhawan, H.E.C. Township, Dhurwa, P.O. & P.S. Dhurwa, District Ranchi (Jharkhand)
2. Deputy Commissioner, Dhanbad, P.O. & P.S. Dhanbad, District Dhanbad (Jharkhand).
3. District Transport Officer, Dhanbad, P.O. & P.S. Dhanbad, District Dhanbad (Jharkhand).

... ..

Respondents

With

W.P. (T) No. 7247 of 2012

Steel Authority of India Limited, a Government Company within the meaning of Section 617 of the Company, represented through its Assistant General Manager (Liaisoning), Raw Materials Division Shri Rajiva Kumar Bhargava son of Harshu Prasad Bhargava, having its Office at 10, Camac Street, P.O. Camac Street, Police Station Park Street, District Kolkata (West Bengal)

.... **Petitioner**

Versus

1. The State Jharkhand.
2. The District Transport Officer, West Singhbhum, at Chaibasa, P.O., P.S. Chaibasa, District West Singhbhum.

... ..

Respondents

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE NAVNEET KUMAR**

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For the Appellant : Mr. R. Venkataramani,
Attorney General
Mr. Indrajit Sinha, Advocate
Mr. Ajay Kumar Sah, Advocate
Mr. Ankit Vishal, Advocate.

For the State : Mr. Jai Prakash, AAG-IA
Ms. Omiya Anusha, AC to AAG-IA

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C.A.V. on 20/12/2023 **Pronounced on 22/12/2023**
Per Sujit Narayan Prasad, J.:

1. The *intra-court* appeal (LPA No. 630 of 2022) and writ petition (W.P.T No. 7247 of 2012) have been directed to be listed together on the submission of learned counsel for the petitioner in W.P. (T) No. 7247 of 2012 that similar issue concerning the same petitioner is involved in L.P.A. No. 630 of 2022 (instant appeal), as would be evident from order dated 30.01.2023 passed in W.P. (T) No. 7247 of 2012, which has been taken note of in order dated 6th November, 2023 passed in LPA No. 630 of 2022.

2. Since the issue raised in L.P.A. No. 630 of 2022 and W.P. (T) No. 7247 of 2012 are inter-linked, as such they are taken up together.

Prayer in L.P.A. No. 630 of 2022

3. The instant *intra-court* appeal, under Clause 10 of the Letters Patent, is directed against order/judgment dated 6th December, 2021 passed by learned Single Judge in W.P.(C) No. 1 of 2015 with W.P.(C) No. 90 of 2015 whereby and whereunder while dismissing the writ petition it has been held that the dumpers, pay-loaders, shovels, drill master, bulldozers etc. would fall within the definition of “motor vehicles” as defined under Section 2(28) of the Motor Vehicles Act, 1988 [hereinafter referred to as ‘Act, 1988’].

Prayer in W.P. (T) No. 7247 of 2012

4. The instant writ petition has been filed for quashing order dated 06.10.2012 and 29.11.2012 whereby and whereunder the petitioner has been directed to pay road tax, registration charges and penalty on the equipment used by it in its mines.

Brief facts of WPC No. 1 of 2015 (subject matter of L.P.A. No. 630 of 2022 appeal):

5. Brief facts of the case, as per the pleadings made in the writ petition (WPC No. 1 of 2015), which is required for adjudication of *lis* reads as under:

6. The petitioner-Steel Authority of India Limited (SAIL) has its coal mines at Chasnalla Area of Dhanbad district from where coal for its steel plant is mined and for the purpose of mining of coal heavy earth moving equipments have been purchased and are being used exclusively within the leasehold area, which are huge in size and are incapable of plying on roads. Such vehicles include Haulpak Dumpers, Water Sprinklers, Excavators, Dozers, Drillers etc. having either chain mounted or huge tyres and they are categorized as 'off road vehicles' for the purpose of excise duty and other taxes by their manufacturers. It has been stated that the delivery of such equipments to the petitioners has also been made in a dismantle form and after getting delivery the same is being assembled within the mining premises.

7. It is the case of the petitioner-SAIL that having regard to the dimensions of such vehicles and its adaptability and use, the petitioner did not apply for their registration under the provisions of Motor Vehicle Act and rules made thereunder as the said vehicles do not fall within the definition of 'motor vehicle' or construction equipment vehicle.

8. It is further case of the petitioner that on 28.08.2014 the petitioner received a letter by which the petitioner was directed to get its heavy earth moving equipments registered under the provisions of of Motor Vehicles Act. Thereafter, again letter dated 07.09.2014 was issued by which the petitioner was directed to get its heavy earth moving vehicles registered in terms of Motor Vehicles Act, 1988.

9. Being aggrieved by impugned letter dated 28.08.2014 and 07.09.2014 issued by respondents, the petitioner moved this Court by filing writ petition being W.P.(C) No. 1 of 2015.

10. The writ Court taking into consideration the pleading available on record has framed the issue as to "*whether the heavy earth moving machineries, such as, dumpers, payloaders, shovels, drill master, bulldozers etc. are covered under the definition of 'motor vehicles' as defined*

under Section 2(28) of the Motor Vehicles Act, 1988 and liable to tax or not?”

