RC

Decision No. 71804

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HIGHWAY CARRIERS ASSOCIATION
VS.
CITY OF BURBANK

Case No. 8453

ORDER OF DISMISSAL

Public Utilities Code sections 4301-4303 read as follows:

"4301. An adequate transportation system is essential to the welfare of the State and an important part of that system is service rendered by highway carriers.

4302. No city shall assess, levy, or collect an excise or license tax of any kind, character, or description whatever upon any motor vehicle carrier who is subject to the jurisdiction of the commission, when the delivery of merchandise by the motor vehicle carrier in the city is occasional and incidental to business conducted elsewhere.

4303. No city shall assess, levy, or collect an excise or license tax of any kind, character, or description whatever upon any household goods carrier, as defined in Section 5109, when the delivery or pickup of household goods, as defined in Chapter 7 (commencing at Section 5101) of Division 2, by the household goods carrier in the city is occasional and incidental to business conducted elsewhere."

The Highway Carriers Association filed a "petition" seeking a restraining order prohibiting the City of Burbank from denying four carriers "the right to serve the public" in that city as provided in the carriers' permits or certificates. The pleading also requested an investigation into the practices of city taxation of regulated carriers for the purpose of issuing a General Order "interpreting the meaning" of the code sections, and prohibiting all cities from taxing regulated carriers except within specific guidelines. The "petition" was docketed as a complaint against the city.

Responsive to preliminary mailing of the complaint under procedural Rule 12, the city submitted a statement of asserted defects. A copy was sent to complainant, and counsel thereafter advised that an "amended petition" would be filed.

The "amended petition" withdraws the Association's "contentions and request for declaratory and injunctive relief with respect to city ordinances", stating it is not necessary for the Commission to hear or make findings on those issues.

Conceding that cities have power to levy license taxes for revenue purposes, the amended petition states that the application of taxing ordinances to regulated carriers has been restricted by sections 4301-4303. Petitioner says that trucking which is occasional and incidental to any city is "state-wide" and exempt, while trucking which is not occasional or incidental is "local" and non-exempt. By omitting precise definitions and by placing the enactment in the "Public Utilities Commission Code", petitioner says the legislative intent can only be construed as vesting the Commission with the responsibility of defining or specifying the distinguishing facts.

Petitioner cites three court cases,[1/] denies their pertinency,

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1/ L.A. v. Tannahill, (1951) 105 Cal. App. 2d 541, sustained the validity of a license tax by Los Angeles on for hire trucks domiciled in Vernon and visiting Los Angeles "on an average of more than once a week during at least one quarter of the calendar year involved."

In Security Truck Line v. Monterey, (1953), 117 Cal. App. 2d 441, a San Jose permit holder using its own trucks plus those of subhaulers delivered fish to Monterey canneries from Hueneme and Avila. Monterey imposed an annual tax on any vehicle that transported a load into the city. Injunction was sustained, holding that deliveries constituted doing business in Monterey, taxable by a proper non-discriminatory ordinance, but that the tax was arbitrary and discriminatory because, "keeping in mind that the city cannot tax an occasional delivery", if one truck makes 100 deliveries the maximum tax for that truck is $13.50, but if the carrier uses 100 different trucks to make the 100 deliveries, it must pay $13.50 per truck, or a total of $1,350.

L.A. v. Calif. Motor Transport Co. (1961), 195 Cal. App. 2d 759 involved a San Francisco based certificated carrier. Vehicles used in Los Angeles were also used throughout the state, no specific vehicles being assigned for use within that city. It was held that the "taxable event" is the doing of business in the city, but that a tax measured by the number of vehicles used has no reasonable connection with the "taxable event" or the quantam of business carried on in the city, and thus is arbitrary and discriminatory.

and urges that courts "cannot legally" pass on the issue of whether a carrier is exempt or non-exempt under sections 4301-4303.

On the premise that jurisdiction "over utilities is reserved to the Commission", and that only the Commission has authority to define exempt and non-exempt carriers, the Association requests a hearing and the issuance of findings by which carriers subject to the Commission's jurisdiction may determine whether they are exempt or non-exempt within the meaning of sections 4301-4303. It is petitioner's position that by enactment of those sections the "legislative intent was clear that upon the facts as to the meaning of occas.onal and incidental, the Commission was to provide the interpretations in light of 'state-wide' need."

No such legislative intent is indicated by those sections or their legislative history. An "act to define and limit the power of municipalities in assessing, levying or collecting taxes on motor vehicle carriers who are subject to the jurisdiction of the Railroad Commission" was adopted in 1939. (Stats. 1939, Chapter 1098, page 3027.) In 1951 the two sections of the 1939 statute were codified, without substantive change, as sections 4301 and 4302 of the Public Utilities Code. (Stats. 1951, page 2025.) Section 4303, relating specifically to household goods carriers, was added in 1957. (Stats. 1957, Ch. 567.)

The Commission is not the tribunal to determine whether or not a tax imposed by a city is in violation of a statute defining and limiting the taxing power of cities. The mere fact that such a statute has been codified as part of the Public Utilities Code does not give the Commission that power. Nor is it a Commission function to establish a "definitive classification as to what constitutes occasional or incidental for application of city tax ordinances", as sought by petitioner.

If the now codified 1939 statute has resulted in "endless confusion" and a "highly discriminatory taxing situation", as alleged, petitioner's request should be addressed to the Legislature.

Case No. 8453 is dismissed.

Dated at San Francisco, California, this 4th day of JANUARY, 1967.

President

Commissioners