RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 8258/2026
CNR: RJHC020371352026 | URN: CW / 18194U / 2026

Rajasthan High Court
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Honda Motorcycle And Scooter India Pvt. Ltd., Having Its Registered Office At Plot No. 1, Sector-3, Imt Manesar, Gurugram - 122050 And Factory At Plot No. Spl - 2(D), 2 (E), 2(F) And 2(G) Tapukara, District Alwar, Rajasthan Through Its Authorised Signatory Ms Apeksha Awasthi

----Petitioner

Versus

1. Union Of India, Through Secretary, Ministry Of Road Transport And Highways, Transport Bhawan, 1, Parliament Street, New Delhi - 110001
2. State Of Rajasthan, Through Principal Secretary And Transport Commissioner, Transport Department, Jaipur - 302005
3. Additional Transport Commissioner, Transport Department, Government Of Rajasthan, Jaipur - 302005
4. Regional Transport Officer, Distt. Alwar, Rajasthan.
5. District Transport And Taxation Officer, Bhiwadi, Alwar, Rajasthan.

----Respondents

Connected with

D.B. Civil Writ Petition Nos. 13820/2017, 13821/2017, 13825/2017, 13828/2017, 13830/2017, 1413/2018, 4676/2018, 4677/2018, 5247/2018, 5368/2019, 4360/2020, 6280/2020, 6285/2020, 6290/2020, 9487/2020, 10463/2020, 10481/2020, 3131/2021, 4018/2021, 4174/2021, 10219/2021, 5231/2022, 5238/2022, 10212/2022, 5613/2023, 6501/2023,11302/2023, 6777/2024, 4151/2025, 4771/2025, 8810/2025, 9140/2025, 7879/2026, 11608/2026

For Petitioner(s)	:	Mr. Lakshami Kumaran, Sr. Advocate Mr. Sudhir Gupta, Sr. Advocate assisted by Mr. Umang Gupta Ms. Shweta Chauhan Mr. Vinay Kumar Jain Ms. Priyavada Joshi Mr. Sakshya Jain Mr. Sanjay Kumar Mr. Anshul Sehgal Mr. Pranshu Paul Mr. Pranav Pareek Mr. Aman Lodiya Mr. Rachit Somani Mr. Madhusudan Purohit Mr. Harshit Bansal
For Respondent(s)	:	Mr. Rajendra Prasad, AG assisted by Ms. Dhrishti Laddha Mr. Tanay Goyal

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Mr. Bharat Vyas, ASG, through V.C.
assisted by Ms. Niti Jain Bhandari
Mr. Devesh Yadav
Mr. Rakesh

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HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Judgment

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For the sake of convenience our Judgment is divided in following parts:

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Reportable

Reserved on: 07/08/2026

Pronounced on: 06/11/2026

Per: Arun Monga, J.

A. INTRODUCTION

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1. This batch of writ petitions turns on one central question. Is a manufacturer of motor vehicles liable to tax under Section 4(1)(d) of the Rajasthan Motor Vehicles Taxation Act, 1951 ("Act of 1951") for finished vehicles he holds inside his factory before despatching them to dealers? The petitioners say he is not, unless the vehicles are shown to have used the roads of this State. The State says the charge attaches to possession of such vehicles in the course of business and it does not depend upon proof of user.

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2. The petitioners also challenge the *vires* of four provisions. They are the proviso to Section 39 of the Motor Vehicles Act, 1988 ("Act of 1988"), Rule 33 of the Central Motor Vehicles Rules, 1989 ("Rules of 1989"), Section 4(1)(d) of the Act of 1951, and Notification S.O. 413, dated 31.03.2000 issued under it. In the alternative, they seek a reading down of these provisions. In the further alternative, they seek a declaration that Rule 33 is *ultra vires* the proviso to Section 39.

3. The issues in all the petitions are identical. The petitions were heard together. There are two sets of petitions bunched together i.e. one by M/S Honda car India Ltd. And then by M/S Hero Motocorp Ltd.. They are being decided by this common judgment. For convenience, we have taken the facts and recitals from D.B. Civil Writ Petition No. 13820/2017.

B. FACTS

4. The petitioner is a company incorporated under the Companies Act. It manufactures and markets motor cars. It began production in February 2014.

5. On 04.03.2016, the Transport Inspector, Bhiwadi, visited the factory in exercise of his power of entry as per Section 18 of the Act of 1951. A memo was drawn up. It recorded that, under Rule 33 of the Rules of 1989 as amended and the notification dated 31.03.2000, a

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manufacturer could keep an unregistered vehicle only after obtaining a trade certificate. The petitioner was asked to give details of vehicles manufactured from February 2014 onwards. It was also asked to deposit tax.

6. The petitioner replied on 14.03.2016. Production data was also provided. It disputed the need for a trade certificate. It said a certificate was needed only for the purposes listed in Rule 41 of the Rules of 1989.

7. However, on 31.03.2016, the District Transport Officer assessed tax for the period 01.04.2014 to 31.03.2015. He did so under Section 4(1)(d) of the Act of 1951 read with the notification dated 31.03.2000. He exercised the power of computation in Section 8A of the Act of 1951. Demand Notice was issued the same day.

8. The petitioner appealed under Section 14 of the Act of 1951. An order was passed on 29.07.2016 on its application for stay. On 09.08.2016, the appeal was dismissed because the deposit required by the second proviso to Section 14(2) had not been made.

9. The petitioner then filed S.B. Civil Writ Petition No. 13405/2016 before this Court. On 18.01.2017, interim protection was granted upon deposit of fifty per cent of the demand. The deposit was made. On 01.08.2017, the petitioner was allowed to withdraw that petition with liberty to challenge the *vires* of the provisions now impugned by way of D.B. Writ Petition. Fresh petitions were filed each year, as demands were raised for later years. The particulars of those petitions are set out in the Schedule A and B annexed to this judgment.

C. THE STATUTORY AND CONSTITUTIONAL FRAMEWORK

10. Three sets of provisions operate together in this case and we propose to delve into same before adverting to merits of the case. Those are:

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(i) The first is a constitutional entry.

(ii) The second is a State taxing statute.

(iii) The third is a Central regulatory statute and the rules made under it.

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10.1 In the order to have better understanding of the case in hand, let us see what is the *inter se*, link among all three. Much of the argument at the Bar turned upon them. We therefore propose to set them out first.

10.2 Wherever we deemed it necessary, the relevant ones have been reproduced and the rest of them have just been referred/discussed with brief particulars thereof to maintain brevity.

C.1 The constitutional entries

11. Entry 57 of List II of the Seventh Schedule reads as follows.

> *"Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III."*

12. Entry 35 of List III reads as follows.

> *"Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied."*

13. The framers used the words "suitable for use on roads" in Entry 57. They did not use the words "used on roads". Nor did they use the words "using the roads of the State". The entry identifies the object of tax by the character of the vehicle. It does not identify it by any activity of the vehicle. The reason is plain. The State builds and maintains roads for all who keep vehicles capable of using them. A levy that depended on proof that a particular vehicle used a particular road on particular days would be unworkable. It would also be evaded simply by laying up the vehicle.

14. Entry 57 is made subject to Entry 35 of List III. That condition operates only where Parliament has made a law laying down the

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principles on which taxes on mechanically propelled vehicles are to be levied. No such law appears to have been made or has been placed before us. The said condition therefore does not, by itself, in any manner narrow the field open to the State.