11. Learned counsel for the petitioner-SAIL relying upon the communications dated 13th July, 2020 and 9th March, 2021 has submitted that since advisory has been issued to the Principal Secretary, Department of Transport of all the States/UTs not to insist on registration of heavy earth moving machineries such as dumpers, payloaders, shovels, drill master, bulldozers etc. as these equipments are not covered under the definitions of ‘motor vehicle’ under the Act, 1988, as such direction may be issued to the State of Jharkhand not to force M/s BCCL and SAIL to register all such equipments.

12. The learned Single Judge taking into consideration the submissions advanced by learned counsel for the parties as also the judicial pronouncements as enunciated by Hon’ble Apex Court cited by the parties dismissed the writ petition holding that dumpers, payloaders, shovels, drill master, bulldozers etc. has been held to be under the definition of “motor vehicles” under Section 2(28) of the Motor Vehicles Act, 1988, which is the subject matter of instant *intra-court* appeal.

13. It is evident from the pleading made in the writ petition that the petitioner have claimed that heavy

vehicles like Haulpak Dumpers, Water Sprinklers, Excavators, Dozers, Drillers etc, as per their dimensions, are not coming under the fold of definition of 'motor vehicle' as defined under Section 2 (28) of the Act, 1988 since these equipments, dimensions of which is mentioned at paragraph 6 of the writ petition, have their specific job in mining operations and cannot be used for any other purposes apart from mining. It has been stated therein that due to the aforesaid fact more particularly considering the use of the vehicle the petitioner had not applied for registration of the vehicle under Motor Vehicle Act. But the writ petitioner-appellant received letter dated 28.08.2014 and 07.09.2014 by which the petitioner was directed to get its heavy earth moving equipments registered under the provisions of Motor Vehicles Act.

14. Aggrieved thereof, the petitioner has approached this Court by filing writ petition under Article 226 of the Constitution of India. The ground has been taken in assailing the impugned letter dated 28.08.2014 and 07.09.2014 that such vehicle does not come within ambit and fold of definition of 'motor vehicle' as under Section 2 (28) of the Act, 1988 and further taking reference of judgment rendered by Hon'ble Apex Court in the case of ***Bolani Ores Ltd. V. State of Orissa [(1974) 2 SCC 777]; M/s Central Coalfields Ltd. Vs. State of Orissa***

& Ors. [1992 Suppl. (3) SCC 133] and **Rajasthan SRTC & Ors. Vs. Santosh & Ors [(2013) 7 SCC 94]** has submitted that the such vehicles are not required to be registered and liable to pay tax.

15. While on the other hand, the State has taken the plea that the registration is required in view of judgment rendered by Hon'ble Apex Court in the case of **Western Coalfields Limited Vs. State of Maharashtra & Anr. [(2016) 11 SCC 613]** wherein the judgment passed by Hon'ble Three Judges Bench and Two Judges Bench of Hon'ble Apex Court in the case of **Natwar Parikh & Co. Ltd. Vs. State of Karnataka & Ors [2005) 7 SCC 364]** and **Rajasthan SRTC Vs. Santosh & Ors [(2013) 7 SCC 94]** respectively has been taken note of and it has been held that the excavators deployed by Western Coalfields Limited are "motor vehicles" within the meaning of section 2(28) of the Act, 1988.

16. Reliance has also been placed upon the judgment passed by Co-ordinate Division Bench of this Court in '**Central Coalfields Limited Vs. The State of Jharkhand & Ors [LPA No. 574 of 2019]** decided on 2nd June, 2020 whereby and whereunder such vehicles/equipments have been held to be coming under the definition of 'motor vehicle'.

17. The learned Single Judge taking into consideration the submissions advanced by learned counsel for the parties as also the judicial pronouncements dismissed the writ petition holding that dumpers, payloaders, shovels, drill master, bulldozers etc. has been held to be under the definition of “motor vehicles” under Section 2(28) of the Motor Vehicles Act, 1988 [hereinafter referred to as ‘Act, 1988’], which is the subject matter of instant writ petition.

Brief facts of W.P. (T) No. 7247 of 2012

18. In the State of Jharkhand, the petitioner company has several mining leases in the district of West Singhbhum and for carrying out the mining operations the petitioner requires various equipments for mining lease hold area.

19. It is the case of the petitioner that on 15.06.2012, the respondent no. 2-District Transport Officer, West Singhbhum inspected one of the mines of the petitioner and asked for providing information about mining equipments/vehicles deployed in the mines in order to ascertain as to whether these equipments/vehicles are liable to be registered in terms of Motor Vehicles Act, 1988 or not, to which, the petitioner explained. But being not satisfied with such explanation the respondent-authority again served a similar letter on 28.06.2012.

20. Thereafter, the respondent-authority passed an order dated 06.10.2012 directing the petitioner to pay the road tax, registration fee and penalty. Being aggrieved, the petitioner preferred appeal before the Regional Transport Officer, Ranchi but no order was passed thereupon. However, again on 29.11.2012 a letter was issued by the respondent-District Transport Officer directing to pay the road tax, registration fee and penalty.

21. Being aggrieved with letter dated 06.10.2012 and 29.11.2012, the petitioner has approached this Court by filing writ petition being W.P (T) No. 7247 of 2012.

Submission on behalf of petitioner-appellant

22. Mr. R. Venkataramani, learned Attorney General, appearing for the appellant-SAIL has assailed the impugned judgment passed by learned Single Judge on the following grounds:

- I.** The learned Single Judge has not appreciated the judgment passed by Hon'ble Apex Court regarding the applicability of vehicle in question to come under the fold of Section 2 (28) of the Act, 1988 as a vehicle of special type manufactured or adapted for special purpose in any enclosed premises or in a factory is not to be treated as a 'motor vehicle' for the purposes of

registration and taxation under 'Motor Vehicles Act, 1988.

