(2011) 04 AHC CK 0112

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 455 of 2011

Raj Kumar Singh APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Uttar Pradesh Motor Vehicles Taxation (Amendment) Rules, 2009 — Rule 22

Citation : (2011) 4 ADJ 600 : (2011) 4 AWC 3874 : (2011) 8 RCR(Civil) 2052

Hon'ble Judges : F.I. Rebello, C.J;Prakash Krishna, J

Bench : Division Bench

Judgement

1. The Petitioner is owner of two vehicles, being UP70-AT-5140 (Dumper) and DLI-GA-4431 (Dumper). According to the Petitioner, as his vehicles required major repairs, he submitted an application for surrender of the papers before the concerned authority on 30.6.2008 in respect of Vehicle No. DLI-GA-4431 and similarly in respect of vehicle No. UP70-AT-5140. After the repairs were carried out and the vehicles become fit for plying, the Petitioner made an application to the concerned Authority, vide application dated 14.3.2011 for releasing the papers, which had been surrendered.

2. According to the Petitioner, ARTO (Administration) passed an order to the effect that the papers of the vehicles shall be released only on the payment of additional tax plus penalty etc. The Respondents, in respect of Vehicle No. DLI-GA-4431 demanded a sum of Rs. 23,460/- plus penalty and in respect of Vehicle No. UP70-AT-5140, demanded the same sum plus penalty.

3. The demand as sought to be made is under the provisions of the U.P. Motor Vehicles Taxation Rules, 1998, the relevant provisions of which came into force w.e.f. 28th October, 2009. Therefore, according to the Petitioner, considering that he had surrendered the documents on 30.6.2008, it is wholly arbitrary and illegal and is liable to be set aside.

4. On the other hand, on behalf of the Respondents, it is submitted that the

relevant rules having come into force, the Petitioner is bound to pay the tax as demanded and as such, no fault can be found with the demand raised by the authorities.

5. Having considered the rival contentions of the parties, the question before us is, whether Rule 22, as introduced by the U.P. Motor Vehicles Taxation (Sixth Amendment) Rules, 2009, would be attracted. Before this rule came into force, the rule as it then stood, only required that the owner of the vehicle had to surrender the certificate of registration to the Taxation Officer in Form ''F''. Rule-22, which has been introduced by the Rules of 2009, reads as under:

22. Procedure in the case of non-use of a vehicle. - (1) When the owner of a motor vehicle has occasion to withdraw his motor vehicle from use for a period of one month or more, in the case of motor vehicle other than transport vehicle the certificate of registration and in case of transport vehicle the certificate of registration, tax certificate, additional tax certificate, if any, fitness certificate and permit, if any, must be surrendered to the Taxation Officer in Form ''F'', otherwise the motor vehicle shall be deemed to have been in use. The vehicle shall not be kept outside in the territorial limit of the Taxation Officer during the period of surrender except with the prior permission of the Taxation Officer an exception circumstances.

(2) The intimation of non-use shall be accompanied by a cash receipt of [Rupees One Hundred] to be deposited in the office of the Taxation Officer and shall be presented by the owner or his duly authorised agent to the Taxation Officer.

(3) When the Taxation Officer, after satisfying himself that Form ''F'' presented before him is complete, the documents as mentioned in Sub-section (1) are attached and the fee prescribed in Sub-rule (2) has been deposited, shall accept the surrender of the documents of the vehicle. The Taxation Officer shall complete Part II of Form ''F'' and return it to the claimant after entering the date of surrender in the documents produced with Form ''F''.

(4) The Tax 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 Rs. 10 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.

(5) The Taxation Officer shall make entry and sign on each entry in the register maintained in Form ''F-2'' in the order of acceptance of surrender of documents for non-use of the vehicle under Sub-rule (3). The Taxation Officer or any other officer authorized by him in this behalf, shall sign whenever any entry is made in the register. The Taxation Officer shall check such register on the last day of

every calendar month and shall sign below the last entry therein.

(6) A list of vehicles in respect of which the surrender of documents for non-use has been accepted by the Taxation Officer and entries had been made during the calendar months in the aforesaid register shall be prepared in the end of each month and shall be provided to all the Enforcement Officers of sub-region.

(7) The Taxation Officer may inspect by himself or by any officer authorised by him any motor vehicle which is kept under surrender and whenever the vehicle will be inspected, the report in brief thereof shall be entered in the register referred to in Sub-rule (6).

(8) The owner of a surrendered vehicle shall not remove it from the place specified by him during the period of surrender without prior permission in writing of the Taxation Officer. The Taxation Officer, after being satisfied on the application made by the owner of the vehicle along with the fee of ten rupees, may permit the owner to remove the vehicle from the stipulated place. However, the owner of a vehicle may in unforeseen circumstances such as flood, fire and the like may remove the vehicle but he shall intimate the Taxation Officers such removal within twenty-four hours.

(9) Subject to the provision of Sub-rule (4), the owner of a surrendered vehicle in respect of which intimation of non-use has already been accepted, shall liable to pay tax and additional tax for the period beyond three calendar months during any calendar year, whether the possession of the surrendered documents has been taken from the Taxation Officer or not.

(10) When the owner of such motor vehicle desires to bring him motor vehicle into use again he shall make an application in Form ''F-1'' and shall present it to the Taxation Officer along with a fee of ten 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-1'' must be accompanied by an 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.

6. On a reading of the Rule as it now stands, it will be clear that after the initial period of three months, in terms of Sub-rule (4), there are some further requirements. The requirements are that the Taxation Officer shall not accept the intimation of non-use of any vehicle for more than three calendar months, within a calendar year and thereafter the Taxation Officer, for any period beyond that

period, must forward his opinion when an application is moved for extension to the Regional Transport Officer. The relevant portion of Sub-rule (4) reads, "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 as the case may be."

7. The question would be whether the rule will apply to a vehicle, which was surrendered before the Rule came into force.

8. In our opinion, if we interpret the language of the above Rule in a literal manner, the new rule would not apply in respect of those vehicles, whose documents were surrendered before the Rule came into force. The mischief sought to be avoided would be defeated if the rule is so read. The mischief was as pointed out by the Government, that the vehicles would continue to ply even without the documents. It is to avoid this that the new rule was amended. Such a construction, in our opinion, cannot also be supported on a reading the provision of Sub-rule (9), which enjoins on the owner of the vehicle, who had surrendered the vehicle, to pay tax in case of failure of comply with the requirement of Sub-rule (4). In these circumstances, in our opinion, the proper construction on a reading of the Rule would mean that in respect of owners, who had surrendered the vehicle before the new Rule came into force on the rules coming into force and a period of three months elapsing, they will be bound to comply with the said requirement of the rule i.e. of applying to the Taxation Officer to refer the application for extension to the Regional Transport Officer. In the instant case, as the Rule had come into force w.e.f. 28.10.2009 and on failure by the Petitioner to comply with the mandate of Sub-rule (4), the period of three months having expired on 27.1.2010, the Petitioner would be liable to pay the tax from 27.1.2010.

9. In the light of that, the demand as raised by notices dated 14.3.2011 in respect of Vehicle No. UP70-AT-5140 and dated 17.3.2011 in respect of Vehicle No. DLI-GA-4431, are quashed and set aside. The Respondents are directed to issue fresh demand in terms of law as now explained.

10. Accordingly, the writ petition stands disposed of.

