(2003) 01 AHC CK 0056

In the Allahabad High Court

Case No : C.M.W.P. No. 988 of 2001

Ram Jeet Yadav		APPELLANT
	Vs	
Transport Commissioner and Others		RESPONDENT

Date of Decision : 29-01-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 88
Uttar Pradesh Motor Vehicles Taxation Act, 1997 — Section 6

Citation : (2003) 2 AWC 1160

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : B.B. Singh, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju, J.—Heard learned counsel for the petitioner and the learned standing counsel.

2. The petitioner is registered owner of a truck, which operates in the States of West Bengal, Jharkhand, Bihar, U.P. and Orissa on the basis of a national permit granted u/s 88 of the Motor Vehicles Act. He holds an authorisation certificate granted by the State Transport Authority, West Bengal for 5 States including U. P. vide Annexure-1 to the petition. In paragraph 6 of the petition it is stated that when his vehicle entered U.P. his bank draft was not accepted at the check post and his vehicle was seized on 9.7.2001, although his bank draft of Rs. 5,000 has been accepted by the A.R.T.O., Varanasi. He applied for release of his vehicle stating that his bank draft has been accepted, but respondents 2 and 3 directed him to pay 10 times penalty. Against the order dated 18.7.2001 he filed Writ Petition No. 906 of 2001, and this Court directed that the matter be re-heard vide order dated 8.8.2001, Annexure-4 to the writ petition. Thereafter the order dated 24.8.2001 was passed (vide Annexure-6 to the petition) on the basis of the Impugned circular dated 22.9.2000 demanding 10 times penalty.

3. A counter-affidavit has been filed and we have perused the same.

4. The petitioner is challenging the impugned circular dated 22.9.2000 (Annexure-5 to the writ petition) as well as the order dated 24.8.2001 (Annexure-6 to the writ petition). He has also prayed for release of his vehicle.

5. In this case, this Court passed an interim order on 3.9.2001 and as a result thereof the petitioner''s vehicle had been released on his paying the tax.

6. The controversy in this case is not regarding the additional tax u/s 6 of the U. P. Motor Vehicles Taxation Act, 1997 but with regard to 10 times penalty which has been imposed under Clause 9 of the impugned Circular dated 22.9.2000.

7. It may be mentioned here that the provision for imposing 10 times penalty was introduced for the first time on 6.10.2001 by means of U. P. Amending Act No. 25 of 2001. Hence at the time when the impugned Circular dated 22.9.2000 was issued, there was no provision for imposition of penalty on national permit holders. Hence, in our opinion, Clause 9 of the said Circular in so far as it concerns national permit holders is clearly illegal because at the time when it was issued, there was no statutory provision for imposition of penalty.

8. The petition is, therefore, allowed. Clause 9 of the Circular dated 22.9.2000, shall have no application to national permit holders. The penalty part of the impugned order is quashed. The petitioner shall pay the additional tax unless he has already paid the same. Since the petitioner''s vehicle has already been released, no order need be passed with regard to the prayer for release of the vehicle.