II. It has been submitted that the issue has already been decided in ***Bolani Ores Ltd. V. State of Orissa (Supra)*** case wherein it has been held that the vehicle is required to be registered but merely because registration is required the same *ipso facto* will not be held the vehicle owner liable to pay the motor vehicle tax as long as they are working solely within the premises of respective owners.

III. It has further been submitted that a vehicle which is not required to be registered cannot come under the scanner of any tax under any law enacted by a State Legislature, under Entry 57 List 2 of Seventh Schedule of the Constitution as the pre-condition for imposition of tax under Entry 57 law namely Jharkhand Motor Vehicles Taxation Act, 2001 is that the vehicle in question has to be registered under the Motor Vehicles Act, 1988.

IV. The ground has been taken that the learned Single Judge while considering the various judgments has considered the judgment rendered by Hon'ble Apex Court in the case of

Western Coalfields Limited Vs. State of Maharashtra & Anr. (supra) and discarded the judgment rendered by three-judges Bench of Hon'ble Apex Court in the case of **Bolani Ores Ltd. V. State of Orissa (supra)** and hence the order passed by learned Single Judge suffers from error.

V. It has been contended by referring to the provisions of Section 2 (28) of the Act, 1988, that merely because vehicle is adapted to ply in the road that will not only bring the vehicle in question under the fold of Section 2(28) of the Act, 1988 rather the aforesaid provisions contains three categories, i.e.,

(2)(28) “motor vehicle” or “vehicle” means

(1) 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;

(2) that 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

(3). a vehicle having less than four wheels fitted with engine capacity of not exceeding1 [twenty-five cubic centimetres];

VI. As per learned senior counsel, the case is coming under the fold of second category since the vehicle in question is being used in the closed premises for the purpose of mining operation, hence the case of the appellant is coming under the fold of second category, as contained under Section 2(28) of the Act, 1988. Therefore, the appellant is not required to get the vehicle registered.

VII. In addition to aforesaid ground, another ground has been taken that an advisory dated 9th March, 2021 has also been issued in continuation to the previous directives dated 13th July, 2020 by the Ministry of Road Transport and Highways, Government of India to all the States/UTs in view of Article 256 of the Constitution of India wherein it has been stipulated not to insist on registration of heavy earth moving machineries such as dumpers, payloaders, shovels, drill master, bulldozers etc. as these equipments are not covered under the definitions of 'motor vehicle' under the Act, 1988, but this directive

has been given complete go by, even though the said advisory binds the State Government.

VIII. Learned senior counsel further submits that the matter requires to be considered with reference to the scope of Entry 57 law and the need for exemption from taxation of specially manufactured vehicles, for specific use in enclosed areas, and such vehicles being not required to be registered.

IX. It has further been argued that there can be no taxation by implication nor by inference similarly there can be no taxation when the incidence of tax is not clearly spelt out.

23. Learned senior counsel based upon the aforesaid premise and relying upon the judgment rendered by Hon'ble Apex Court in the case of ***Bolani Ores Ltd. V. State of (supra); M/s Central Coalfields Ltd. Vs. State of Orissa & Ors. (supra); and Rajasthan SRTC Vs. Santosh & Ors (supra)***, has submitted that learned Single Judge did not take into consideration these facts as also the judicial pronouncements, as enunciated by Hon'ble Apex Court, in right perspective and impugned order has been passed which requires interference by this Court.

Submission on behalf of State:

24. Mr. Jai Prakash, learned A.A.G-IA appearing for the respondents-State has defended the impugned orders by taking the following grounds:

- I.** That the Hon'ble Apex Court in the case of ***Bolani Ores Ltd. V. State of (supra)*** has been pleased to hold at paragraphs 28 and 29 that the dumpers and rockers are motor vehicles which are not taken out of that category, as was the case before the amendment, and they have to be registered after the amendment and can only be driven by persons holding a valid licence. The Hon'ble Apex Court has further observed that the question then remains as to whether these vehicles though registrable under the Act, 1988 are motor vehicles for the purpose of taxation etc. The Hon'ble Apex Court has further come out with a specific finding that the very nature of the area operated by these three companies it is obvious that the machines which are the subject-matter of these appeals must be working in their respective mining areas since there is no evidence to the effect that the vehicle in question is plying in the open road, hence, even though the registration is required but such vehicles are

not taxable under the Taxation Act as they are working solely within the premises of respective owners.

II. It has been contended that subsequent to the aforesaid judgment, the Hon'ble Apex Court has again considered the aforesaid issue in the case of **Central Coalfields Ltd Vs. State of Orissa & Ors [(1992) Suppl 3 SCC 133]** wherein the judgment rendered by Hon'ble Apex Court in the case of **Bolani Ores Ltd. V. State of (supra)** was also considered and thereafter at paragraph 9 it has been held that the mere fact that the Dumpers or Rockers as suggested are heavy and cannot move on the roads without damaging them is not to say that they are not suitable for use on roads. The word 'adapted' in the provision was read as 'suitable' in **Bolani Ores case (supra)** by interpretation on the strength of the language in Entry 57, List II of the Constitution. Thus on that basis it was idle to contend on behalf of the appellants that Dumpers and Rockers were neither adaptable nor suitable for use on public roads. Thereafter the Hon'ble Apex Court on the aforesaid fact has come to the conclusion by holding that the High

Court was right in coming to the conclusion that Dumpers and Rockers are vehicles adapted or suitable for use on roads and being motor vehicles *per se*, as held in ***Bolani Ores case*** were liable to taxation on the footing of their use or kept for use on public roads.

