# HIGH COURT OF UTTARAKHAND, AT NAINITAL

**Writ Petition P.I.L. No.1018 of 2008**

Ajay Goyal
S/o Sri C. K. Goyal
R/o 5 Aravali Enclave
G.M.S. Road, Dehradun … Petitioner

Versus

State of Uttarakhand and others … Respondents

**Dated:- 10th May, 2011**

**Coram: Hon. Tarun Agarwala, J.**
**Hon. Prafulla C. Pant, J.**
**Hon. Sudhanshu Dhulia, J.**

**Per :- Hon'ble Tarun Agarwala, J.**

1. This case has come up before us upon a reference made by a Division Bench, which felt that the decision of another Division Bench on the point in question requires reconsideration and accordingly framed a question for its decision, namely,

> "whether after the power to levy toll on motor vehicles by the Municipalities was expressly withdrawn, on the strength of Notification issued by the Cantonment Board prior to withdrawal of such power, the Cantonment Board can continue to collect toll on motor vehicles."

2. The brief facts is, that the Municipalities were imposing tax on entry of vehicles under Section 128 of the U.P. Municipalities Act, 1916. With effect from 01st August, 1991, the levy of toll tax on entry of vehicles in the municipal area was abolished and, since then, no tax on entry of vehicles is being levied in a municipal area.

3. However, the Cantonment Board, Dehradun continued to levy tax on entry of vehicles in its cantonment area. The collection of such tax was challenged in **Arun Kumar Jaiswal Vs. Cantonment Board,**

**Dehradun & another 2004 (2) U.D. 401**, which was dismissed by a judgment dated 01.09.2004 passed by a Division Bench of this Court, holding that the Cantonment Board had the jurisdiction and power to levy tax on entry of vehicles. The Division Bench held as under:-

> *"10. In view of sub-section (vii) and (viii) of Section 128 of the United Provinces Municipalities Act, 1916, since the toll and octroi could be imposed by the Municipalities of the State of U.P., the Cantonment Board situated within those Municipalities were also competent to impose and collect the octroi/toll. The clause "for the time being in force" used by the Legislature under u/s 60 of the Cantonment Act, 1924 clearly spells out the intention of the Legislatures that when the Cantonment Board decides to impose a tax, it can impose only those tax, which could be imposed by the Municipal Board in the State under any enactment 'for the time being in force', wherein such cantonment is situated. Thus, at the time of imposition of tax under section 60 of the Cantonment Act, the power of Municipal Board to impose a tax under any enactment is to be seen. The taxes, which are to be imposed under section 60, by the Cantonment Board, have been adopted from the law, 'for the time being in force', empowering the Municipality, wherein such Cantonment is located. 'For the time being in force' means 'at the time of imposition of tax'. Therefore, it is an adoption of taxes. Once tax is imposed at any point of time, when that may be imposed by the Municipality in the State by Notification in accordance with the provisions of*

*section 61, 62 and 63 of the Cantonment Act, the taxes so imposed, stands adopted. Subsequent amendment in the Local Act will not nullify the prior imposition of tax as 'at that point of time' the provisions existed empowering the municipality to impose such tax."*

4. The Division Bench held the Cantonment Board had the power to levy a tax under Section 60 of the Cantonments Act, since the Municipality had the power to levy a tax on entry of vehicles. The Division Bench held that even though the power to levy a tax on entry of vehicles was abolished in the Municipalities Act, nonetheless, the Cantonment Board could continue to levy tax on entry of vehicles, since the power to levy tax by a Cantonment Board was to be seen at the time of the imposition of the tax. The Division Bench, explained that the words "for the time being in force" used in Section 60 of the Cantonments Act meant "at the time of imposition of tax".

5. Subsequently, in a P.I.L., another Division Bench while hearing a matter with regard to the levy of the tax on entry of vehicles, had an occasion to consider the judgment in **Arun Kumar Jaiswal's** case (supra) passed by the Division Bench (supra) and disagreed with the reasoning adopted therein. The Division Bench in Writ Petition PIL No.1018 of 2008 held:-

***"Section 60 of the Cantonments Act authorizes the Cantonment Board to impose such tax, as may be imposed in any Municipality, under any enactment for the time being enforced, with, however, previous sanction of the Central Government.***

