(2019) 04 UK CK 0102

In the Uttarakhand High Court

Case No : Writ Petition No. 2067, 2076 Of 2018 (M/S)

M/s Central Transport Company — APPELLANT

Vs

State Of Uttarakhand And Others — RESPONDENT

Date of Decision : 22-04-2019

Acts Referred:

Uttarakhand Motor Vehicle Taxation Reforms (Third Amendment) Rules, 2012 — Rule 22, 22(4), 22(10), 81

Citation : (2019) 04 UK CK 0102

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Mani Kumar, Sudhir Kumar, Ranjan Ghildiyal

Final Decision : Allowed

Judgement

Sharad Kumar Sharma, J

1. These are the two connected Writ Petitions. The grievance, as raised by the petitioners in the writ petition, is with regard to the imposition of the late fee, as well as, the imposition of penalty, which has been imposed for the purposes of renewal of fitness certificate by invoking the amended provisions as contained under Rule 22 (4), as enforced by the State of Uttarakhand, by virtue of a Notification No. 1009/IX-1/2012/323/2006 dated 29.11.2012.

2. The State of Uttarakhand, in the exercise of its powers under Uttarakhand Motor Vehicle Taxation Reforms (Third Amendment) Rules, 2012, had invoked Section 28 of Uttarakhand Motor Vehicles Taxation Reforms Rules, 2003, and has consequently invoking powers under it had incorporated amendments and particularly the amendment with which we are concerned relates to the amendment as made in Rule 22 (4).

3. Before, the amendment, the Rule 22 (4) of 2003 Rules, it reads as under :

"(4) The Tax or additional tax, payable in respect of a motor vehicle which is again brought into use shall be calculated from the first day of the month in which the certificate of registration is returned to the owner."

4. In particular, reference may be had to column No. 10, of the said amendment, made in Rule 22 (4), which deals with the situation that when a permit holder surrenders the permit of his vehicle for specified time frame, i.e. for a period of three months, which could be extended to a maximum period of six months, in case, if, he wants revival of the said surrender, he had to comply with the conditions given in the amended Rules of the State of Uttarakhand. Column (4) and (10) read as under :-

"(4) The Taxation Officer shall not accept the intimation of non use of any vehicle for more than three calendar months, within a calendar year, however, the period, beyond three calendar months may be accepted by the Regional Transport Officer of the region concerned on the recommendation of the taxation officer. If the owner makes an application along with a fee of rupees two hundred in the case of light motor vehicle and rupees five hundred in respect of motor vehicle other than light motor vehicle to the Taxation Officer. If any such vehicle remains surrendered for more than three calendar months during a year without the extension of acceptance of surrender it shall be deemed to be revoked and the owner shall be liable to pay tax and additional tax as the case may be.

(10) When the owner of such motor vehicle desires to bring his motor vehicle into use again he shall make an application in Form "F-2" and shall present it to the Taxation Officer along with a fee of one hundred rupees. If the owner of the surrendered vehicle has lost part II of Form "F" returned to him under sub-rule (1), he shall intimate with a declaration to that effect. If the Period for which the tax has been Paid is not expired on the date of such application all the documents which were surrendered will be returned to the claimant after entering the date of return on the documents and in the surrender register. In other case an application for return of the documents in form "F-2" must be accompanied by and application in form "D" for payment of the due tax, if any the Taxation Officer will return the documents after payment of tax in the said manner. In the case of a transport vehicle, the Taxation Officer shall ensure before returning the surrendered documents that the fitness and permit of the vehicle, if any are valid, and if it is not so he shall in writing instruct the owner for taking necessary action in order to validate the documents."

5. Learned counsel for the petitioner submits that he was the holder of the permit of various transport vehicles, which was run and managed by him, but due to fall in business, he had voluntarily surrendered the permits for the vehicle invoking Rule 22, initially, for a period six months w.e.f. 30th June, 2017 to 31st December, 2017. Later on, when he intended to revive back the permit and withdraw the surrender made by him, he was imposed with the penalty as contained in Column-2 of Annexure-4 to the writ petition. In Column 2, so far it relates to the vehicle inspection and certificate, the amount imposed was Rs. 800/- and the penalty shown as against it is Rs.8,750/-, which is impugned and

is under question in the present writ petition, which reads as under:-

"Customer Copy

STATE TRANSPORT DEPARTMNET

State Transport Department

UDHAM SINGH NAGAR ARTO, UK.

RECEIPT/APPL.NO

UK6r180200003712/UK18021256372120

Vehicle

Bus

Received From

M/s CENTRAL TRANSPORT CO.

Received Date

19-Feb-2018

Vehicle No.