III. The reference of judgment rendered by Hon'ble Apex Court in the case of ***Natwar Parikh & Co. Ltd. Vs. State of Karnataka & Ors (supra)***, which has been taken note of by Hon'ble Apex Court in the case of ***Western Coalfields Limited Vs. State of Maharashtra & Anr. (supra)*** has also been taken aid of wherein the Hon'ble Apex Court at paragraph 28 has been pleased to hold that word motor vehicle as under Section 2(28) 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. Therefore, the Hon'ble Apex Court by keeping the aforesaid fact into consideration has been pleased to hold that 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 Hon'ble Apex Court has been pleased to lay down the test which is to be applied in such a case as to 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.

- IV.** Learned State counsel based upon the aforesaid ground has submitted that the learned Single Judge has considered all the judgment of Hon'ble Apex Court and thereafter is correct in discarding the advisory on the ground that the proposition has been laid down by Hon'ble Apex Court by interpreting Section 2 (28) of the Act, 1988 by holding the vehicle in question to be motor vehicle within the meaning of Section 2 (28) cannot be said to suffer from error.
- V.** Further ground has been taken by referring to the prayer made in the writ petition that although the argument has been advanced relying upon the judgment rendered in the case of ***Bolani Ores Ltd. V. State of Orissa (supra)*** wherein the registration of the vehicle has been held to be required but the writ petition is on the

ground that the registration of the vehicle is not required, which would be evident from communication as contained in impugned letters wherein the competent authority has issued the communication to get the vehicle registered which has been challenged by taking the ground that the vehicles in question are not required to be registered in view of judgment passed in ***Bolani Ores Ltd. V. State of Orissa (supra)***.

VI. Learned AAG-IA has submitted that once the reliance is being put on behalf of writ petitioner upon the judgment rendered by Hon'ble Apex Court in the case of ***Bolani Ores Ltd. V. State of Orissa (supra)*** wherein also law has been laid down that such vehicles are required to be registered but the proposition has been laid down that merely because the vehicle is required to be registered that does not mean that such vehicle will be subject to taxation rather the parameter to test is as to whether the vehicle in question is adaptable to ply on the road for the purpose of transportation of goods from one place to another and when a vehicle is so altered or prepared it becomes apt for transporting goods then where is the question of putting reliance

upon the judgment in ***Bolani Ores Ltd. V. State of Orissa case***, which is nothing but contrary to the prayer made in the writ petition.

VII. Learned counsel AAG-IA further submits that so far advisory dated 13th July, 2001 and 9th March, 2021 are concerned, it is settled position of law that in legal parlance advisory does not attain the status of law, as such the advisory so issued is not having binding effect.

25. The learned AAG-IA appearing for the State based upon the aforesaid ground has submitted that the impugned judgment passed by learned Single Judge suffers from no error, hence the instant appeal is fit to be dismissed.

Discussion:

26. We have heard learned counsel for the parties, perused the finding recorded by learned Single Judge in the impugned order as also the pleading made in the writ petition and the grounds agitated for filing the instant appeal and the written note of argument filed on behalf of appellant-petitioner.

27. It is evident from the pleading made in the writ petition that communication as contained in letter dated 28.08.2014 and 07.09.2014 has been challenged.

28. We have gone through the contents of said letters and found therefrom that the same is for getting the motor vehicles registered under the provisions of Act, 1988. The writ petitioner has challenged those letters issued by way of communication dated 28.08.2014 and 07.09.2014.

29. Learned counsel for the writ petitioner has argued that the vehicle in question is not taxable but there is no pleading to that effect that whether the vehicle in question is taxable or not rather only pleading is based upon the fact that the vehicle in question i.e., dumpers, payloaders, shovels, drill master, bulldozers etc. are not required registration under the Act, 1988 since these vehicles are not coming under the fold of Section 2(28) of the Act, 1988, as such this Court deems, it fit and proper to reproduce the prayer of writ petition, which reads as under:

“a. For issuance of an appropriate writ, order or direction, including writ in the nature of certiorari, for quashing Letter no.1024 dated 28.8.2014 issued under the signature of the District Transport Officer, Dhanbad-Respondent no.3, whereby and whereunder, the petitioner has been directed to get all heavy earth moving equipments used for mining at its coal mines, registered with the Transport Authority;

b. For issuance of further appropriate writ, order or direction, including writ of certiorari for quashing Letter no.1821 (GO) dated 7.9.2014 issued under the signature of the Deputy Commissioner, Dhanbad, whereby and

whereunder, the petitioner has been directed to get all its heavy earth moving equipments used for mining registered with the District Transport Authority;

C. A further writ, order or direction, declaring that heavy earth moving equipments used by the petitioner at this coal mines are not subject to registration under Motor Vehicles Act, as the same are not vehicles within the meaning of term "Motor Vehicle" and are incapable of plying on public road;

d. Upon such declaration, directing and commanding upon the respondents authorities to forebear from giving effect to the operation of the impugned letters dated 28.8.2014 and 7.9.2014."

