

1962

M/s. Stanworth
Ltd.

v.

State of Assam

Kapur J.

In view of our decision on these two points the third point, that is, the refusal of the Sales Tax Officer to amend the registration certificate will have no force.

In the result this petition fails and is dismissed and the rule is discharged. The petitioner will pay the costs of the respondent.

Petition dismissed.

1962

January 16.

SOUTHERN ROADWAYS PRIVATE LTD.

v.

UNION OF INDIA AND ANOTHER

(B. P. SINHA, C.J., J. L. KAPUR, M. HIDAYATULLAH,
J. C. SHAH and J. R. MUDHOLKAR, JJ.)

Income Tax—Development Rebate—Disallowance on office appliances and transport vehicles If discriminatory—Income-tax Act, 1922 (11 of 1922) as amended by the Taxation Laws (Amendment) Act (28 of 1960, s. 10(2) (vi-b) second proviso.

The assessee company owned a fleet of buses and carried on the business of transport. The income-tax officer disallowed development rebate on the transport vehicles owned by the company as provided by the second proviso to s. 10(2) (vi-b) of the Income-tax Act. The company challenged the section on the ground that the said proviso offends Art. 14 in that it discriminates between machinery which is office appliances or road transport vehicles and other kinds of machinery.

Held, that there is nothing in the Constitution which prevents the Legislature from choosing the objects of taxation from amongst various classes of machinery for purpose of giving development rebate.

ORIGINAL JURISDICTION : Petition No. 143 of 1961.

Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental rights.

S. Swaminathan and R. Gopalakrishnan, for the petitioner.

K. N. Rajagopala Sastri and P. D. Menon, for the respondents.

1962. January 16. The Judgment of the Court was delivered by

KAPUR, J.—This is a petition by the assessee under Art. 32 of the Constitution challenging the constitutionality of the second proviso to s. 10(2) (vi-b) of Income tax Act introduced by The Taxation Laws (Amendment) Act (28 of 1960). The relevant section with the proviso is as follows :—

S. 10(1) "The tax shall be payable by an assessee under the head "Profits and gains of business, profession or vocation" in respect of the profits or gains of any business, profession or vocation carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely :

.....
.....

(vi-b) in respect of machinery or plant being new, which has been installed after the 31st day of March, 1954, and which is wholly used for the purposes of the business carried on by the assessee, a sum by way of development rebate in respect of the year of installation equivalent to twenty-five per cent of the actual cost of such machinery or plant to the assessee :

Provided that no allowance under this clause shall be made unless the particulars prescribed for the purpose of clause (vi) have been furnished by the assessee in respect of such machinery or plant;

Provided further that no allowance under this clause shall be made in respect of any machinery or plant which consist of office appliances or road transport vehicles."

The petitioner is a limited company with its registered office at Madurai in the State of Madras

1962

*Southern Roadways
Private Ltd.*

*v.
Union of India*

Kapur J.

1962

Southern Redways
Private Ltd.v.
Union of India

Kapur J.

which owns a fleet of buses and lorries and carries on the business of transport. In respect of assessment year 1960-61 it claimed a development rebate on all its plants and machinery including business. The Income tax Officer disallowed the claim of rebate on transport vehicles under the proviso above quoted and computed the tax payable without such rebate. It was contended on behalf of the petitioner that the proviso offends Art. 14 in that it discriminates between machinery which is office appliance or road transport vehicles and other kind of machinery. It is difficult to accept such a contention because there is nothing in the Constitution which prevents the legislature from choosing the object of taxation from amongst various classes of machinery for the purpose of giving development rebate. The Constitution does not prohibit any such classification which has been made in the present case.

The petition is wholly without merit and is therefore dismissed and the rule is discharged. The petitioner will pay the costs of the respondent.

Petition dismissed.

1962

January 16.

P. V. RAGHAVA REDDI AND ANOTHER

v.

COMMISSIONER OF INCOME-TAX

(B. P. SINHA, C. J., J. L. KAPUR, M. HIDAYATULLAH,
J. C. SHAH and J. R. MUDHOLKAR, J.J.)

Non-resident company - Commission due to—Received by Indian firm and paid directly or through others to the non-resident company --If statutory agent—Income, if received in taxable territory—Indian Income-tax Act, 1922 (11 of 1922), ss. 4(1)(a), 4(1)(c), 43.

The appellant is a firm which was doing business in mica. To negotiate for orders and to handle its other affairs the appellant engaged a company in Japan which is admittedly a "non-resident" company. By agreement between the