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C.2 The charging provision in the Rajasthan Motor Vehicles Taxation Act, 1951

15. Section 4(1) of the Act of 1951 is reproduced as under:-

> *"4. Imposition of tax*
> *(1) Save as otherwise provided by this Act or by the Rules made thereunder or any other law for the time being in force, there shall be levied and collected on all motor vehicles used or kept for use in the State,-*
> *(a) a tax in respect of such vehicles which are not covered by clause (b), (c), (cc) or (d) at such rates as may be specified by the State Government by notification in the Official Gazette which shall not exceed 10% of the cost of the chassis/vehicles per annum:*
> *Provided that where the rates are not specified, on quarterly, half yearly or monthly basis, by the State Government, by notification in the Official Gazette and if the tax is permissible to be paid quarterly, half yearly or monthly, the amount payable shall be equivalent to the one forth, one half or one twelfth respectively of the annual rate of tax;*
> *(b) a One Time Tax in the case of non transport vehicles at such rates as may be notified by the State Government by notification in the Official Gazette which shall not exceed-16% of the cost of the vehicle/ chassis:*
> *Provided that in the addition to One Time Tax there shall be paid by the owner or person having possession or control of a motor vehicle on which one time tax is payable, any tax or penalty as was payable under this Act for any period prior to the coming into force of the provisions of "Chapter V of the Rajasthan Finance Act, 2005 (Act No. 15 of 2005) at such rates as were applicable to such vehicles from time to time:*
> *Provided further that on every transfer of ownership of motor vehicle mentioned above, an additional one time tax shall be payable at such rates as may be notified by the State Government in the Official Gazette;*
> *(c) a tax in respect of motor vehicles registered outside the State and using roads in Rajasthan, at such rates, as may be notified by the State Government in the Official Gazette which shall not exceed Rs. 500/- per seat for 7 days or part thereof in case of passenger vehicles and shall not exceed Rs. 250/-per thousand Kg. Gross Vehicle Weight/Registered Laden Weight or part thereof for 30 days or part thereof in case of goods vehicles and shall not exceed Rs. 5000/- per thousand Kg. of Unladen Weight or part thereof for 30 days or part thereof in case of Construction Equipment Vehicles;*
> *(cc) a tax in respect of motor vehicles or motor vehicle chassis temporarily registered and passing through the State using roads in Rajasthan, at such rates, as may be notified by the State Government in the Official Gazette which shall not exceed Rs. 5000/-:*
> *(d) a tax on dealers in, or manufacturer of, motor vehicles in respect of such vehicles as are in their possession in the course of his business as such manufacturers, or dealer under the authorisation of a trade certificate granted or deemed to be granted under the Motor Vehicle*

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> *Rules for the time being in force in the State of Rajasthan, at such rates as may be specified by the State Government by a notification in the Official Gazette which shall not exceed rupees ten thousand for every 50 vehicles or part thereof in respect of three or four wheeled vehicles; and shall not exceed Rs. 10,000/- for every 100 vehicles or part thereof in respect of two wheeled vehicles; and*
> *(e) a one time tax in respect of transport vehicles at such rates as may be notified by the State Government in the Official Gazette, which shall not exceed 50% of the cost of the vehicle/chassis:*
> *Provided that in addition to one time tax, there shall be paid by the owner or person having possession or control of transport vehicle on which one time tax is payable any tax or penalty as was payable under this Act for any period prior to the coming into force of the provisions of the Chapter V of the Rajasthan Finance Act, 2005 (Act No. 15 of 2005) at such rates as were applicable to such vehicles from time to time:*
> *Provided further that the owner or person having possession or control of transport vehicles shall have option either to pay tax levied under clause (a) or one time tax levied under clause (e).”*

Section 4(1) of the Act of 1951 is thus the charging provision. It opens with a saving clause and a common description. It then divides the charge among five clauses.

16. Perusal of the section 4(1), *ibid*, reveals that clause (a) thereof covers vehicles not covered by clauses (b), (c), (cc) or (d). It fixes a rate by gross vehicle weight or by seat. Clause (b) covers non transport vehicles and notified transport vehicles. It levies a one time tax by reference to the cost of the vehicle or chassis. Clause (c) covers vehicles registered outside the State. It expressly requires that they be "using roads in Rajasthan". Clause (cc) covers vehicles or chassis temporarily registered and passing through the State. It too expressly requires that they be "using roads in Rajasthan". Clause (d) covers dealers in, and manufacturers of, motor vehicles. Its criterion is possession in the course of business under the authorisation of a trade certificate granted or deemed to be granted.

17. Clause (d) is the one with which we are concerned. At the cost of repetition, let us have a segregated look at it. It reads as follows.

> *"(d) a tax on dealers in, or manufacturer of, motor vehicles in respect of such vehicles as are in their possession in the course of his business as such manufacturers, or dealer under the authorisation of a trade certificate granted or deemed to be granted under the Motor Vehicle Rules for the time*

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being in force in the State of Rajasthan, at such rates as may be specified by the State Government by a notification in the Official Gazette which shall not exceed rupees ten thousand for every 50 vehicles or part thereof in respect of three or four wheeled vehicles; and shall not exceed Rs. 10,000/- for every 100 vehicles or part thereof in respect of two wheeled vehicles."

18. Section 4 also carries two Explanations. It is the second which is of importance for the purpose of adjudication in hand. It reads as follows.

"Explanation. (2) For determining the vehicles kept in possession of a dealer or manufacturer, the number of vehicles declared by them likely to be in their possession or the vehicles sold by them during the preceding year, whichever is higher, shall be taken into consideration."

19. Section 2(e) of the Act of 1951 is a definition by reference. Words used but not defined in that Act, and defined in the Act of 1988 and the Rules of 1989, carry the meanings given to them by that Act and those Rules, as amended from time to time. The words dealer, manufacturer, motor vehicle and trade certificate in clause (d) therefore take their meaning from the Central law.

C.3 The notification dated 31.03.2000

20. The notification is issued under clause (d) of Section 4(1). Its opening words prescribe the rate of tax on manufacturers or dealers having possession of motor vehicles in a financial year under the authorisation of a trade certificate granted or deemed to be granted under the motor vehicles rules. It fixes the rate at Rs. 4,000/- for every fifty units of three or four wheeled vehicles. It fixes Rs. 2,000/- for every hundred two wheeled vehicles. The first rate works out to Rs. 80/- per vehicle for a whole financial year. The statutory ceiling is Rs. 10,000/- for every fifty such vehicles.

21. The notification also carries a proviso and three Explanations. They decide more than one point. They read as follows.

"Provided that in case of vehicles transferred or sold otherwise than sold with form No. 21 prescribed in Central Motor Rules, 1989 by a dealer, the rate of tax shall be one fourth of the rates prescribed above in column No. 3.

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Explanation. (i) Dealer shall have the same meaning as defined under Motor Vehicles Act, 1988.

(ii) For determining the vehicles kept in possession of a dealer or manufacturer, the number of vehicles declared by them likely to be in their possession or the vehicles sold by them during the preceding year, whichever is higher, shall be taken into consideration.

(iii) The tax is to be paid in advance within the first 7 days of the commencement of the financial year. For determining the vehicles likely to be sold or manufactured or financed by the dealer or manufacturer in the financial year for which the tax has become due, the number of vehicles declared by them likely to be sold or manufactured or financed, or the vehicles actually sold or manufactured or financed by them during the preceding financial year, whichever is higher, shall be taken into consideration, and adjustment of tax shall take place in the next financial year alongwith the payment of advance the next financial year."

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C.4 The machinery of the Act of 1951

22. Section 5(1) requires the tax under Section 4 to be paid in advance in the prescribed manner. Section 8 requires a declaration to be delivered to the Taxation Officer. Section 8A confers the power of assessment. It reads as follows.

"8A. Computation of tax.

If the Taxation Officer is satisfied that tax has not been correctly paid, he shall, after giving the owner a reasonable opportunity of being heard, proceed to compute the amount of tax due and recover the same."

23. Section 14 provides the remedies. Sub section (1) gives an appeal, within thirty days, to the appellate authority appointed by the State Government. Sub section (2) makes the appellate order final. It then carries four provisos.

24. By the first proviso, the Commissioner may call for the record and revise the order in appeal. He may do so on his own motion or on an application filed within ninety days. By the second proviso, no appeal shall be entertained unless it is accompanied by proof of payment of fifty per cent of the amount due under the order appealed against, or of the amount admitted, whichever is higher. The same proviso says the appellate authority shall not stay recovery of tax. By the third proviso,

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where an appeal or revision is pending, the Commissioner may stay recovery on a written application if the owner furnishes sufficient security. By the fourth proviso, tax so stayed carries interest. Sections 2(a) and 2(aa) define Commissioner to include the Additional Transport Commissioner.

25. Section 18 empowers an officer of the Transport Department, not below the rank of Sub Inspector, to enter premises between sunrise and sunset. He may do so where he has reason to believe that a motor vehicle is kept there in contravention of the Act. The Act therefore expressly contemplates that vehicles liable to tax may be kept on private premises.

