
(2002) 07 P&H CK 0086
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2858 of 2002

Lokender Kothari

APPELLANT

Vs

Prohibition Excise and Taxation Commissioner-cum-Revisional
Authority and Another

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Punjab Passengers and Goods Taxation Act, 1952 — Section 9(4)

Citation : (2002) 4 RCR(Civil) 799

Hon'ble Judges : Virender Singh, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : Rajesh Bindal, for the Appellant; Ritu Bahri, DAG, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—Whether penalty could be levied u/s 9(4) of the Punjab Passengers and Goods Taxation Act, 1952 (hereinafter called the Act) for the period during which the recovery of tax had been stayed by an order of the court, is the short question which arises for determination in this petition filed under Article 226 of the Constitution.

2. Facts of the case are these. Lokender Kothari of Udaipur is the petitioner before us. He holds All India Tourist permits covering several States including Rajasthan, Haryana and Delhi. He was at the relevant time operating two 35-seater deluxe buses carrying passengers through the State of Haryana from Udaipur to Delhi and back. These buses would enter Haryana at Jaisinghpur Khera border in Rewazi district leaving Haryana territory at Sirhol/Dundahera border in Gurgaon district and the return by the same route, thus, covering a distance of 83.2" kilometres one side in Haryana. Passenger tax is leviable in the State of Haryana under the Act at the rate of 60% on the value of the fare collected from all the passengers carried by a motor vehicle. In the present case, the State Government has fixed the fare at 34 paise per passenger per kilometer and passenger tax becomes payable when a motor vehicle enters Haryana

territory. Since the petitioner carried passengers through the State of Haryana, he was called upon to pay passenger tax at the aforesaid rate. On receipt of notice from the respondents he filed a writ petition in the Rajasthan High Court at Jodhpur CWP No. 3646 of 1996. The High Court by its interim order dated 14.10.1996 restrained the State of Haryana from imposing any passenger tax on the vehicles of the petitioner. It is common case of the parties that the writ petition was dismissed by that court on 4.8.1997 for want of territorial jurisdiction. The stay order granted by the High Court, thus, remained in operation from 14.10.1996 to 4.8.1997. Since the petitioner had not paid the tax for this period the assessing authority detained his buses at Gurgaon. By order dated 20.2.1998 the assessing authority determined the tax liability of the petitioner for the period from 14.10.1996 to 25.8.1997 and created a demand of Rs. 1,84,376/- by way of passenger tax and penalty in a sum of Rs. 1,60,586/- was also imposed u/s 9(4) of the Act for the undisclosed trips during the aforesaid period. Feeling aggrieved by this order, the petitioner filed an appeal before the Joint Excise and Taxation Commissioner, Faridabad who dismissed the same on December 22, 2000. A revision petition was thereafter filed which, too, met the same fate. Hence this writ petition.

3. The petitioner challenged his liability to pay the tax right up to the revisional authority but having failed he deposited the tax. The tax as levied by the assessing authority is not under challenge before us. The only challenge that has been made in this writ petition is to the power of the assessing authority to levy penalty u/s 9(4) of the Act. This section reads as under;

"9. Grant of Registration certificate

(1) to (3)-

(4) If the prescribed authority is satisfied that any owner is liable to pay tax under the provisions of this Act in respect of any period but who has wilfully failed to apply for registration or to pay the tax, the said authority may, after giving the owner reasonable opportunity of being heard, assess the amount of tax if any, due from the owner, and also direct that the owner shall pay in the prescribed manner by way of penalty a sum not exceeding five times the amount of the tax so assessed, subject to a minimum of two hundred rupees.

(5) to (7)-

A bare reading of this provision makes it clear that if the prescribed authority is satisfied that any owner who is liable to pay tax under the Act in respect of any period and wilfully fails to pay the same, the said authority can not only assess the amount that may be due from the owner but also direct that the owner shall pay penalty in a sum not exceeding five times the amount of the tax so assessed. The sine qua non for levying penalty under the aforesaid provision is the wilful failure on the part of the owner to pay the tax. The question that arises for our consideration is whether the petitioner wilfully failed to pay the tax for the period from 14.10.1996 to 25.8.1997. As already noticed above, the stay

order granted by the Rajasthan High Court remained operative during this period and the respondents had been restrained from recovering the tax. In other words, the recovery of tax from the petitioner during this period had been stayed. When the High Court had stayed the recovery of tax from the petitioner, we fail to understand how the assessing authority could come to the conclusion that he wilfully failed to pay the same during that period. An order of stay may be passed in different ways but the effect of every such order is that for the period during which an order of stay operates, the order that is stayed does not exist in the eye of law. Once the stay is vacated, the order gets revived and may then be executed. If the assessee does not comply with the order during the period of stay, he cannot be said to be in default nor can it be said that he wilfully failed to pay the tax. The view that we have taken finds support from a recent decision of Apex Court in Consolidated Coffee Limited v. Agricultural Income Tax Officer (2001)1 S.C.C. 278. We are, therefore, of the view that the condition precedent for levying penalty u/s 9(4) of the Act, namely, wilful failure on the part of the assessee to pay the tax, is not satisfied in the instant case and, therefore, no penalty could be levied on him. The answer to the question posted in the earlier part of the judgment has to be in the negative.

4. In the result, the writ petition is allowed and the impugned order of assessment as upheld by the revisional authority in so far as it levies penalty on the petitioner quashed. There is no order as to costs.

Sd/- Virender Singh, J.