(1990) 03 AHC CK 0018

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 482 of 1979

Ram Sewak Goel APPELLANT

Vs

Passenger Tax Officer RESPONDENT

Date of Decision : 01-03-1990

Acts Referred:
Uttar Pradesh Motor Gadi (Yatri Kar) Adhiniyam, 1962 — Rule 5, 5(3), 5(4)A, 3(1), 3(3)

Citation : (1990) 1 AWC 598

Hon'ble Judges : B.P. Singh, J;A.N. Varma, J

Bench : Division Bench

Advocate : L.P. Naithani, for the Appellant;

Final Decision : Allowed

Judgement

A.N. Varma, J.—The Petitioner is an operator of a stage carriage. He has assailed the validity of the notice of demand issued by the Passenger Tax Officer on 2-7-1979 asking the Petitioner to deposit additional tax under the Motor Gadi (Yatri Kar) Adhiniyam. The notice is assailed on the ground that the same was issued without giving any opportunity to the Petitioner as contemplated u/s 9 of the said enactment. A counter affidavit has been filed stating that no notice or opportunity was required to be given to the Petitioner in view of the fact that the Petitioner had entered into an agreement for payment of passenger tax in lump sum as contemplated under the first proviso to Section 5 of the Adhiniyam. The stand taken in the counter affidavit is that the agreement for payment in lump sum of the passenger tax executed by the Petitioner would in law make the Petitioner liable to pay additional tax also in lump sum. That being so, the Petitioner was liable to pay and deposit 25% of the passenger tax by way of additional tax in terms of Sub-rule (4-A) of Rule 5 of the Motor Gadi (Yatri Kar) Rules. The stand taken in the counter affidavit as well as in the course of arguments by the learned Standing Counsel is clearly untenable.

2. Additional tax has been imposed u/s 3(3) of the aforesaid Act. Sub-section (4)

of Section 3 provides that the provisions of this Act shall, so far as may be, apply in relation to payment of additional tax chargeable under Sub-sections (3) and (3-A) of Section 3 as they apply in relation to the passenger tax chargeable under Sub-section (1) of Section 3. It further provides that the same procedure shall be followed in relation to additional tax with such adaptation or modification as the State Government may by notification in the gazette direct as in the case of passenger tax.

3. Section 54 lays down the method of collection and provides that the tax shall be collected by the operator of the stage carriage and paid to the State Government in the prescribed manner. The rules referred to above lay down the procedure for collection of this tax. Rule 5 lays down the procedure for collection of both passenger tax as well as additional tax in cases where there is lump sum agreement for the payment of the same.

4. We then have Sub-rule (4-A) which is the main basis on which the Respondents are contending that the Petitioner was liable to pay additional tax without the authorities having gone through the formalities of assessment as contemplated Under Sections 8 and 9 of the Act inasmuch as a fixed sum is payable as additional tax i e.''25% of the tax payable by way of passenger tax. This provision may be extracted here in view of the fact that the entire question turns upon true and proper construction thereof:

the lump sum payable in respect of the additional tax under Sub-section (3) of Section 3 of the Act shall be 25 per cent of the amount payable under Sub-rule (3) and this amount shall also be payable along with the lump sum amount under Sub-rule (3).

5. This provision was subject of decision by a Bench of this Court in the case of Gyan Deo Sharma and Ors. v. The State of U.P. and Anr. reported in JT 1977 HG 539. The Division Bench after considering the entire scheme of the Act and Rules held that additional tax under Sub-rule (4-A) of Rule 5 cannot be levied on and demanded from those operators who are and were paying additional tax on way bill system. Additional amount under Sub-rule (4-A) of Rule 5 can, however, be demanded from those operators only who agree or had agreed to pay additional tax on lump sum basis. The ratio of the decision is that Sub-rule (4-A) of Rule 5 would be attracted only where there is express agreement for payment of additional tax on lump sum basis.

6. In the present case it is not disputed that there was no such agreement with regard to payment of additional tax in lump sum by the Petitioner. That being so the impugned notice is clearly liable to be quashed. It will, however, be open to the Passenger Tax Officer to levy additional tax on the Petitioner by following the procedure laid down in Section 9 of the Act by issuing proper notice to the Petitioner and making an assessment after making such enquiry as may be considered necessary and proper.

7. In the result the petition succeeds and is allowed. The notice dated 2-7-1979

(Annexure-III to the writ petition) is quashed. The Passenger Tax Officer shall be free to proceed afresh according to law and in the light of the observations made herein above u/s 9 of the Motor Gadi (Yatri Kar) Adhiniyam. No orders as to cost.

8. It is made clear that the bar of three years'' limitation u/s 9 shall not be applicable in relation to the fresh notice that the Passenger Tax Officer shall now be issuing in accordance with the decision of this case.