C.5 Registration under the Motor Vehicles Act, 1988

26. Section 39 of the Act of 1988 reads as follows.

> ***"39. Necessity for registration.***
>
> *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."*
>
> *(Emphasis is ours)*

27. Three features of the section stand out. First, the prohibition covers not only a public place but "any other place". Second, the prohibition says "no person shall drive". It is therefore not confined to the owner, on whom Section 40 casts the duty to register. Third, the exemption in the proviso is defined by status, namely possession by a dealer. The prohibition, on the other hand, is defined by conduct, namely driving.

28. Section 2(28) defines a motor vehicle as any mechanically propelled vehicle adapted for use upon roads. Among other things, it excludes a vehicle of a special type adapted for use only in a factory or

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in any other enclosed premises. Section 43 provides for temporary registration. It is valid for not more than one month. It may be extended in the case of a chassis awaiting a body.

29. Section 64 confers the rule making power of the Central Government for Chapter IV. Its heads run from clause (a) to clause (p). We have examined them. None of them deals with trade certificates. None deals with the exemption of vehicles in the possession of a dealer. The only head that can support Rule 33 is the residuary clause. It reads, "any other matter which is to be, or may be, prescribed by the Central Government".

30. Section 65 confers the corresponding power on the State Government. It does deal with this subject by name. Clause (m) of sub section (2) reads as follows.

> *"(m) the exemption from the provisions of this Chapter and the conditions and fees for exemption, of motor vehicles in the possession of dealers."*

31. Section 2(8) defines dealer. The definition is inclusive. As first enacted, its clause (a) spoke of a person engaged in the manufacture of motor vehicles. That clause now stands omitted. Section 2(21A) now separately defines manufacturer as a person engaged in the manufacture of motor vehicles. We return to the effect of this change in Part H of our judgment.

C.6 The trade certificate scheme under the Central Motor Vehicles Rules, 1989

32. Rule 33 of the Rules of 1989 reads as follows.

> ***"33. Condition for exemption from registration.***
>
> *For the purpose of the proviso to section 39, a motor vehicle in the possession of a dealer or manufacturer of automobiles or automobile ancillaries or a test agency specified in rule 126 shall be exempted from the necessity of registration subject to the condition that he obtains a trade certificate from the registering authority having jurisdiction in the area in which the dealer or manufacturer of automobiles or automobile ancillaries or a test agency specified in rule 126 has his place of business in accordance with the provisions of this Chapter."*

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33. The words describing the different class *i.e.* dealer, manufacturer, automobile, test agency were substituted, by Notification G.S.R. 291(E) dated 24.04.2014. Before that, the rule as it originally existed spoke of a dealer alone.

34. The rest of the group must be read with Rule 33. Rule 34 prescribes the application. It requires a separate application for each class of vehicle. Rule 35(1) provides for grant or renewal. It assigns a trade registration mark made up of the State code, the district code and the letters TC with a number. Rule 35(2) reads as follows.

> *"(2) No application for trade certificate shall be refused by the registering authority unless the applicant is given an opportunity of being heard and reasons for such refusal are given in writing."*

35. Rule 37 makes the certificate valid for twelve months throughout India. Rule 39(1) forbids use of a trade registration mark on more than one vehicle at a time. It also forbids its use on any vehicle other than one *bona fide* in the possession of the holder in the course of his business. Rule 39(2) requires the certificate to be carried in a weather proof folder and the mark to be shown conspicuously. Rule 40 confines use of the certificate to the holder and those acting under his authority.

36. Rule 41 lists, in eight clauses, the purposes for which the holder may use a vehicle in a public place under the certificate. Rule 42 says no holder shall deliver a motor vehicle to a purchaser without registration, whether temporary or permanent. Rule 43 requires a register in Form 19 and a trip record carried by the driver. Rule 44 permits suspension or cancellation for breach of Rules 39 to 43, after a hearing.

37. The opening words of Rule 41 deserve emphasis, because much turns on them. They say the holder of a trade certificate "shall not use any vehicle in a public place under that certificate for any purpose other than the following". The rule restricts use of vehicle to what a certificate

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permits in a public place. On its terms, it does not describe the occasions on which a certificate must be taken out.

38. Having travelled the road starting from Constitution of India, Central Acts, State Acts and respective Rules framed thereunder, let us now see what is the collective import thereof. Read as a whole, the design is plain. A person who trades in motor vehicles necessarily holds unregistered vehicles. To register them in his own name would be artificial, because he is not the intended user. It would also force cancellation and fresh registration on every sale. The law therefore puts a class authorisation in place of individual registration. That removes individual identification. So the scheme supplies other controls in its place. There is a trade registration mark to be displayed. It may be used on one vehicle at a time. There is a closed list of permitted uses in a public place. There is a bound register with trip records. There is a duty to register before delivery. There is a power to suspend for breach. It is a controlled dispensation and not a free pass.

C.7 How the three instruments fit together

39. The Act of 1988 and the Rules of 1989 are referable to Entry 35 of List III. They regulate. They do not tax. The Act of 1951 is referable to Entry 57 of List II. It taxes. It does not regulate.

40. In our view, the link between them is this. The State Legislature chose to describe the subject of its charge by borrowing a concept from the Central Rules. Through Section 2(e), it imported the Central meanings. That device does not make the validity of the State charge depend on the Central Rules. It makes only the identification of the persons and vehicles charged depend on them.

D. SUBMISSIONS ON BEHALF OF THE PETITIONERS

41. Learned Senior Counsel Mr. Lakshami Kumaran and Mr. Sudhir Gupta assisted by the team of briefing Counsels for the petitioners

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advanced various contentions, but we crystallise them from brevity as below:-

42. First, Section 4(1)(d) taxes only vehicles that are used or kept for use in this State and that are, in addition, held under a trade certificate. Vehicles lying in a factory yard awaiting despatch meet neither condition. About ninety five per cent of the production leaves this State on trailers and never touches a road here.

43. Second, Section 39 of the Act of 1988 prohibits the driving of an unregistered vehicle. It has no application where the vehicle is not driven at all. The proviso cannot travel beyond the field of the main enactment. Reliance was placed on **Commissioner of Income Tax vs Indo Mercantile Bank Limited**[1], **Ram Narain Sons Limited vs Assistant Commissioner of Sales Tax**[2], **Abdul Jabar Butt vs State of Jammu and Kashmir**[3], **Dwarka Prasad vs Dwarka Das Saraf**[4], **Haryana State Cooperative Land Development Bank Limited vs Haryana State Cooperative Land Development Bank Employees Union**[5] and **Romesh Kumar Sharma vs Union of India**[6].

44. Third, a trade certificate is needed only for the purposes in Rule 41. Rule 35 leaves the registering authority a discretion to refuse one. Rule 42 would lead to an absurdity if a certificate were needed for the whole of a manufacturer's stock.

45. Fourth, the power under Entry 57 of List II is limited to a regulatory and compensatory levy. Such a levy must bear a nexus with vehicles using the public roads. Reliance was placed on **Bolani Ores Limited vs State of Orissa**[7] and **Tarachand Logistic Solutions Limited vs State of Andhra Pradesh**[8].

1AIR 1959 SC 713.
2AIR 1955 SC 765.
3AIR 1957 SC 281.
4AIR 1975 SC 1758.
5(2004) 1 SCC 574.
6(2006) 6 SCC 510.
7(1974) 2 SCC 777.
82025 SCC OnLine SC 1851.

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46. Fifth, a levy computed on the number of vehicles manufactured is in substance a duty of excise. That falls within the Union field. It is therefore beyond the competence of the State and its officers.

47. Sixth, taxing the manufacturer and then the dealer amounts to double taxation. It also discriminates against vehicles made in this State, in breach of Article 14.

48. Seventh, and in the alternative, Rule 33 is *ultra vires* the proviso to Section 39. The proviso speaks only of a dealer. The rule extends to a manufacturer and to a test agency.

49. Lastly, the assessment order and the orders that followed it are vitiated by breach of natural justice.

E. SUBMISSIONS ON BEHALF OF THE STATE

50. Mr. Rajendra Prasad, learned AG-cum-Senior Counsel and Mr. Bharat Vyas, learned Additional Solicitor General for the State submitted that clause (d) of Section 4(1) creates a special charge on a distinct class, namely dealers in and manufacturers of motor vehicles. It fixes a distinct taxable event, namely possession in the course of business. The general words in the opening part of Section 4(1) cannot displace the specific words of the clause.