30. It is evident from the aforesaid prayer made in the writ petition, which is the subject matter of instant intra-court appeal, that only prayer is for questioning the decision of the competent authority under the Act, 1988 requesting for registration of the said vehicles.

31. Counter affidavit has been filed on behalf of State. The learned AAG-I appearing for the State referred to the judgment rendered in ***Western Coalfields Limited Vs. State of Maharashtra & Anr. (supra); Natwar Parikh & Co. Ltd. Vs. State of Karnataka & Ors [supra] and Rajasthan SRTC Vs. Santosh & Ors (supra)***. However, learned counsel appearing for the writ petitioner has mainly relied upon the judgment rendered by Hon'ble Apex Court in the case of ***Bolani Ores Ltd. V. State of Orissa (supra)***.

32. We before coming to the legality and propriety of the judgment passed by learned Single Judge, deems it fit and proper to refer the definition of ‘motor vehicle, as contained in the un-amended Act of 1939; Act of 1956 in Section 2 (18) thereof and under Section 2(28) of the Act 1988.

33. For ready reference, the same is being re-produced hereunder in tabular form:

Section 2(18) before amendment	Section 2(18) after amendment by Act 100 of 1956	Section 2(28) of the Act, 1988
“motor 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 used solely upon the premises of the owner.	“motor 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 special type adapted for use only in a factory or in any other enclosed premises.	“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 ¹ [twenty-five cubic centimetres];
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34. It requires to refer herein that the 1914 Act defined ‘motor vehicle’ as including “*a vehicle, carriage or other means of conveyance propelled, or which may be propelled, on a road by electrical or mechanical power either entirely or partially*”.

35. In the year 1939 the Motor Vehicles Act, 1914 was repealed and a new Act was substituted in its place. The definition of ‘motor vehicle’ under Section 2(18) of the Act has been re-defined as “motor vehicle” which 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 special type adapted for use only in a factory or in any other enclosed premises.

36. Thereafter the Act, 1956 has come and subsequently the Act, 1956 has been repealed and superseded by Act, 1988 wherein Section 2(28) has been stipulated as definition of ‘motor vehicles, which says that 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], such motor vehicle or vehicle will not come under the fold of the definition of motor vehicle if a vehicle running upon fixed rails or a vehicle of a special type adapted for use only a factor or any enclosed premises.

37. The contention has been raised as per the pleading made in the writ petition that the vehicle in question herein are not motor vehicle since it is only to be used in the factory in the enclosed premise hence such vehicle will not come under the fold of motor vehicle as per the provisions as contained under section 39 of the Act, 1988 wherein necessity for registration has been dealt with stating therein that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in

accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner: provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

38. The fact as to whether such vehicle is coming under the fold of Section 2(28) or not has been considered by Hon'ble Apex Court in the case of ***Bolani Ores Ltd. V. State of Orissa (supra)*** wherein the issue fell for consideration is as to whether the legislature has intended to incorporate the definition under the Act as it was existed and not as it may exist from time to time. The Hon'ble Apex Court after taking note of the fact in entirety has laid down at paragraph 28 that vehicle like dumpers or rockers are motor vehicles which are not taken out of that category, they have to be registered and can only be driven by persons holding a valid licence.

39. But at paragraph 29 the question has been decided as to whether those vehicles though registrable under the Act are motor vehicles for the purpose of the Taxation Act or not.

40. The Hon'ble Apex Court has considered in the aforesaid very paragraph that entry 57 List II of VII

Schedule read with Article 301 of the Constitution and after considering the aforesaid fact, it has been observed that the regulations under the Motor Vehicles Act for registration and prohibition of certain categories of vehicles being driven by persons who have no driving licence, even though those vehicles are not plying on the roads, are designed to ensure the safety of passengers and goods etc. and for that purpose it is enacted to keep control and check on the vehicles. It has further been held that if this be the purpose and object of the Taxation Act, when the motor vehicle is defined under Section 2(c) of the Taxation Act as having the same meaning as in the Motor Vehicles Act, 1939, then the intention of the Legislature could not have been anything but to incorporate only the definition in the Motor Vehicles Act as then existing, namely, in 1943, as if that definition was bodily written into Section 2(c) of the Taxation Act.

41. Further, the Hon'ble Apex Court at paragraph 37 has been pleased to hold that the nature of the vehicle is required to be seen and if from the very nature of the area operated by these three companies it is obvious that the machines which are the subject-matter of these appeals must be working in their respective mining areas. The mere fact that there is no fence or the barbed wire around the leasehold premises is not conclusive.

There is evidence to show that the public are not allowed to go inside without prior permission, there are gates and a check on ingress and egress is kept by guards who also ensure that no unauthorised persons have access to the mining area, all of which indicate that the respective mining areas are enclosed premises within the meaning of the exceptions under Section 2(c) of the Taxation Act.

42. Accordingly, the Hon'ble Apex Court at paragraph 38, while dismissing the *Civil Appeal 336 of 1970* and partly allowing other appeals, has been pleased to hold that dumpers and rockers though registrable under the Act are not taxable under the Taxation Act as long as they are working solely within the premises of the respective owners.