***2. The respondent-Cantonment Board is entitled to impose such tax, as a Municipality is entitled to impose under the U.P. Municipalities Act, 1916. Municipalities covered by the said Act, can impose tax on vehicles but not on motor vehicles, as appears from Section 128 of the Act. Municipalities governed by the Act, were entitled to impose toll, but such power has been withdrawn with effect from 1991. Before 1991, the Cantonment Board, by a Notification, imposed toll on motor vehicles with previous sanction of the Central Government. A Division Bench of this Court in its judgment, rendered in Writ Petition No. 1187 (M/B) 2003, held that the such Notification is still valid, despite the Municipalities lost the power to impose toll on motor vehicles since 1991, although this aspect of the matter has not been clearly highlighted in the said judgment.***

***3. Being of the view that the said Notification issued in exercise of statutory power came to an end the moment statutory power was lost, we are unable to accept the findings recorded in the said judgment."***

6. The Division Bench requested the Chief Justice to constitute a larger Bench in order to resolve the issue. The matter has accordingly been placed before this Bench to answer the reference.

7. We have heard Mr. D. Barthwal, the learned counsel for the petitioner, Mr. B. D. Upadhyaya, the learned Additional Advocate General for the respondent Nos.1 & 2 and Mr. Arvind Vashisht & Mr. S. S. Chauhan, the learned counsel for the respondent Nos.3 & 4, namely, the Cantonment Board, Dehradun.

8. Mr. D. Barthwal, the learned counsel for the petitioner submitted that the Cantonment Board gets its power under Section 60 of the Cantonments Act, 1924 which

provides that the Cantonment Board can levy any tax from an enactment which is applicable in a municipality of the State. The learned counsel for the petitioner submitted that the municipalities were levying tax on entry of vehicles, but, with effect from 01.08.1991, the power to levy toll tax on entry of vehicles in a municipal area was withdrawn. The learned counsel for the petitioner submitted that once the power to levy tax was withdrawn from the Municipalities Act, no tax could be levied by the Cantonment Board under Section 60 of the Cantonments Act since the power to levy the tax by the Cantonment Board was dependant upon the power given to a Municipality under the Municipalities Act. In support of his submissions, the learned counsel for the petitioner placed reliance upon certain decisions, which will be referred hereinafter.

9. On the other hand, Mr. Arvind Vashisht and Mr. S. S. Chauhan, the learned counsel for the Cantonment Board submitted that even though the Municipalities Act was amended by U.P. Act No.9 of 1991 and the power to levy toll tax on entry of vehicles in a municipal area was abolished, nonetheless, the Cantonment Board had the power to continue to levy toll tax on entry of vehicles in the Cantonment area in as much as the power was not lost upon the abolition of the provision for levy of toll tax under the Municipalities Act. The learned counsel further submitted that the provision of Section 60 of the Cantonments Act is a piece of legislation by incorporation and once exercised under Section 60 of the Cantonments Act, the said power continues inspite of the repeal of the provision relating to levy of tax on

entry of vehicles under the Municipalities Act. In support of their submissions, the learned counsel placed reliance upon various decisions on the doctrine of 'legislation by incorporation', which will be dealt hereinafter.

10. In order to appreciate the contention of the rival parties, it is necessary to consider the legislative scheme.

11. Section 60 of the Cantonments Act, 1924 reads as under:-

> *"60. General power of taxation. – (1) The Board may, with the previous sanction of the [Central Government], impose in any cantonment any tax which, under any enactment for the time being in force, may be imposed in any municipality in the State wherein such cantonment is situated.*
> *(2) Any tax imposed under this section shall take effect from the date of its notification in the Official Gazette [or where any later date is specified in this behalf in the notification, from such later date].]"*

12. The aforesaid provision makes it apparent, namely, that the power to levy any tax in any cantonment under Section 60 (1) of the Act is dependant upon and coextensive with the corresponding power which may vest in a Municipality. If a Municipality has a power to levy tax under an enactment, the same power can be exercised by a Cantonment Board to levy tax in a cantonment under Section 60(1) of the Cantonments Act. In other words, Section 60(1) of the Cantonments Act is not an independent provision by itself, in the

sense that the Cantonment Board has no power to levy tax by itself and is dependant upon the powers given in the Municipalities Act.

13. Section 128 of the U.P. Municipalities Act, 1916 provides for taxes which could be imposed by a Municipality. For facility Section 128 (vii) of the said Act reads as under:-

> *"Section 128. Taxes which may be imposed. – (1) Subject to any general rules or special orders of the [State Government] in this behalf, the taxes which a [Municipality] may impose in the whole or part of a municipality are -*
>
> *(vii) a toll on vehicles and other conveyances, animals and coolies laden with goods other than household goods of passengers, which enter the limits of the municipality and unload such laden goods or any part thereof within such limits;*

14. From the aforesaid, a Municipality is empowered to levy tax on entry of vehicles in the Municipal area. Since tax on entry of vehicles was being imposed by the Municipality, the Cantonment Board, after obtaining sanction from the Central Government also started collecting toll tax on entry of vehicles in its cantonment area pursuant to the notification SRO No.369 dated 01.11.1956 which was published in the Gazette on 17.11.1956 by the Ministry of Defence.