51. He submitted that Entry 57 of List II empowers the State to tax vehicles suitable for use on roads. The entry nowhere makes actual user an ingredient. Reliance was placed on **State of Gujarat vs Akhil Gujarat Pravasi V.S. Mahamandal**[9], **State of Orissa vs Bijaya C. Tripathy**[10] and **Chief General Manager, Jagannath Area vs State of Orissa**[11].

9(2004) 5 SCC 155.
10(2004) 7 SCC 139.
11(1996) 10 SCC 676.

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52. He submitted that the compensatory tax doctrine relied on by the petitioners no longer survives. A Bench of nine learned Judges discarded it in **Jindal Stainless Limited vs State of Haryana**[12].

53. He submitted that Section 39 prohibits driving an unregistered vehicle "in any public place or in any other place". A storage yard and the internal roads of a factory are "any other place". The vehicles are in fact driven from the assembly line to the yard. They are then driven onto the carriers. Reliance was placed on **Tata Engineering and Locomotive Company Limited vs State of Bihar**[13] and **Tata Motors Limited vs State of Jharkhand**[14].

54. Lastly, he submitted that the claim that no vehicle ever touches a road in this State is a bare averment. Not a single despatch record supports it. The burden of showing that a subject otherwise within the charge falls outside it lies on the person who asserts it.

F. QUESTIONS OF LAW FOR DETERMINATION

55. The contentions on either side are many. However, eventually they resolve into three heads of questions of law. Each head has distinct ancillary questions. For our own clarity, we frame them as follows.

56. **Question I. The reach of the charge under Section 4(1)(d) of the Act of 1951.**

(a) What is the taxable event under Section 4(1)(d)? Is it the possession of motor vehicles by a dealer or manufacturer in the course of his business? Or is it the use of those vehicles on the roads of Rajasthan?

(b) Does the expression "used or kept for use in the State" in the opening part of Section 4(1) require actual use of a road? Or is availability for use enough?

12(2017) 12 SCC 1.
13AIR 1999 Patna 62.
14[2018] 14 SCR 1241.

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(c) Are finished vehicles held by a manufacturer inside his factory in Rajasthan, awaiting despatch to dealers within or outside the State, "kept for use in the State"?

57. **Question II. Section 39 of the Act of 1988, the trade certificate and the vires of Rule 33.**

(a) Does Section 39 apply to the driving of an unregistered vehicle inside private factory premises? Put differently, are a factory yard and the internal roads of a factory "any other place" within that section?

(b) Is a manufacturer holding unregistered vehicles bound to obtain a trade certificate? If so, when does that obligation arise?

(c) Is Rule 33 *ultra vires* the proviso to Section 39, because it extends to manufacturers and test agencies an exemption that the proviso gives only to dealers?

58. **Question III. The constitutional validity of the levy.**

(a) Is the levy under Section 4(1)(d) and the notification dated 31.03.2000 in substance a duty of excise on manufacture, and so beyond the competence of the State Legislature?

(b) Having regard to Jindal Stainless, and to the later decisions in Tarachand Logistic and Ultratech Cement, can the levy be struck down for want of a compensatory character, or for want of a nexus with the use of roads, or under Articles 301 and 304?

(c) Does the levy offend Article 14, either as double taxation or as discrimination against vehicles made in this State?

59. The order in which we have framed the questions is the order which we propose to answer them. Until the charge is construed, one cannot know what the trade certificate scheme has to do with it. Until both are understood, the constitutional attack cannot be measured. The

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relief against the individual assessments follows upon all three. We deal with it separately in Part J.

G. QUESTION I. THE REACH OF THE CHARGE UNDER SECTION 4(1)(d)

60. The charge is created by clause (d) read with the opening part of Section 4(1). It is not created by either alone. The three parts of Question I must therefore be answered together. We first identify the taxable event. We then examine the expression "used or kept for use in the State", first on its temporal side and then on its territorial side.

G.1 The taxable event under clause (d)

61. In our view, the construction advanced by the State is correct. Five reasons emerge from the statutory language itself.

62. First, the clause charges a person and not a journey. Its words are "a tax on dealers in, or manufacturers of motor vehicles in respect of such vehicles as are in their possession". The words "in respect of" identify the measure of the charge. The subject of the charge is the trader. The criterion chosen by the Legislature is possession.

63. Second, possession in the course of business is the only fact the clause requires the assessing authority to find. The language contemplates no enquiry into the use of any particular vehicle.

64. Third, the clause speaks of a trade certificate "granted or deemed to be granted". If liability arose only where a certificate had actually been taken out, the deeming words would be surplusage. Worse, an assessee could fix his own liability at nil simply by never applying for a certificate. A construction that lets the subject decide the incidence of a charge by his own abstention cannot be accepted.

65. Fourth, the structure of Section 4(1) tells against the petitioners. Clause (c) taxes vehicles registered outside the State and "using roads in Rajasthan". Clause (cc) taxes vehicles temporarily registered and

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passing through the State "using roads in Rajasthan". In both, the Legislature has said in terms that use of the roads of this State is an ingredient of the charge. It has said nothing of the kind in clause (d). Where a draftsman uses an expression in two neighbouring clauses of the same sub section and leaves it out of a third, the omission must be taken as deliberate. To read the words "and using roads in Rajasthan" into clause (d) would be to supply a *casus omissus*. That is not permissible. It is doubly impermissible in a taxing statute, where the subject is to be taxed by the words used and by no others.

66. Fifth, and this places the matter beyond argument, the Legislature has itself said how the charge is to be measured. Explanation (2) to Section 4 says that, to determine the vehicles kept in possession of a dealer or manufacturer, the number taken is the number they declare as likely to be in their possession, or the number they sold in the preceding year, whichever is higher. Explanation (iii) to the notification adds that the tax is payable in advance within the first seven days of the financial year on such a declaration. Adjustment follows in the next year. A levy that falls due in the first week of a year, on a declaration of vehicles likely to come into possession during that year, cannot depend on proof that a particular vehicle later used a particular road. The machinery of the levy and the construction urged by the petitioners cannot stand together.

67. The view we take accords with **Tata Motors Limited (*supra*)**. Hon'ble the Supreme Court there considered Section 6 of the Bihar Motor Vehicles Taxation Act, 1994. That section levied a tax at an annual rate on a manufacturer or dealer in respect of the motor vehicles in his possession, in the course of his business as such, under the authorisation of a trade certificate granted under the Rules of 1989. It is

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a charge in terms closely similar to clause (d). Explaining the place of the trade certificate in that scheme, the Court said the following.

> *"For this reason, a dealer or a manufacturer of motor vehicle is permitted to obtain trade certificate so that he is exempted from registering the vehicle in his name. The Bihar Act, even in such a case, contemplates levy of tax."*

68. The Supreme Court concluded that "the appellants are liable to pay tax under Section 6 of the Bihar Act". The appellants there were manufacturers. The tax related to chassis in their possession before delivery to dealers or purchasers.

69. At the same time, we should also record one argument of the State that we do not accept. It was urged that, because of the position of a comma in clause (d), the words "under the authorisation of a trade certificate" qualify only a dealer and not a manufacturer. Punctuation is a frail guide to the construction of statute. It cannot control the plain sense of the words.

G.2 "Used or kept for use in the State", the temporal limb

70. The opening words of Section 4(1) are common to all its clauses. They cannot be treated as ornamental. A vehicle charged under clause (d) must therefore also answer the description "used or kept for use in the State". That description has a temporal limb and a territorial limb. They thus ought to be treated separately.

71. In **Akhil Gujarat Pravasi V.S. Mahamandal (*supra*)**, Hon'ble the Supreme Court considered Entry 57 of List II. Adopting the words of an earlier larger Bench, it noted that the words "suitable for use" "describe the kinds of vehicle and not their condition". It then also held, that the tax under the entry "has no corelation with the actual period of use". Because the levy is a tax and not a fee, the Court said that "the actual use of the public roads of the State cannot be insisted upon for incurring the liability". It reasoned that "the State has to maintain the

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roads and to keep them in proper condition for all those who own vehicles", and that this is so "irrespective of the fact whether they use it or not".

72. **Jagannath Area (*supra*)** is to the same effect. It concerned dumpers used within mining areas. The argument that the levy could be sustained only on proof of actual use of public roads was rejected. It was observed that an individual who can take advantage of the facility provided by the State "cannot escape the taxing liability on that score".