43. For ready reference, the relevant paragraphs of judgment rendered by Hon'ble Apex Court in the case of ***Bolani Ores Ltd. V. State of Orissa (supra)*** is quoted as under:

"28. Insofar as the Act is concerned, having regard to the fact that the dumpers and rockers are motor vehicles which are not taken out of that category, as was the case before the amendment, they have to be registered after the amendment and can only be driven by persons holding a valid licence. The tractair though it may be a motor vehicle within the definition of that term is neither a goods vehicle nor a vehicle which carries passengers nor is it being driven in a place to which public have as a right of access. As it does not perform any of the aforesaid functions or uses it is not a vehicle which has to be registered nor has it to be driven only by a person who holds a licence.

29. *The question then remains as to whether these vehicles though registrable under the Act are motor vehicles for the purpose of the Taxation Act. It has already been pointed out that before the amendment vehicles used solely upon the premises of the owner, though they may be mechanically propelled vehicles adapted for use upon roads were excluded from the definition of 'motor vehicle'. If this definition which excludes them is the one which is incorporated by reference under Section 2(c) of the Taxation Act, then no tax is leviable on these vehicles under the Taxation Act. Shri Tarkunde for the State of Orissa contends that the definition of 'motor vehicle' in Section 2(c) of the Taxation Act is not a definition by incorporation but only a definition by reference, and as such the meaning of 'motor vehicle' for the purpose of Section 2(c) of the Taxation Act would be the same as defined from time to time under Section 2(18) of the Act. In ascertaining the intention of the legislature in adopting the method of merely referring to the definition of 'motor vehicle' under the Act for the purpose of the Taxation Act, we have to keep in mind its purpose and intendment as also that of the Motor Vehicles Act. We have already stated what these purposes are and having regard to them the registration of a motor vehicle does not automatically make it liable for taxation under the Taxation Act. The Taxation Act is a regulatory measure imposing compensatory taxes for the purpose of raising revenue to meet the expenditure for making roads, maintaining them and for facilitating the movement and regulation of traffic. The validity of the taxing power under Entry 57 List II of the Seventh Schedule read with Article 301 of the Constitution depends upon the regulatory and compensatory nature of the taxes. It is not the purpose of the Taxation Act to levy taxes on vehicles which do not use the roads or in any way form part of flow of traffic on the roads which is required to be regulated. The regulations under the Motor Vehicles Act for registration and prohibition of certain categories of vehicles being driven by persons who have no driving licence, even though those vehicles are not plying on the roads, are designed to ensure the safety of passengers and goods etc. etc. and for that purpose it is enacted to keep control and check on the vehicles. Legislative power under Entry 35 of List III (Concurrent List) does not bar such a provision. But Entry 57 of List II is subject to the limitations referred to above, namely, that the power of taxation thereunder cannot exceed the compensatory nature which must have some nexus with the vehicles using the roads viz. public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Act, they cannot be taxed. This very concept is embodied in*

*the provisions of Section 7 of the Taxation Act as also the relevant sections in the Taxation Acts of other States, namely, that where a motor vehicle is not using the roads and it is declared that it will not use the roads for any quarter or quarters of a year or for any particular year or years, no tax is leviable thereon and if any tax has been paid for any quarter during which it is not proposed to use the motor vehicle on the road, the tax for that quarter is refundable. If this be the purpose and object of the Taxation Act, when the motor vehicle is defined under Section 2(c) of the Taxation Act as having the same meaning as in the Motor Vehicles Act, 1939, then the intention of the Legislature could not have been anything but to incorporate only the definition in the Motor Vehicles Act as then existing, namely, in 1943, as if that definition was bodily written into Section 2(c) of the Taxation Act. If the subsequent Orissa Motor Vehicles Taxation (Amendment) Act, 1943, incorporating the definition of 'motor vehicle' referred to the definition of 'motor vehicle' under the Act as then existing, the effect of this legislative method would, in our view, amount to an incorporation by reference of the provisions of Section 2(18) of the Act in Section 2(c) of the Taxation Act. Any subsequent amendment in the Act or a total repeal of the Act under a fresh legislation on that topic would not affect the definition of 'motor vehicle' in Section 2(c) of the Taxation Act. This is a well-accepted interpretation both in this country as well as in England which has to a large extent influenced our law. This view is further reinforced by the use of the word 'has' in the expression "has the same meaning as in the Motor Vehicles Act, 1939" in Section 2(c) of the Taxation Act, which would perhaps further justify the assumption that the Legislature had intended to incorporate the definition under the Act as it then existed and not as it may exist from time to time. This method of drafting which adopts incorporation by reference to another Act whatever may have been its historical justification in England in this country does not exhibit an activists draftsmanship which would have adopted the method of providing its own definition. Where two Acts are complimentary or interconnected, legislation by reference may be an easier method because a definition given in the one Act may be made to do as the definition in the other Act both of which being enacted by the same Legislature. At any rate, Lord Esher, M.R. dealing with legislation by incorporation, in *In re. Wood's Estate* [(1886) 31 Ch D 607] said at p. 615:*

"If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often

been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have these clauses in the later Act, you have no occasion to refer to the former Act at all.”

The observations in Clarke v. Bradlaugh [(1881) 8 QBD 63 607] are also to the same effect. Brett, L.J. in that case had said at p. 69:

“... there is a rule of construction that, where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third statute does not affect the second.”