15. By U.P. Act No.9 of 1991, Section 128 of the Municipalities Act was amended and sub-clause (vii) was omitted. Consequently, w.e.f. 01.08.1991 levy of toll tax on entry of vehicles in a Municipal area was

abolished and since then, no tax on entry of vehicles is being levied in a Municipal area.

16. The Division Bench in the matter of Arun Kumar Jaiswal (supra) laid emphasis on the expression “for the time being in force” and held that these words used in Section 60 of the Cantonments Act meant “at the time of the imposition of tax” and that once tax was imposed at any point of time, the tax so imposed stood adopted and a subsequent amendment in the Municipalities Act would not nullify the imposition of tax under the Cantonments Act.

17. The expression “for the time being in force” has been interpreted by the Supreme Court in various decisions.

18. The phrase “for the time being” as defined in Stroud’s Judicial Dictionary 5th Edition is extracted hereunder:-

> *The phrase “for the time being” may, according to its context, mean the time present, or denote a single period of time; but its general sense is that of time indefinite, and refers to an indefinite state of facts which will arise in the future, and which may (and probably will) vary from time to time”.*

19. In **Anna Transport Corporation Ltd. Vs. M/s Safe Service Ltd. & others 1992 (1) SCC 401**, the Supreme Court while interpreting the language of Rule 3 of the Jute Manufacturers Cess Rules 1976 held that the effect is as if the words “for the time being in force” were there after the words “the provisions of Central Excise and Salt Act, 1944 and that the Rules made thereunder” in Rule 3 and opined that amendment of Rules 9 and 49

made in 1982 was equally applicable in the matter of levy and collection of cess under the Act.

20. In **Devkumarsingji Kasturchandji v. State of Madhya Pradesh & Ors., AIR (1967) M.P. 268 (DB)**, the High Court held that Section 132(1) and Section 135 of the Madhya Pradesh Municipal Corporation Act, 1956 empowered the Municipal Corporation to impose a tax on land and buildings which the Corporation did under the exercise of that power. The State Legislature enacted a law called the Madhya Pradesh Nagriya Sthavar Sampati Kar Adhiniyam, 1964 which provided for the levy of tax on land and buildings in the urban areas in the State of Madhya Pradesh. Sub-section (3) of Section 4 of the Madhya Pradesh Corporation Act provided that the tax levied and payable under that Act shall be in addition to any other tax for the time being payable under any other enactment for the time being in force in respect of the land or the building or portion thereof. The Act of 1964 was challenged and one of the grounds of challenge was that the State Legislature having delegated its power to impose tax on land and buildings in favour of the Municipal Corporation and Municipalities under the Municipal Corporation Act, 1956 and the M.P, Municipalities Act, 1961 and the local authorities having imposed a tax on land and buildings, the State Legislature had no power to levy tax on land and buildings. The Court said that the expression "any other enactment for the time being in force" did not mean an enactment which was already in force at the time the Corporation imposed a tax under Section 132 of the

Municipal Corporation Act but meant any legislation enacted whether before or after the imposition of the tax by the Corporation. The Court said that the general sense of the words "for the time being" is that of time indefinite and refers to indefinite state of facts which will arise in future and which may vary from time to time.

21. In **Sir Dinshaw Manekji Petit Vs. G. B. Badkas & others AIR 1969 Bombay 151**, the question before the High Court was the scope of the expression “in any law for the time being in force” as appearing in clause (g) of Section 19(1) of the Defence of India Act. The High Court held that the words “law for the time being in force” referred not only to the law in force at the time of passing of the Defence of India Act but also to any law that may be passed subsequently and which is in force at the time when the question of applicability of such law to arbitrations held under Section 19 of the Defence of India Act arose.

22. The aforesaid judgments of M.P. High Court and Bombay High Court was approved by the Supreme Court in **Thyssen Stahlunion GMBH Etc Vs. Steel Authority Of India Ltd. 1999 (9) SCC 334**. The Supreme Court interpreted the expression “for the time being in force” to mean that the provision of that Act would apply which would be in force at the relevant time when arbitration proceedings were held. The Supreme Court held that the aforementioned expression not only refers to the law in force at the time the arbitration agreement was entered into but also to any law that may

be in force for the conduct of the arbitration proceedings.