73. In **Bijaya C. Tripathy (*supra*)**, it was held that a transport vehicle with a valid certificate of fitness and a valid certificate of registration must be presumed to be kept for use. The statute there contained an express Explanation to that effect. Section 4 of the Act of 1951 has no Explanation in those terms. The decision therefore helps on the general approach. It is not a source of any statutory presumption in this State. Nothing turns on the difference. Section 4 supplies its own measure in Explanation (2), which we have already noticed.

74. On these principles, the temporal objection fails. A motor car or a two wheeler lying in a factory yard is a vehicle adapted for use upon roads within Section 2(28) of the Act of 1988. It is made for no other purpose. It is sold for no other purpose. That it was not driven on a given day is irrelevant to the charge. Section 2(28) excludes a vehicle of a special type adapted for use only in a factory or other enclosed premises. The petitioners do not say, and could not say, that their cars answer that description. They are motor vehicles precisely because they are adapted for the roads.

G.3 "Used or kept for use in the State", the territorial limb

75. The territorial objection was rather pressed with some extra force. The vehicles, it was urged, are sent on trailers to dealers in other States. About ninety five per cent of the production leaves Rajasthan. A

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vehicle never meant to be used in this State, it was argued, cannot be "kept for use in this State". We were told that the State's authorises all concerned vehicles kept in the taxing State for use in that State, so the point is open. That is a fair description of those decisions. We have therefore examined the question afresh.

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76. The objection does not survive a reading of the words. They are "kept for use in the State". They are not "kept for use only in the State". Nor are they "used in the State". The keeping referred to is the keeping that actually takes place. Here it takes place within Rajasthan. Throughout the time the vehicle lies in the yard, it is physically in this State. It is also capable of being used on the roads of this State. That satisfies the description. Where the vehicle finally goes is a matter of the petitioners' commercial arrangements. It is foreign to the charge.

77. Two further considerations confirm this. First, the charge under clause (d) falls due in advance, in the first week of the financial year, on a declaration of vehicles likely to come into possession. At that point no one can say which vehicle will go where. If the levy depended on the destination of each vehicle, the charge could never be quantified when it falls due. Explanation (iii) to the notification would become unworkable. A construction that makes the machinery of a levy unworkable must be avoided.

78. Second, the incidence of the levy would otherwise depend on events after the taxable event is complete. It would vary with orders later placed by dealers in other States. A charge cannot be made to depend on such contingencies unless the Legislature says so. It has not.

G.4 Answer to Question I

79. We answer Question I as follows. The taxable event under Section 4(1)(d) of the Act of 1951 is the possession of motor vehicles by a dealer or manufacturer in the course of his business as such. It is not

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the use of any road by any vehicle. The expression "used or kept for use in the State" in the opening part of Section 4(1) denotes availability for use and not actual use. It is not confined to vehicles destined for use within this State. Motor vehicles adapted for use on roads, held by a manufacturer inside his factory in this State pending despatch to dealers within or outside the State, are therefore within the charge.

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H. QUESTION II. SECTION 39, THE TRADE CERTIFICATE AND THE VIRES OF RULE 33

80. The three parts of this question arise in sequence. If Section 39 does not mean movement within private premises, the exemption in its proviso and the condition in Rule 33 never come into play. If it does, the next question is whether the condition in Rule 33 is obligatory or optional. Only if the condition binds does it matter whether the rule imposing it is within the power of the delegate. We take the three in that order.

H.1 Whether Section 39 applies to movement within factory premises

81. The petitioners' proposition seeking the benefit of a proviso to Rule 33 seems sound, at first flush, but on closer consideration, it is untenable. A proviso carves out an exception from the main enactment. It covers only the field of the main provision. However, it is not an independent enactment and cannot be read divorced from its context. In **Indo Mercantile Bank Limited (*supra*)**, the Supreme Court put it thus.

> *"The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment, a portion which, but for the proviso, would fall within the main enactment. Ordinarily, it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment."*

82. Earlier, in **Ram Narain Sons Limited (*supra*)**, the Supreme Court said as below:-

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> *"It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision."*

83. The other decisions cited, down to **Romesh Kumar Sharma (*supra*)**, say no less.

84. The difficulty for the petitioners lies not in the proposition but in its application. They define the field of the main enactment too narrowly. Section 39 does not prohibit driving an unregistered vehicle only in a public place. It prohibits driving it "in any public place or in any other place". The closing words are not surplusage. They cannot be read out of the section.

85. The reason for that width is plain. Registration exists so that every vehicle in motion can be identified and the person responsible for it traced. The occasions that make identification necessary, namely accident, injury to a third person, theft and the commission of offences, arise on private premises as much as on a public road. Had the section stopped at a public place, a whole class of movement elsewhere would have escaped identification. Parliament deliberately provided otherwise. Section 18 of the Act of 1951 confirms that vehicles may stand on private premises. It authorises entry on any premises where an officer has reason to believe a motor vehicle is kept.

86. On any ordinary understanding, a storage yard and the internal roads of a factory are "any other place". The Patna High Court took the same view in **Tata Engineering and Locomotive Company Limited (*supra*)**. That case concerned a manufacturer of chassis and the very section now before us. The High Court held that Section 39 "prohibits in absolute terms the driving of a motor vehicle in any public place or in any other place". It said that the section is "not limited in its application to vehicles being used in a public place only". On the incidence of the

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State tax, it held that "as soon as a completed chassis suitable for use on roads comes into existence, the liability of the manufacturer arises".

87. Patna judgment was considered by the Supreme Court in **Tata Motors Limited (*supra*)** and the Special Leave Petition was dismissed. The construction of "any other place" adopted by the Patna High Court commends itself to us and we are in respected agreement with same view.

88. It follows that if the petitioners' vehicles are driven at all within the factory, whether from the assembly line to the yard or from the yard onto the carriers, Section 39 applies of its own force. The exemption in the proviso, read with Rule 33, is then the only cover available. The State has said in terms that the vehicles are so driven. The petitioners have denied it without producing any material.

H.2 Whether a trade certificate is obligatory upon possession

89. At the threshold we may note that on this part, neither side is wholly right. Let us see how.

90. Rule 33 is not framed as a command. It is framed as a conditional exemption. It says the vehicle "shall be exempted from the necessity of registration subject to the condition that he obtains a trade certificate". Grammatically, the rule confers a benefit on terms. A person who does not want the benefit is not, in terms, commanded to take out a certificate.

91. But he does not escape. He falls back on the main enactment. That forbids driving an unregistered vehicle in any public place or in any other place. The compulsion is therefore practical and not textual. If a vehicle is truly never moved, no exemption is needed and no certificate is required. If it is moved anywhere at all, the holder must either register it or hold a trade certificate. So understood, the petitioners are right that a certificate serves no purpose for a stationary vehicle. But,

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that is correct as far as it goes. It is irrelevant to a vehicle that is put to movement, in whichever mode.

92. Three subsidiary arguments remain.

93. It was urged that Rule 35 gives a discretion to refuse a certificate, and that a mandatory duty to obtain one would make that discretion illusory. The text does not bear this out. Rule 35(2) says no application shall be refused unless the applicant is heard and reasons are recorded in writing. That is a safeguard attending refusal. It is not a general discretion to refuse. Rule 45 gives an appeal against refusal. The argument does not survive these provisions.

94. It was next urged, relying on Rule 42, that if a certificate were needed for the whole stock, registration would have to be obtained in the dealer's name before every sale. That, it was said, could not have been intended. The answer lies in the rule itself. It speaks of registration "whether temporary or permanent". Section 43 of the Act of 1988 provides for temporary registration. Rules 53A to 53C of the Rules of 1989 now prescribe the procedure. Rule 53A expressly contemplates a vehicle being registered in a State other than the dealer's. That is exactly the pattern the petitioners describe. No absurdity arises.

95. It was lastly urged that a certificate would serve no purpose for stock that does not move. Rule 39(1) answers this. A trade registration mark may not be used on more than one vehicle at a time. It may be used only on a vehicle *bona fide* in the holder's possession in the course of his business. The scheme therefore contemplates one certificate covering a floating stock, carried on whichever vehicle is being moved. It does not contemplate a certificate fixed permanently to every stationary car in a yard. The argument built on that supposed absurdity is misconceived.

