(2014) 04 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 6443 of 1998 (O & M)

Sahib Ram Punia APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2014) 176 PLR 13 : (2014) 4 RCR(Civil) 286

Hon'ble Judges : Jaspal Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : R. Kartikya, Advocate and Sanjiv Bansal, Advocate for the Appellant; Mamta Singla Talwar, AAG, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—Challenge in this petition filed under Articles 226/227 of the Constitution of India is to the assessment orders dated 25.9.1996 and 4.12.1996, Annexure P.1 collectively passed u/s 9(4) of the Punjab Passengers and Goods Taxation (Haryana Amendment and Validation) Act, 1988 (in short, "the Act") imposing tax and penalty and the appellate order dated 15.12.1997/10.4.1998, Annexure P. 7 dismissing the appeals filed by the petitioners. A few facts relevant for the decision of the controversy as narrated in the petition may be noticed. The petitioners are registered owners of passenger buses and hold valid route permit from the State Transport authority. The buses of the petitioners are registered with the registering authority, Haryana. The registration and assessment of the passenger vehicles in the State of Haryana is governed by the Act. During the assessment year 1995-96 (petitioner No. 1) and 1996-97 (petitioners No. 2 and 3), the buses of the petitioners were acquired by the State of Haryana for election duty and hence were not plied on the route. Even after the buses were released by the Government of Rajasthan, the same remained in workshop for repairs. Respondent No. 3 under a mistaken belief that the buses of the petitioners were not registered passed assessment orders alongwith penalty, which are attached collectively as Annexure P. 1. Aggrieved by the orders, the petitioners filed appeals before the Joint Excise and Taxation Commissioner (Appeals) Hisar - respondent No. 2. Vide order dated 28.2.1997, Annexure P.3, respondent No. 2 held that the appeals shall not be heard till the petitioners deposit the amount of assessment and penalty. The petitioners filed CWP No. 4030 of 1997 in this Court which was allowed vide judgment dated 20.5.1997 and the order impugned was set aside. The said order was brought to the notice of the appellate authority vide letters dated 26.3.1997 and 8.4.1997, Annexures P.4 and P.5. Vide order dated 15.12.1997, Annexure P.7, the appeals were dismissed, upholding the order of assessment and penalty. Hence the instant writ petition by the petitioners.

2. A written statement has been filed on behalf of the respondents wherein it has been inter alia stated that assessment of tax has rightly been framed by respondent No. 3 u/s 9(4) of the Act because the petitioners have not filed returns as required under Rule 16 of the Punjab Passengers and Goods Taxation Rules, 1952 (in short, "the Rules") and never kept the accounts maintained as required u/s 6 of the Act. It has also been stated that Section 9(4) of the Act does not deal with only unregistered vehicles. Infact it deals with the liability of tax and willful failure of payment of tax. It has further been asserted that the petitioners have approached this court without exhausting the alternative remedy of revision before the Prohibition, Excise and Taxation Commissioner as required u/s 16 of the Act. On these premises, prayer for dismissal of the petition has been made.

3. We have heard learned counsel for the parties and perused the record.

4. The solitary contention raised on behalf of the petitioners is that u/s 9(4) of the Act, no penalty was exigible as Section 9 of the Act deals with grant of registration certificate. According to the learned counsel, it only applies to unregistered vehicle owners and is not applicable in the case of registered vehicle owners.

5. On the other hand, learned State counsel submitted that the petitioners had not been maintaining accounts as required u/s 6 of the Act and, therefore, demand of tax and penalty had rightly been made u/s 9(4) of the Act as it nowhere provides that it applies only to unregistered vehicle owners and not to registered vehicle owners.

6. After hearing learned counsel for the parties and perusing the record, we do not find any merit in the submissions of learned counsel for the petitioners.

7. It would be apposite to reproduce the relevant portion of Section 9 of the Act, which reads thus:--

"9. Grant of registration Certificate.

(1) to (3) xx xx xx xx xx xx

(4) If the prescribed authority is satisfied that any owner is liable to pay tax under the provisions of this Act in respect of any period but who has willfully failed to apply for registration or to pay the tax, or where such authority has reason to believe that the tax due has not been paid correctly the said authority may, after giving the owner a reasonable opportunity of being heard, assess the amount of tax, if any, due from the owner, and also direct that the owner shall pay in the prescribed manner by way of penalty, a sum not exceeding five times the amount of the tax so assessed.

(5) to (7) xx xx xx xx xx xx xx"

8. Sub section 4 of Section 9 of the Act provides that if any vehicle owner who is liable to pay tax under the Act, fails to apply for registration or to pay the tax or where the authority has reasons to believe that the tax due has not been paid correctly, the appropriate authority shall assess the amount of tax due from the owner and also require him to pay penalty after giving him reasonable opportunity of hearing. The quantum of penalty prescribed cannot exceed five times of the amount of tax assessed. The aforesaid provision nowhere specifies that the same applies to unregistered vehicle owner and not to registered vehicle owner. In the present case, the petitioners could not dispute that the owner had not maintained any books of account and had failed to pay the tax due under the Act. In view of the above, finding no merit in the petition, the same is hereby dismissed.