23. In **Management of M.C.D. Vs. Prem Chand Gupta & another AIR 2000 SC 454**, Regulation 4(1) of the Delhi Municipal Corporation Service Regulation, 1959 provided as under:-

> *"4(1) Unless otherwise provided in the Act or these regulations, the Rules for the time being in force and applicable to Government servants in the service of the Central Government shall, as far as may be, regulate the conditions of service of municipal officers and other municipal employees"*

The said provision was analysed by the Supreme Court as under:-

> *"13. In this connection, one submission of learned counsel for the respondent-workman may be noted. He submitted that as laid down by Regulation 4(1), the Rules for the time being in force as mentioned therein would refer to only those Rules which were in force when Service Regulations of 1959 were promulgated and not any latter Rules, It is difficult to countenance this submission. Rules for the time being in force will have a nexus with the regulation of condition of service of the municipal officers at the relevant time as expressly mentioned in Regulation 4(1). Therefore, whenever the question of regulation of conditions of service of the municipal officers comes up for consideration, the relevant Rules in force at that time have to be looked into. This is the clear thrust of Regulation 4(1). Its scope and ambit cannot be circumscribed and frozen only to the*

*point of time in the year 1959, when the Service Regulations were promulgated. If such was the intention of the framers of the Regulation, Regulation 4(1) would have employed a different phraseology, namely, "rules at present in force" instead of the phraseology "rules for the time being in force". The phraseology "rules for the time being in force" would necessarily means rules in force from time to time and not rules in force only at a fixed point of time in 1959 as fried to be suggested by learned counsel for the respondent-workman."*

24. In the light of the aforesaid decisions, it is clear that the language of Section 60 of the Cantonments Act is explicit and clear. A tax can be imposed by the Cantonment Board pursuant to the law in force i.e. the Municipalities Act at the time of the issuance of the notification, but the amendments made in the Municipalities Act subsequently would also apply equally. The words "for the time being in force" is crucial and can only mean not only to the law in force at the time of the passing of the Municipalities Act but also to any law that is passed subsequently.

25. In the light of the aforesaid, when the provision relating to levy of tax on entry of vehicles was withdrawn by a notification in 1991, the Municipality lost the power to levy toll tax on entry of vehicles w.e.f. 01.08.1991, as a result the statutory power under Section 60 of the Cantonments Act, being dependant and co-extensive with the power given under Section 128 of the Municipalities Act, was also lost and automatically

withdrawn. Upon the issuance of the notification dated 01.08.1991 by U.P. Act No.9/1991, the Municipalities lost the power to levy tax on entry of vehicles. The Cantonment Board, being dependant upon the provision of Section 128 of the Municipalities Act also lost the power automatically to levy tax on entry of vehicles in the cantonment area.

26. In the light of the aforesaid, we are of the opinion that it is not necessary to dwell on the subject as to whether the provision of Section 60 is a case of legislation by incorporation or by way of reference. However, since the Cantonment Board is heavily relying upon the concept of legislation by incorporation, we find that it would be appropriate to dwell into this aspect of the matter as well.

27. Adaptation of a provision by a reference or citation or by incorporation is an accepted device of legislation. If the adapting Act refers to certain provisions of an earlier existing Act, it is known as legislation by reference but if the provisions of another Act are bodily lifted and incorporated in the new Act, it is known as legislation by incorporation. The distinction between a legislation by reference or by incorporation is not easy to highlight and the distinction is one of difference in degree and is often blurred. There are no clear cut guidelines or distinguishing features which would ascertain as to whether the said adaptation belongs to one category or the other. The Supreme Court in the case of **Bharat Cooperative Bank (Mumbai) Ltd. Vs.**

**Cooperative Bank Employees Union 2007 (4) SCC 685** held:-

> *"21. ……Ultimately, it is a matter of probe into legislative intention and/or taking an insight into the working of the enactment if one or the other view is adopted. Therefore, the kind of language used in the provision, the scheme and purpose of the Act assume significance in finding answer to the question. (See: Collector of Customs vs. Sampathu Chetty & Anr. ). The doctrinaire approach to ascertain whether the legislation is by incorporation or reference is, on ultimate analysis, directed towards that end."*