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H.3 Whether Rule 33 is ultra vires the proviso to Section 39

96. The alternative challenge is this. The proviso speaks only of "a motor vehicle in possession of a dealer". Rule 33 extends the exemption to "a dealer or manufacturer of automobiles or automobile ancillaries or a test agency specified in rule 126". The delegate, it is said, has enlarged the parent.

97. Two matters bear on this challenge. The first is that clause (a) of the definition of dealer in Section 2(8) of the Act of 1988, which once spoke of a person engaged in manufacture, now stands omitted. Manufacturer is now separately defined by Section 2(21A). The second is that Section 64 has no head referable to trade certificates. Rule 33 must therefore rest on the residuary clause of Section 64, read with the words "subject to such conditions as may be prescribed by the Central Government" in the proviso to Section 39. It is also significant that Section 65(2)(m), which confers the corresponding State power, deals with this very subject and again speaks only of dealers.

98. We are therefore unable to hold, as the learned AG for State invited us to, that a manufacturer is necessarily included in the word dealer. Nor can we hold that the opening words of Rule 33 are mere recital. The proviso to Section 39 is the source of the power. Its reach does bear on the reach of the rule. To that extent, the petitioners' argument has some foundation. It is right that we say so.

99. The challenge must nevertheless fail for two reasons which are equally decisive.

100. The first is that Rule 33 does not impose a burden. It confers an exemption. It is the only source of the dispensation from registration that a manufacturer enjoys for unregistered stock. A rule that confers a benefit wider than the parent may have contemplated stands on a very different footing from a rule that imposes an obligation beyond the

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parent. The petitioners do not complain that Rule 33 burdens them. They ask that it be struck down so that the measure of a State tax that refers to it may be defeated. If we agreed, they would lose the exemption. Every movement of an unregistered vehicle in their premises would then fall squarely within the prohibition in Section 39. They would have no cover at all. A Court will not strike down, at a person's instance, the very provision that protects him, merely so that a collateral consequence may follow.

101. The second is that Section 4(1)(d) of the Act of 1951 would not fall with Rule 33. The State charge draws its validity from Entry 57 of List II. It does not draw it from a Central rule. The most that could follow from striking down Rule 33 is that the description in clause (d) would lose part of its referent. That goes to the workability of the charge, not its validity. It is also not the relief the petitioners seek. Clause (d) speaks of a certificate "granted or deemed to be granted". Explanation (2) to Section 4 fixes the measure by reference to vehicles kept in possession of a dealer or manufacturer. The State charge is therefore addressed to manufacturers in its own terms, independently of the language of the Central rule.

H.4 Answer to Question II

102. We answer Question II as follows. Section 39 of the Act of 1988 extends to the driving of an unregistered motor vehicle within private premises. A factory yard and the internal roads of a manufacturing unit fall within the words "any other place" in that section. The need for a trade certificate arises on possession coupled with any movement of the vehicle. The exemption from registration is available only if that condition is fulfilled. The challenge to the *vires* of Rule 33 of the Rules of 1989 fails. The rule confers an exemption and not a burden. Section 4(1)(d) of the Act of 1951 would not fall with it in any event. It is

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neither necessary nor appropriate to decide finally whether the rule travels beyond the proviso to Section 39.

I. QUESTION III. THE CONSTITUTIONAL VALIDITY OF THE LEVY

103. The third question gathers the whole constitutional attack. It is made on three fronts. They are (i) legislative competence, (ii) the supposed need for a compensatory character, and (iii) Article 14 read with Articles 301 and 304. We deal with them turn by turn.

I.1 Whether the levy is in substance a duty of excise

104. It was urged that the demand, being computed on the number of vehicles manufactured in the year, is in substance a duty of excise on manufacture. It was said to be beyond the competence of the State Legislature and its officers.

105. The contention confuses the subject of a charge with its measure. A tax does not become a tax on manufacture merely because a manufacturer is the person charged. Nor does it become one because a figure linked to production is a convenient yardstick. The subject of the charge under clause (d) is not the act of manufacture. It is possession in the course of business. That state of affairs comes into being only after manufacture is complete. The same clause charges dealers, and a dealer manufactures nothing. That puts the matter beyond doubt. Nor is the measure chosen by the Legislature a measure of production. Explanation (2) to Section 4 and Explanation (ii) to the notification both fix it by the vehicles declared as likely to be in possession, or the vehicles sold in the preceding year, whichever is higher.

106. Furthermore, Entry 84 of List I was substituted by the Constitution (One Hundred and First Amendment) Act, 2016. As substituted, it covers duties of excise only on petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel, and tobacco and tobacco products. Motor cars and two wheelers fall outside

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it. For the assessment years after that substitution, which cover most of this batch, the complaint of trespass on the Union field of excise has no basis or substance.

107. The contention is therefore rejected in so far as it attacks the *vires* of the provision.

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I.2 The compensatory character of the levy and the effect of Jindal Stainless

108. The petitioners' constitutional case rests on a proposition drawn from **Bolani Ores Limited (*supra*)**. The proposition is that the power under Entry 57 of List II is a power to impose taxes of a regulatory and compensatory character. Such a levy, it is said, must bear a nexus with vehicles using the public roads. Vehicles that do not use the roads cannot be taxed, even if registered. Hon'ble the Supreme Court in Bolani Ores observed as follows.

> *"If the vehicles do not use the roads, notwithstanding that they are registered under the Act, they cannot be taxed."*

109. That proposition can no longer be treated as a constitutional limit on the State's taxing power. The doctrine on which it rests has been discarded by a Constitutional Bench of nine Hon'ble Judges of the Supreme Court.

110. In **Jindal Stainless Limited (*supra*)**, the majority answered the reference in a series of propositions. Taxes simpliciter, it held, are not within the contemplation of Part XIII of the Constitution. On the scope of Article 304(a), it held as follows.

> *"Only such taxes as are discriminatory in nature are prohibited by Article 304(a)."*

111. On the compensatory tax theory, the majority held as follows.

> *"The compensatory tax theory evolved in Automobile Transport case and subsequently modified in Jindal's case has no juristic basis and is therefore rejected."*

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112. The Court went on to overrule **Automobile Transport (Rajasthan) Limited vs State of Rajasthan**[15], and the decisions that followed it, to the extent that they relied on that theory.

113. Three consequences follow for the present case. They are all decisive.

114. First, the compensatory character of a tax on motor vehicles is no longer an independent constitutional limit on the power under Entry 57 of List II. Any limit must be found in the language of the entry itself. That language is "vehicles suitable for use on roads". It fastens on the character of the vehicle, not its use. Once the vehicle answers that description and the State Legislature has framed a charge referable to it, the enquiry ends.

115. Second, the reasoning in **Automobile Transport (Rajasthan) Limited (*supra*)**, on which the observations in Bolani Ores partly rested, no longer holds the field in so far as it rested on the compensatory tax doctrine. Passages from that line of authority cannot be used as though the doctrine survived.

116. Third, the grounds under Articles 301 and 304 must also fail. After Jindal Stainless, a tax simpliciter is not a restriction on the freedom of trade, commerce and intercourse under Article 301. No case of discrimination under Article 304(a) is made out, or could be. The petitioners do not say that goods brought into this State bear a heavier burden than goods made within it. Their complaint is the reverse. Article 304(a) does not help them.

117. In Bolani Ores. the decision turned partly on the meaning of a motor vehicle. The question was whether dumpers and rockers used within mining areas were vehicles adapted for use on roads at all. That reasoning is independent of the compensatory tax doctrine. Jindal

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Stainless does not affect it. It is also reflected, as noticed under Question I, in the exclusionary words of Section 2(28) of the Act of 1988. It simply does not help a manufacturer of passenger cars and two wheelers. These are adapted for use on roads. They are made for no other purpose. They are sold to buyers for that sole purpose.

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I.3 The decisions in Tarachand Logistic and Ultratech Cement

118. Two more decisions of the Supreme Court, rendered after Jindal Stainless also call for our discussion. The first is **Tarachand Logistic Solutions Limited (*supra*)**. The second is **Ultratech Cement Limited vs State of Gujarat**[16]. Both bind us under Article 141. Both were concerned with vehicles confined to private premises. We must therefore see exactly what each decides.