37. *From the very nature of the area operated by these three companies it is obvious that the machines which are the subject-matter of these appeals must be working in their respective mining areas. The mere fact that there is no fence or the barbed wire around the leasehold premises is not conclusive. There is evidence to show that the public are not allowed to go inside without prior permission, there are gates and a check on ingress and egress is kept by guards who also ensure that no unauthorised persons have access to the mining area, all of which indicate that the respective mining areas are enclosed premises within the meaning of the exceptions under Section 2(c) of the Taxation Act.*

38. *In the result, the Civil Appeal 336 of 1970 is dismissed with costs and other appeals are partly allowed and it is held that **dumpers and rockers though registrable under the Act are not taxable under the Taxation Act as long as they are working solely within the premises of the respective owners.** So far as the tractairs are concerned they are neither registrable under the Act nor taxable under the Taxation Act. The appellants will get proportionate costs.”*

44. It is thus evident that in the **Bolani Ores Ltd. V. State of Orissa (supra) case** the Hon[’]ble Apex Court has been pleased to hold that the registration of the vehicle is necessary but so far applicability of Taxation Act is concerned the same is to be decided solely on the ground that the said vehicle is being plied within the premises of owners or not.

45. Subsequent to the judgment passed in ***Bolani Ores Ltd. V. State of Orissa (supra)*** the Hon'ble Apex Court has re-considered the aforesaid issue in the case of ***M/s Central Coalfields Ltd. Vs. State of Orissa & Ors. (supra)*** wherein the judgment rendered in ***Bolani Ores Ltd. V. State of Orissa (supra)*** has also been taken into consideration holding at paragraph 9 that the very nature of these vehicles make it clear that they are not manufactured or adapted for use only in factories or enclosed premises. The mere fact that the Dumpers or Rockers as suggested are heavy and cannot move on the roads without damaging them is not to say that they are not suitable for use on roads. The word 'adapted' in the provision was read as 'suitable' in *Bolani Ores case* by interpretation on the strength of the language in Entry 57, List II of the Constitution. Thus on that basis it was idle to contend on behalf of the appellants that Dumpers and Rockers were neither adaptable nor suitable for use on public roads. Thus on the fact situation, we have no hesitation in holding that the High Court was right in concluding that Dumpers and Rockers are vehicles adapted or suitable for use on roads and being motor vehicles per se, as held in *Bolani Ores case* were liable to taxation on the footing of their use or kept for use on public roads.

46. For ready reference, paragraph 9 of the judgment rendered in ***M/s Central Coalfields Ltd. Vs. State of Orissa & Ors. (supra)*** is quoted as under:

*“9. It would be appropriate now to mention that some documentary material was sent to us by the appellants by means of an affidavit after we had reserved judgment. That material is suggestive of the fact that Dumpers in some States are granted permission to run on public roads at a speed not exceeding 16 kms per hour and on bridges and culverts at a speed not exceeding 8 kms per hour. From this it is suggested that they have a minimum weight and safe laden weight fixed on some principles. Pictures of various types of Dumpers have also been sent to us which indicate prominently one factor that these Dumpers run on tyres, in marked contrast to chain plates like caterpillars or military tanks. By the use of rubber tyres it is evident that they have been adapted for use on roads, which means they are suitable for being used on public roads. The mere fact that they are required at places to run at a particular speed is not to detract from the position otherwise clear that they are adapted for use on roads. The very nature of these vehicles make it clear that they are not manufactured or adapted for use only in factories or enclosed premises. The mere fact that the Dumpers or Rockers as suggested are heavy and cannot move on the roads without damaging them is not to say that they are not suitable for use on roads. The word ‘adapted’ in the provision was read as ‘suitable’ in Bolani Ores case [(1974) 2 SCC 777 : (1975) 2 SCR 138] by interpretation on the strength of the language in Entry 57, List II of the Constitution. Thus on that basis it was idle to contend on behalf of the appellants that Dumpers and Rockers were neither adaptable nor suitable for use on public roads. Thus on the fact situation, we have no hesitation in holding that **the High Court was right in concluding that Dumpers and Rockers are vehicles adapted or suitable for use on roads and being motor vehicles per se, as held in Bolani Ores case [(1974) 2 SCC 777 : (1975) 2 SCR 138] were liable to taxation on the footing of their use or kept for use on***

public roads; the network of which, the State spreads, maintains it and keeps available for use of motor vehicles and hence is entitled to a regulatory and compensatory tax. (Exemptions claimable apart). The appellants, therefore, in our view, have no case for grant of any relief in these appeals."

47. Again the matter was considered by Hon'ble Apex Court in the case of **Natwar Parikh & Co. Ltd. Vs. State of Karnataka & Ors (supra)** which is judgment rendered by **Hon'ble Three Judge Bench** of the Apex Court. This is a judgment after Act, 1988 has come into being, which has also been taken note by Hon'ble Apex Court in the case of **Western Coalfields Limited Vs. State of Maharashtra & Anr. (supra)**. The Hon'ble Apex Court in the case of **Natwar Parikh & Co. Ltd. Vs. State of Karnataka & Ors (supra)** at paragraph 24 has been pleased to hold that words 'motor vehicle' as under Section 2(28) 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. The test which is to be applied in such a case as to 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.