28. Similar view was expressed by the Supreme Court in **Rakesh Vij Vs. Dr. Raminder Pal Singh Sethi & others 2005 (8) SCC 504, Secretary of State Vs. Hindustan Cooperative Insurance Society Ltd. A.I.R. 1931 Privy Council 149, Shamrao Vs. Parulekar & others A.I.R. 1952 SC 324, Ram Sarup Vs. Munshi & Ors. AIR 1963 SC 553, Bolani Ores Ltd. Vs. State of Orissa 1974 (2) SCC 777, State of Madhya Pradesh Vs. M. V. Narasimhan AIR 1975 SC 1835, U.P. Avas Evam Vikas Parishad Vs. Jainul Islam & another AIR 1998 SC 1028, Kerala State Road Transport Corporation Vs. K.O. Varghese & others 2003 (12) SCC 293, State of West Bengal Vs. Kedarnath Rajgarhia Charit, Trust Estate 2004 (12) SCC 425, P.C. Agarwala Vs. Payment of Wages Inspector M.P. (2005) 8 SCC 104 and Bharat Cooperative Bank (Mumbai) Ltd. Vs. Cooperative Bank Employees Union 2007 (4) SCC 685**.

29. The aforesaid concept has been reiterated by the Supreme Court in its latest judgment in **Girnar Traders Vs. State of Maharashtra & others J.T. 2011 (1) SC 469** wherein the Supreme Court held:-

> *"41. ……..when there is general reference in the Act in question to some earlier Act but there is no specific mention of the provisions of the former Act, then it is clearly considered as legislation by reference. In the case of legislation by reference, the amending laws of the former Act would normally become applicable to the later Act; but, when the provisions of an Act are specifically referred and incorporated in the later statute, then those provisions alone are applicable and the amending provisions of the former Act would not become part of the later Act. This principle is generally called legislation by incorporation. General reference, ordinarily, will imply exclusion of specific reference and this is precisely the fine line of distinction between these two doctrines. Both are referential legislations, one merely by way of reference and the other by incorporation. It, normally, will depend on the language used in the later law and other relevant considerations."*

The Supreme Court further held :-

> *"42. With the development of law, the legislature has adopted the common practice of referring to the provisions of the existing statute while enacting new laws. Reference to an earlier law in the later law could be a simple reference of provisions of earlier statute or a specific reference where the earlier law is made an integral part of the new law, i.e., by incorporation. In the case of*

*legislation by reference, it is fictionally made a part of the later law. We have already noticed that all amendments to the former law, though made subsequent to the enactment of the later law, would ipso facto apply. ……..……"*

30. In the light of the aforesaid, we are of the opinion that the provisions of Section 60 of the Cantonments Act is wholly dependant upon and coextensive with the provisions of Section 128 of the Municipalities Act. Without the provision of Section 128 of the Municipalities Act, the Cantonment Board has no power to impose any tax in its cantonment area. It is apparent that Section 60 of the Cantonments Act is a legislation by reference and is not a legislation by incorporation. The submission of the learned counsels for the Cantonment Board that the provision is a piece of legislation by incorporation and the power to levy tax once exercised under Section 60 of the Cantonments Act would continue to operate inspite of the repeal of the power under the Municipalities Act is not correct. Consequently, the decisions cited by the learned counsels for the Cantonment Board viz. **Nagpur Improvement Trust Vs. Vasantrao 2002 (7) SCC 657, Bhikha Ram Vs. Ram Sarup 1992 (1) SCC 319, Bolani Ores Ltd. vs. State of Orissa 1974 (2) SCC 777, Mahindra & Mahindra Ltd. Vs. Union of India & Anr. 1979 (2) SCC 529, U.P. Avas Evam Vikas Parishad Vs. Jainul Islam & another AIR 1998 SC 1028, P.C. Agarwala v. Payment of Wages Inspector, M.P.,(2005) 8 SCC 104** on the question of legislation by incorporation is distinguishable and not applicable to the facts of this case.

31. In the light of the aforesaid, we are of the opinion that once the power to levy tax on entry of vehicles under Section 128 of the Municipalities Act is withdrawn, the Cantonment Board loses the power to levy tax on entry of vehicles in the cantonment area under Section 60 of the Cantonments Act in as much as the power to levy tax under Section 60 (1) of the Cantonments Act is dependant upon and coextensive with the corresponding power given in the Municipalities Act. We, accordingly hold that the decision in the case of **Arun Kumar Jaiswal Vs. Cantonment Board, Dehradun 2004 (2) U.D. 401** is not a good law and is overruled. The question raised is answered accordingly.

32. In the light of the aforesaid, let this opinion be placed before the appropriate Bench dealing with the matter.

**(Sudhanshu Dhulia, J.) (Prafulla C. Pant, J.) (Tarun Agarwala, J.)**

Dated 10th May, 2011
**LSR**