119. In Tarachand Logistic, the vehicles were used inside the central dispatch yard of the Visakhapatnam Steel Plant. Access to the yard was restricted. The charging section, Section 3 of the Andhra Pradesh Motor Vehicles Taxation Act, 1963, levies tax "on every motor vehicle used or kept for use, in a public place in the State". The Supreme Court identified the charge in these words, at paragraph 45.

> *"The taxable event under Section 3 is when a vehicle is used or kept for use in a 'public place' in the State."*

120. The Supreme Court said, "Motor vehicle tax is compensatory in nature. It has a direct nexus with the end use." It went on to explain that a person using public infrastructure such as roads must pay for that use. A person who does not use the vehicle, or keep it for use, in a public place derives no such benefit.

121. We have given this observation our anxious consideration. Three features of the decision persuade us that it does not govern the present case.

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122. First, the decision turned on the express words "in a public place" in the Andhra Pradesh charging section. The Court held that Rule 12A of the Andhra Pradesh Rules had to be read so as to give effect to those words, since a rule cannot travel beyond its parent statute. The description of the tax as compensatory explained why the Legislature had chosen those words. It was not a holding that Entry 57 of List II forbids a State to tax a road worthy vehicle unless it uses a public road. The validity of the levy was not in question. The question was one of construction.

123. Second, the decision itself draws the very distinction we draw. The State there relied on Akhil Gujarat Pravasi. The Supreme Court itself said that "the decision rendered in Akhil Gujarat Pravasi V.S. Mahamandal (supra) is on an entirely different issue". The reason it gave was that the Bombay Act considered in Akhil Gujarat Pravasi did not use the words "public place" or "public road" at all. Section 4(1) of the Act of 1951 is in the same position as the Bombay Act. It uses the words "in the State". It does not use the words "in a public place". On Tarachand Logistic's own reasoning, our statute falls on the Akhil Gujarat Pravasi side of the line.

123. Third, the decision did not consider Article 301 or Article 304. It makes no reference to Jindal Stainless. It cannot be read as reviving, as a constitutional limit on the taxing power, a doctrine that a Bench of nine learned Judges has rejected. Read in this way, the two decisions sit together. Jindal Stainless governs the constitutional question. Tarachand Logistic governs the construction of a charging section that confines the charge to a public place.

124. Now we turn to Ultratech Cement. To be fair to petitioners, that case is closer in one respect, because Section 3(1) of the Gujarat Motor Vehicles Tax Act, 1958 levies tax "on all motor vehicles used or kept for

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use in the State". Those words match the opening words of Section 4(1) of the Act of 1951. The equipment there consisted of dumpers, loaders, excavators, surface miners, dozers, drills and rock breakers. It was confined to the cement works of the appellant. It was carried to the site in a dismantled state on trailers.

125. The Supreme Court held that this equipment fell within the second part of Section 2(28) of the Act of 1988. It was a vehicle of a special type adapted for use only in a factory or other enclosed premises. The Supreme Court described the machines as off road equipment. It held them excluded from the definition of motor vehicle in Section 2(28), and also from tax under Entry 57 of List II. The Court added that if such vehicles are found using roads, "they would not be free from the rigors of Section 2 (28)".

126. Ultratech Cement thus rests on the definitional limb of Bolani Ores. That is the limb, we have held, which survives Jindal Stainless. The description of the tax as regulatory and compensatory appears in the Court's account of Bolani Ores. The decision does not refer to Jindal Stainless. Nor does it rest its own conclusion on the compensatory tax doctrine.

127. The said decision does not help the petitioners. Their passenger cars and two wheelers are not equipment of a special type adapted for use only in a factory. They fall within the first part of Section 2(28) and outside its exclusion. They are suitable for use on roads within Entry 57. They are made for the roads and sold for the roads. Ultratech Cement confirms, rather than weakens, the line we have drawn in Part G.2.

128. There is a further and independent reason why neither decision assists the petitioners. Both concerned a charge on the owner of a vehicle measured by its use or intended use. Clause (d) of Section 4(1) is a charge of a different kind. As held under Question I, it fastens on

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the possession of stock by a trader in the course of his business. The use or non use of any particular vehicle is not an ingredient of it.

I.4 Article 14, double taxation and discrimination

129. Two grounds were urged under this head. The first is double taxation. The second is discrimination against vehicles made in this State.

130. On the first, the taxable events are distinct. Clause (d) charges a trader on possession of stock in the course of business. It does so at a block rate that works out to Rs. 80/- per four wheeled vehicle for a whole year. That falls to one fourth in the cases covered by the proviso to the notification. The tax borne later by or through the dealer or registered owner arises on a different event, under a different clause, and on an entirely different measure. That measure is the cost of the vehicle under clause (b). In any case, double taxation is not by itself a ground of invalidity without an express constitutional or statutory bar. None was shown.

131. On the second, the classification is not based on where the vehicle comes from. It is based on the presence in this State of a person holding stock in the course of business. Every manufacturer with a plant in Rajasthan is treated alike. So is every dealer. A manufacturer with no plant here is outside the charge for want of territorial nexus, not because of any preference. The differentia is intelligible. It bears a rational relation to the object of the charge, which is to bring within the net those who hold road worthy vehicles in this State in the course of trade.

I.5 Answer to Question III

132. We answer Question III as follows. The levy under Section 4(1)(d) of the Act of 1951 and the notification dated 31.03.2000 is not a duty of excise on manufacture. It is within the legislative competence of the

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State under Entry 57 of List II. The objection to the measure adopted in making the assessments is left open. After **Jindal Stainless Limited (*supra*)**, a compensatory character is not a condition of the validity of such a levy. The challenge based on its absence, and on Articles 301 and 304, fails. **Tarachand Logistic Solutions Limited (*supra*)** turned on the words "in a public place" in the Andhra Pradesh charging section, which the Act of 1951 does not use. **Ultratech Cement Limited (*supra*)** turned on the exclusion in Section 2(28) of the Act of 1988 for vehicles adapted for use only in enclosed premises, which does not reach passenger cars and two wheelers. Neither decision assists the petitioners. The levy does not offend Article 14, whether as double taxation or as discrimination. The impugned provisions and the notification are constitutionally valid.

J. RELIEF AND THE INDIVIDUAL ASSESSMENTS

133. Our answers to Questions I to III mean that the constitutional and statutory challenge fails in its entirety. The proviso to Section 39 of the Act of 1988, Rule 33 of the Rules of 1989, Section 4(1)(d) of the Act of 1951 and the notification dated 31.03.2000 are all valid. The prayer for reading down does not survive. That course is open only where a provision would otherwise have to be struck down. We find these provisions valid on their plain construction.

134. We accordingly hold that the impugned assessment orders and demand notices are not liable to be interfered with under Article 226 on any ground touching the validity of the levy. The other grievances about the opportunity of hearing under Section 8A of the Act of 1951, and about the measure used in computing the tax, are to be raised before the statutory authorities. The petitioners' factual claims about the movement and despatch of vehicles can be tested there on documents. Having upheld the levy, we think it just that the petitioners should be

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able to raise these grounds on the merits. They should not be hindered by limitation or by any further demand for deposit. These proceedings have been pending in this Court since 2017. Substantial amounts stand deposited under the interim orders of this Court.

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K. SUMMARY OF CONCLUSIONS

135. Our conclusions may be summarised as follows.

136. On Question I, the taxable event under Section 4(1)(d) of the Act of 1951 is the possession of motor vehicles by a dealer or manufacturer in the course of his business. Proof of use of a road is not an ingredient of the charge. The words "used or kept for use in the State" denote availability for use and not actual use. They are not confined to vehicles destined for use within this State. Vehicles adapted for use on roads, held by a manufacturer inside his factory in this State, are within the charge.

137. On Question II, Section 39 of the Act of 1988 extends to the driving of an unregistered vehicle within private premises. A factory yard and internal factory roads are "any other place". The need for a trade certificate arises on possession coupled with any movement of the vehicle. The challenge to Rule 33 of the Rules of 1989 fails. The rule confers an exemption and not a burden. Section 4(1)(d) would not fall with it in any event. It is unnecessary to decide whether the rule travels beyond the proviso to Section 39.