48. For ready reference paragraph 24 of the judgment rendered in **Natwar Parikh & Co. Ltd. Vs. State of Karnataka & Ors (supra)** is quoted as under:

“24. 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 a 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 aforesaid 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 MV Act, 1988.**”

49. Again in the case of **Western Coalfields Limited Vs. State of Maharashtra & Anr.** the view taken in **Natwar Parikh & Co. Ltd. Vs. State of Karnataka & Ors** and **Rajasthan SRTC & Ors. Vs. Santosh & Ors** has been reiterated as under paragraph 3, which reads as under:

“3. On the other hand, the two-Judge Bench decisions in Natwar Parikh & Co. Ltd. [Natwar Parikh & Co. Ltd. v. State of Karnataka, (2005) 7 SCC 364] and Rajasthan SRTC [Rajasthan SRTC v. Santosh, (2013) 7 SCC 94 : (2013) 3 SCC (Civ) 372 : (2013) 3 SCC (Cri) 37] squarely dealt with the issue and the conclusions therein that the vehicles involved in the said cases would come within the meaning of the definition in Section 2(28) of the Act was on a consideration of the provisions thereof. We have taken note of the definition contained in Section 2(28) of the Act and having regard to the facts of the case we are of the view that the decision in Goodyear [Goodyear India Ltd. v. Union of India, (1997) 5 SCC 752] would have no application for determination of the question that arises in the present case. Having read and considered the decisions in Natwar Parikh & Co. Ltd. [Natwar Parikh & Co. Ltd. v. State of Karnataka, (2005) 7 SCC 364] and Rajasthan SRTC [Rajasthan SRTC v. Santosh, (2013) 7 SCC 94 : (2013) 3 SCC (Civ) 372 : (2013) 3 SCC (Cri) 37] we are in respectful agreement with the conclusions reached therein. We, therefore, answer the question referred by holding that the excavators belonging to the appellant fall within the meaning of the definition of “motor vehicles” contained in Section 2(28) of the Act and would, therefore, be liable for registration, payment of taxes, etc. as envisaged under the provisions of the Act.”

50. The Co-ordinate Division Bench of this Court in **L.P.A. No. 574 of 2019 [Central Coalfields Ltd. Vs. The State of Jharkhand & Ors]** also while taking into consideration the judgment rendered by Hon’ble Apex

Court in the case of ***Bolani Ores Ltd. V. State of Orissa (supra); Western Coalfields Limited Vs. State of Maharashtra & Anr. (supra); M/s Central Coalfields Ltd. Vs. State of Orissa & Ors. (supra); Goodyear India Ltd. Vs. Union of India & Ors [(1997) 5 SCC 752]*** and ***Natwar Parikh & Co. Ltd. Vs. State of Karnataka & Ors (supra)*** has come to the conclusion that Bulldozers, Excavators/Pay Loaders, back-hoe, dumpers, motor grader etc. are motor vehicles within the fold of Section 2(28) of the Act, 1988.

51. We after having discussed the aforesaid judgments of the Hon'ble Apex Court and coming back to the facts of this case, it is evident that although the writ petition has been filed for challenging the very issue that the vehicle in question is not required to be registered under the provisions of Act, 1988 as per Section 39 thereof. But ***Bolani Ores Ltd. V. State of Orissa (supra)*** case has clarified the position of registration of the vehicle that the vehicle is required to be registered, as would be evident from paragraph 38 and 39 thereof.

52. However, learned senior counsel for the appellant has contended that even if the fact the registration is necessary to be done but that not *ipso facto* held the vehicle taxable.

53. So far as the issue of taxation is concerned that has also been taken into consideration by the Hon'ble Apex Court in the case of ***Bolani Ores Ltd. V. State of Orissa (supra), M/s Central Coalfields Ltd. Vs. State of Orissa & Ors. (supra); Natwar Parikh & Co. Ltd. Vs. State of Karnataka & Ors (supra)*** and ***Western Coalfields Limited Vs. State of Maharashtra & Anr. (supra)***.

54. We have found that the proposition has been laid down by giving a test to be considered by coming to the conclusion i.e., in the case of ***Natwar Parikh & Co. Ltd. Vs. State of Karnataka & Ors (supra)*** and the test which is to be applied in such a case as to 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.

55. Since the issue of vehicle is taxable or not it depends upon the test as to whether the vehicle is proposed to be used for transporting goods from one place to another. Hence, herein also it is not in dispute that such vehicle can also be used for the aforesaid purpose.

56. Further the Co-ordinate Bench of this court in L.P.A. No. 574 of 2019 has also passed order regarding the

vehicle in question is required to be registered under the provisions of Section 2 (28) of the Act, 1988.

57. This Court after having discussed the factual aspect and legal position and coming back to the order passed by learned Single Judge is of the view that the learned Single Judge has considered the fact in entirety based upon the legal position.

58. Further the issue of decision of advisory board has also been taken note of by learned Single Judge but the learned Single Judge refrain himself from delving into the legality and propriety of the said decision taken by the advisory board.

59. In this context, we are of the view that the advisory note cannot prevail upon the judgment passed by Hon'ble Apex Court in view of provision of Article 141 of the Constitution of India read with Article 144 thereof, whereby and whereunder if any judgment has been passed by the Hon'ble Apex Court it has got binding effect and over and above any advisory is being issued the same will not prevail upon the law laid down under Article 141 of the Constitution of India.

60. Accordingly, in entirety of facts and circumstances of the case, the instant appeal fails and is dismissed.

61. In consequence thereof, the writ petition being W.P. (T) No. 7247 of 2012 stands dismissed.

62. Pending interlocutory application, if any, stands disposed of.

I Agree

(Sujit Narayan Prasad, J.)

(Navneet Kumar, J.)

(Navneet Kumar, J.)

Jharkhand High Court, Ranchi

Dated: 22/12/2023

Alankar / **A.F.R.**