
(2011) 09 AHC CK 0035
In the Allahabad High Court
Case No : C.M.W. (T.) P. No. 1300 of 2011

Ram Prakash Pal	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Taxation Act, 1997 — Section 18, 20, 20(1), 20(2), 20(3)
Motor Vehicles Taxation Rules, 1997 — Rule 12, 18, 18(2), 4, 6

Citation : (2011) 09 AHC CK 0035

Hon'ble Judges : Sunil Ambwani, J;Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sunil Ambwani and Kashi Nath Pandey, JJ.—We have heard Shri Rakesh Chandra Tiwari, learned counsel for the petitioner. Shri A.C. Tripathi, learned standing counsel appears for the State respondents. This writ petition is directed against the citation issued by the Tehsildar, Duddhi, District Sonebhadra dated 23.7.2011 for recovery of R 40,313 and other dues of the vehicle tax, on the recovery certificate issued u/s 20 of the Motor Vehicle Taxation Act, 1997.

2. Learned counsel for the petitioner states that the vehicle was financed by M/s. Tata Motor Finance Limited, with its head office at Mumbai, and regional office at Baidhan, District Siddhi, Madhya Pradesh in the year 2004. On 20.3.2007 at 4.10 p.m. the representatives of Tata Motor Finance Company repossessed the vehicle for non-payment of the instalments. The petitioner was not in a financial position to pay the dues of the finance company, and to get the vehicle released. He thus paid the vehicle tax upto 31.3.1997, and claims the payment of tax as collateral proof of repossession of the vehicle. It is alleged that all the papers were also taken over by the finance company, and that since thereafter the petitioner is not in possession of the vehicle. He states that the vehicle may have been sold by the finance company to some other person and thus he is not liable to pay the

vehicle tax.

3. A supplementary-affidavit has been filed by the petitioner annexing therewith a letter dated 27.3.2007 sent to the Assistant Regional Transport Officer, Sonebhadra informing him that the vehicle was repossessed on 20.3.2007, and that after delivery of re-possession letter and that the petitioner did not want to ply the vehicle. He also sent a representation on 10.8.2011, after receipt of citation, stating that the vehicle was repossessed on 20.3.2007, and disputing his liability to pay the tax.

4. Learned standing counsel has sought instructions and has produced the records. He states that no such information was received either from the petitioner or from the finance company. The department sent several notices for recovery and finally the citation was issued for recovery of the vehicle tax. The tax is payable by the registered owner of the vehicle. Since the petitioner is still the registered owner of the vehicle in the record of the transport department, he is liable to pay the tax.

5. It is submitted by Shri A.C. Tripathi, that the liability of payment of tax cannot be avoided unless an intimation is given of the re-possession of the vehicle either by the petitioner or the finance company. The information must be given in the prescribed form, failing which the notice itself is to be treated as an order of the Taxing Officer against which an appeal lies u/s 18 of the Act.

6. The issues whether the petitioner had informed the Assistant Regional Transport Officer and whether the last payment of tax will relieve the petitioner from the liability, are questions of fact, which will require the petitioner to produce proof in support thereof and satisfy the Taxation Officer that the vehicle was actually re-posessed, and due information was given to the department.

7. Ordinarily under Article 226 of the Constitution of India the Court does not decide the questions of facts.

8. A perusal of the Motor Vehicles Taxation Act, 1997 and the Rules framed thereunder would show that there are variety of circumstances in which the tax liability may be disputed. There may be cases of non-use of vehicle for a specified period; the liability to pay tax at a lower rate, or the refund of tax. There may be variety of other circumstances in which the owner of the vehicle may object to the notice of demand of tax on Form-E (1) under Rule 18 (2) on its insertion by notification dated 31.8.2009. The appeal is provided under Rule 18 against the order of Taxation Officer under Rules 4, 6 and 12 of the Rules and not against the notice of intimation of liability and payment of tax.

9. We are not in agreement with the arguments of Shri A.C. Tripathi appearing for the State that the imposition of tax under Rule 4, the payment of additional tax on public service vehicle under Rule 6 and the non-use of vehicle and refund of tax under Rule 12, will not require any order to be passed by the Taxation Officer. Ordinarily a Taxation Officer may not be required to pass an order, where

the rate and the period, for which the tax is prescribed, is admitted and there is no dispute to the liability. The procedure of giving notices in such case may be treated to be sufficient in case of imposition of tax. There may, however, be variety of cases where the owner of vehicle may dispute the liability and submit reply/objection to the notice. In such case the Taxation Officer will have to pass an order deciding the objections.

10. Section 18 of the Act provides for an appeal against the order and not against the notice. Where a person does not file any objection before the Taxation Officer, he may not be entitled to file an appeal as the appellate authority will not be required to pass an order against which the appeal is to be heard. The decision on the objections filed by the owner of the vehicle or any other person, who is entitled to pay the tax, will require an order to be passed by the Taxation Officer, against which an appeal is maintainable.

11. In the present case, after perusing the records, we find that notices were sent to the petitioner. The record, however, does not show that the notices were received by any person, and thus the request of the A.R.T.O., Sonebhadra to the District Magistrate, Sonebhadra on 21.8.2009, for recovering the amount as arrears of land revenue u/s 20 of the Act is not in accordance with the law. Sub-section (1) of Section 20 provides that arrears of any tax or additional tax or penalty payable under the Act shall be recoverable as arrears of land revenue. Sub-section (2) provides that the tax, additional tax and penalty payable under the Act shall be first charge on the motor vehicle and sub-section (3) after its amendment by U.P. Act No. 18 of 2009 w.e.f. 28.10.2009 provides as follows:

(3) The Taxation Officer shall raise a demand in the form as may be prescribed, from the owner or operator, as the case may be, for the arrears of tax and additional tax and penalty of each year, which shall also include the arrears of tax, additional tax or penalty, if any, of preceding years.

12. Sub-section (3) of Section 20 quoted as above provides that the taxation officer shall raise a demand for which Form E (1) is provided in the Rules, from the owner or operator for arrears of tax, additional tax and penalty of each year, which shall also include the arrears of tax, additional tax, or penalty, if any, of preceding years. A notice of demand may be issued if the owner of the vehicle has not given reply to the notice issued for payment of tax. Where the notices are not served and an objection is raised to the liability of payment of tax, the Taxation Officer has to pass an order deciding the objection before issuing the recovery certificate to the District Magistrate.

13. In the present case there is nothing on record to show that the notices sent to the petitioner were actually served upon him. The petitioner raised objections before the Assistant Regional Transport Officer, Sonebhadra after receiving the citation. His objections have not been decided. We, thus, find that the recovery of tax as arrears of land revenue by issuing a recovery certificate u/s 20 of the Act is not valid. The Taxation Officer before issuing the recovery certificate should

have satisfied himself that the notices are served and once objections are filed, he must decide the same by passing an order against which the assessee may, if he is aggrieved, file an appeal. The writ petition is allowed. The impugned citation dated 23.7.2011 is set aside. If the petitioner files a fresh representation annexing therewith such evidence, as he may like to produce, within 15 days from today, the Taxation Officer will decide the objections before pursuing the recovery. If the petitioner is still aggrieved, he will have a right to file the appeal in accordance with the procedures prescribed under the Rules made u/s 18 of the Act.