138. On Question III, the levy is not a duty of excise. It is within the competence of the State Legislature. The objection to the measure adopted in the assessments is left open. After Jindal Stainless, a compensatory character is not a condition of the validity of a levy under Entry 57 of List II. The grounds under Articles 301 and 304 fail with it. Tarachand Logistic and Ultratech Cement are distinguishable. The first turned on the words "in a public place". The second turned on the

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exclusion in Section 2(28) for vehicles adapted for use only in enclosed premises. The levy does not offend Article 14.

L. ORDER

139. For the reasons recorded above, we pass the following order.

(i) The challenge to the *vires* of the proviso to Section 39 of the Motor Vehicles Act, 1988, Rule 33 of the Central Motor Vehicles Rules, 1989, Section 4(1)(d) of the Rajasthan Motor Vehicles Taxation Act, 1951 and Notification S.O. 413, No. F6(179)/Pari/Tax/Hqrs/95/5B dated 31.03.2000 is repelled. All the said provisions are held to be *intra vires*.

(ii) It is declared that the taxable event under Section 4(1)(d) of the Act of 1951 is the possession of motor vehicles by a dealer or a manufacturer in the course of his business as such. Proof of the use of any road within this State by any particular vehicle is not an ingredient of the charge.

(iii) It is declared that the expression "used or kept for use in the State" in Section 4(1) of the Act of 1951 denotes availability for use and not actual use. Motor vehicles adapted for use on roads, held by a manufacturer within his premises in this State, answer that description, whatever the State to which they may later be despatched for sale.

(iv) It is declared that Section 39 of the Act of 1988 extends to the driving of an unregistered motor vehicle within private premises. The storage yard and the internal roads of a manufacturing unit fall within the expression "any other place" in that section.

(v) The writ petitions are dismissed in so far as they challenge the *vires* of the said provisions and seek a declaration that no demand may be raised under Section 4(1)(d) of the Act of 1951 on the manufacture and stocking of vehicles.

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(vi) The interim orders operating in these petitions shall stand vacated.

(vii) Liberty is, however, reserved to the petitioners to challenge the individual assessment orders and demand notices impugned in these petitions. They may do so by filing or, as the case may be, reviving appeals under sub section (1) of Section 14 of the Act of 1951. The appeals may be on the following grounds and no others. (a) Breach of the requirement of a reasonable opportunity of being heard in Section 8A of the Act of 1951, including the non consideration of replies already on the file. (b) The basis on which the number of vehicles has been arrived at, having regard to Explanation (2) to Section 4 of the Act of 1951 and Explanations (ii) and (iii) to the notification dated 31.03.2000. This includes, in particular, the contention that the assessments proceed on the number of vehicles manufactured rather than the number declared or sold. (c) The computation of interest, surcharge and penalty.

(viii) Any such appeal filed within eight weeks from today shall be entertained without reference to limitation. The period during which these petitions remained pending in this Court shall be excluded.

(ix) In every matter in which fifty per cent of the demand has already been deposited under the interim orders of this Court, that deposit shall be treated as sufficient compliance with the second proviso to sub section (2) of Section 14 of the Act of 1951. No further deposit shall be insisted on as a condition for the appeal being entertained or heard on the merits.

(x) It is clarified that the power to stay recovery during the pendency of an appeal or revision is that of the Commissioner under the

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third proviso to sub section (2) of Section 14 of the Act of 1951. In any event, recovery of the balance demand shall remain stayed in every matter in which an appeal is filed within the period allowed by clause (ix) above, until that appeal is decided.

(xi) There shall be no order as to costs.

(xii) A copy of this judgment shall be placed in each of the connected files.

140. All the writ petitions stand disposed of in the above terms. Pending applications, if any, also stand disposed of.

(ASHUTOSH KUMAR),J **(ARUN MONGA),J**

Crt_4/D/4/RAKSHA

SCHEDULE-A

M/S HONDA CARS/MOTORCYCLE LTD

Sr. No.	CASE TITLE AND FINANCIAL YEAR	UNDER CHALLENGE
1.	CW/13820/2017 M/S Honda cars India ltd v/s U.O.I & Ors. (F.Y.: 2014-15)	Under challenge is the vires of Section 39 of the Motor Vehicles Act, Rule 33 of the Central Motor Vehicles Rules, Section 4(1)(d) of the Rajasthan Motor Vehicles Taxation Act, and the notification dated 31.03.2000 issued thereunder, and demand notices levying tax on all vehicles manufactured and stocked at the petitioner's factory premises for want of trade certificates.
2.	CW/13821/2017 (F.Y.: 2015-16)	--do--
3.	CW/13825/2017 (F.Y.: 2015-16)	--do--
4.	CW/13830/2017 (F.Y.: 2014-15)	--do--
5.	CW/4676/2018 (F.Y.: 2016-17)	--do--
6.	CW/4677/2018 (F.Y.: 2016-17)	--do--
7.	CW/6280/2020 (F.Y.: 2019-20)	--do--
8.	CW/6285/2020	--do--

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	(F.Y.: 2017-18)	
9.	CW/6290/2020 (F.Y.: 2019-20)	--do--
10.	CW/9487/2020 (F.Y.: 2019-20)	--do--
11.	CW/10463/2020 (F.Y.: 2019-20)	--do--
12.	CW/10481/2020 (F.Y.: 2016-17)	--do--
13.	CW/4018/2021 (F.Y.: 2020-21)	--do--
14.	CW/4174/2021 (F.Y.: 2020-21)	--do--
15.	CW/5231/2022 (F.Y.: 2021-22)	--do--
16.	CW/5238/2022 (F.Y.: 2021-22)	--do--
17.	CW/5613/2023 (F.Y.: 2022-23)	--do--
18.	CW/6501/2023 (F.Y.: 2022-23)	--do--
19.	CW/6777/2024 (F.Y.: 2023-24)	--do--
20.	CW/4151/2025 (F.Y.: 2024-25)	--do--
21.	CW/8810/2025 (F.Y.: 2024-25)	--do--
22.	CW/7879/2026 (F.Y.: 2025-26)	--do--
23.	CW/8258/2026 (F.Y.: 2025-26)	--do--

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SCHEDULE-B
HERO MOTOCORP LTD.

Sr. No.	CASE TITLE & FINANCIAL YEAR	UNDER CHALLENGE
1.	CW/13828/2017 Hero Motocorp Ltd V/s U.O.I and Ors. (F.Y.: 2014-16)	Under challenge is the vires of Section 4(1)(d) of the Rajasthan Motor Vehicles Taxation Act, and the notification dated 31.03.2000 issued thereunder, and demand notices levying tax on all vehicles manufactured and stocked at the petitioner's factory premises for want of trade certificates.
2.	CW/1413/2018 (F.Y.: 2016-17)	Under challenge is the vires of Section 39 of the Motor Vehicles Act, Rule 33 of the Central Motor Vehicles Rules, Section 4(1)(d) of the Rajasthan Motor Vehicles Taxation Act, and

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		the notification dated 31.03.2000 issued thereunder, and demand notices levying tax on all vehicles manufactured and stocked at the petitioner's factory premises for want of trade certificates.
3.	CW/5247/2018 (F.Y.: 2017-18)	--do--
	CW/5368/2019 (F.Y.: 2018-19)	--do--
	CW/4360/2020 (F.Y.: 2019-20)	--do--
6.	CW/3131/2021 (F.Y.: 2020-21)	--do--
7.	CW/10219/2021 (F.Y.: 2021-22)	--do--
8.	CW/10212/2022 (F.Y.: 2022-23)	Under challenge is the vires of Section 4(1)(d) of the Rajasthan Motor Vehicles Taxation Act, and the notification dated 31.03.2000 issued thereunder, and demand notices levying tax on all vehicles manufactured and stocked at the petitioner's factory premises for want of trade certificates.
9.	CW/9140/2025 (F.Y.: 2025-26)	--do--
10.	CW/4771/2025 (F.Y.: 2024-25)	--do--
11.	CW/11608/2026 (F.Y.: 2026-27)	--do--
12.	CW/11302/2023 (F.Y.: 2023-24)	Under challenge is the vires of Section 39 of the Motor Vehicles Act, Rule 33 of the Central Motor Vehicles Rules, Section 4(1)(d) of the Rajasthan Motor Vehicles Taxation Act, and the notification dated 31.03.2000 issued thereunder, and demand notices levying tax on all vehicles manufactured and stocked at the petitioner's factory premises for want of trade certificates.

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