UK06PA0161

Chassis MAT373510a0G13165

Regn Date

14-Sep-2010

Particular

Amount penalty

Total

Service / User charges

20

0

20

Fitness Inspection + certificate

800

8750

9550

GRAND TOTAL (In Rs.) : 9570/- (NINE THOUSAND FIVE HUNDRED AND SEVENTY

ONLY)

Note - This is computer generated slip, no need of signature (https:// parivahan.gov.in."

6. The argument of the learned counsel for the petitioner

is that under the Notification dated 29th November, 2012, which happens to be in consonance to the GSR issued by the Government of India, while exercising its powers under Rule 81 of the rules framed under the Act, it had provided number of amendments, which included the imposition of a penalty on a belated revival of the certificate of fitness of the vehicle.

7. But, however, as far as the State Amendments are concerned as imposed by the amendment made in 29.11.2012 and on its reading, it does not contemplate an imposition of penalty, if there is an application filed by the owner of the vehicle in Form-2, which has to accompanied with Form-D that too after the payment of due taxes. There cannot be any dispute that in an event if there is to be revival of the permit by the permit holder after the expiry of surrender or at the request of the permit holder, the permit holder is liable to pay the tax, whatsoever is due to be paid by him under the Act and the Rules framed thereunder.

8. But so far as the issue of revival of the fitness certificate is concerned, which has expired during the surrender period or even otherwise, the amended/ modification of the rules as contained under Rule 22 (4) or (10), it does not speak about imposition of penalty nor it confer any rights on the respondents authority to impose the penalty for the purposes of revival of the fitness certificate.

9. What has been reserved to be done by the respondents authority is that the Taxing Officer, should at the time of returning the documents after expiry of the period of surrender of fitness document, he is only liable to instruct the permit holder or the owner of the vehicle to take necessary action so as to validate the fitness certificate in accordance with the Rules.

10. In the case at hand, the petitioner had surrendered his permit for six months and later on when he intended to revive the same, the respondents had proceeded to impose a penalty. In Writ Petition No. 2067 of 2018, the respondents had imposed a total penalty for Rs.95,550/-, whereas, in Writ Petition No. 2076 of 2018, they have imposed a penalty for revival of the fitness certificate to the tune of Rs.48,458/-.

11. After having heard, the learned counsel for the parties, this Court is of the view that in view of the amended provisions as enforced by the Notification dated 29th November, 2012, it does not grant the power to the respondents to impose any type of penalty for the purposes of the revival of the fitness certificate which has expired during the surrender period, its imposition of penalty would be contrary to the law and hence cannot be sustained.

12. In response to it, an argument has been extended by the learned counsel for the respondents is that the penalty as demanded by them since has been voluntarily paid by the petitioner, hence now, he is estopped from questioning the right of the State to impose the penalty for the revival of the fitness certificate. Though in principle the Standing Counsel too was unable to show any provision in the amended rules, giving power to the respondent to impose penalty on return of documents or for revival of the fitness certificate.

13. In response to it, with regard to payments made, an argument of the learned counsel for the petitioner is that since he is a transporter engaged in the business of transport, he intended to only ensure plying of his vehicle and put his business rolling, so under those peculiar circumstances instead of raising any controversy at that point of time, he had deposited the penalty as demanded by the respondents in respect to the different vehicles which stood surrendered by the petitioner. But that in itself will not amount to be an estoppels, when the statue itself does not confer the power to impose penalty under the rules. There could be no estoppels against law.

14. Be that as it may. Let us even presume that the petitioner has deposited the penalty as demanded by the respondents that by in itself will not validate the action of the State, more particularly, when the under the Rules itself, the respondents are not entitled to impose a penalty and have no power to do so. But having said so, that would not amount to avail the liberty with regard to the imposition of any other tax, fee or any other legal enforceable liability to be imposed under the Rules for the purposes of the revival of the permit which stood surrendered by the petitioner under Rule 22(4) of the Rules.

15. Consequently, these Writ Petitions succeed only to the limited extent so far it relates to the amount imposed by the respondents as a penalty on the petitioner for the revival of the fitness certificate in the light of amended provision contained under Rule 22(10) of the respective vehicles. However, at this juncture, learned Standing Counsel submits that the amount referred hereinabove, which has been imposed on the petitioner is inclusive of tax as well as the penalty imposed by the impugned orders.

16. While allowing these Writ Petitions, it would only be confined to the imposition of the penalty only in pursuance to the impugned order. It is expected that the respondent No. 5 would ensure to refund the penalty recovered only within a period of two weeks from the date of production of certified copy of the order.

17. Thus the Writ Petitions are allowed, subject to the above findings.

18. However there would be no order as to cost.