(2015) 02 AHC CK 0112

In the Allahabad High Court

Case No : Civil Misc. Writ (Tax) Petition No. 92 of 2015

Manish Mukhriya APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

Citation : (2015) 3 ADJ 62 : (2015) 4 ALJ 248

Hon'ble Judges : Tarun Agarwala, J;Satish Chandra, J

Bench : Division Bench

Advocate : Ran Vijay Singh, for the Appellant; Amit Shukla, Advocates for the Respondent

Judgement

1. The petitioner purchased a Tata Indica car in the year 2006 bearing registration No. UP-93 E-8323 which was duly financed by Tata Motor Finance. The petitioner failed to pay the EMI and consequently surrendered the vehicle to Tata Motor Finance-respondent No. 4 on 20th June, 2008. A possession memo was given by the respondent No. 4 to the petitioner. The petitioner received a recovery citation dated 26.12.2014 in which a demand of Rs. 1,39,308/- was made towards road tax and penalty for the period 1.7.2007 to 31.12.2014. The petitioner, being aggrieved by the issuance of the citation has filed the present writ petition contending that since the vehicle has now been re-possessed by the finance company-respondent No. 4, he is not entitled to pay any road tax or penalty. Sri Amit Shukla appears for respondent No. 4 and admits that the vehicle was re-possessed by the finance company on 20th June, 2008.

2. Admittedly, the vehicle was hypothecated by respondent No. 4. Section-2(h) of the Motor Vehicle Taxation Act, 1997 defines "owner" as under:

"owner" in respect of a motor vehicle means the person whose name is entered in the certificate of registration issued in respect of such vehicle, and where such vehicle is the subject of an agreement of hire purchase or lease or hypothecation, the person in possession of the vehicle under that agreement and where any such person is a minor, the guardian of such minor;"

3. The aforesaid definition indicates that the owner of the vehicle is that person whose name is entered in the certificate of registration and where the vehicle is hypotheticated the owner is that person who is in possession of the vehicle. Under Section-4, the tax is payable by the registered owner of the vehicle under the deed of hypothecation. The petitioner is treated to be a registered owner till the date of re-possession of the vehicle by the finance company. Once the vehicle is repossessed by the finance company the agreement of the hypothecation stands terminated unless contrary is established by the finance company, and from that date, namely, from the date of re-possession, the liability falls upon the finance company who becomes the owner in possession of the vehicle. The financier is also required to inform the Regional Transport Officer that the vehicle has been re-possessed.

4. In the instant case, there is nothing on record to indicate that the finance company has informed the Regional Transport Officer intimating that the date when the vehicle was re-sold by them or possession of the vehicle was taken from the petitioner. In any case, we find that admittedly the finance company re-possessed the vehicle on 20th June, 2008. The demand of road tax is for the period 1.7.2007 to 31.12.2014. The petitioner is consequently liable to pay road tax upto the period 20th June, 2008 and for the period subsequent to 20th June, 2008, the finance company is liable to pay the road tax. Consequently, for the reasons stated aforesaid, the writ petition is partly allowed at the admission stage itself. The citation is quashed and the Regional Transport Officer is directed to issue a fresh notice calculating the arrears of tax, if any, upto 20th June, 2008 which would be recovered from the petitioner and for the subsequent period the petitioner is not liable to pay any tax. It is left open to the Regional Transport Officer to recover the tax for the balance period from the finance company namely Tata Motor Finance-respondent No. 4.

