(2002) 05 AHC CK 0015

In the Allahabad High Court

Case No : C.M.W.P. No. 488 of 2002

Sanjay Sharma APPELLANT

Vs

Taxation Officer, Mathura and Others RESPONDENT

Date of Decision : 23-05-2002

Acts Referred:

Uttar Pradesh Motor Vehicles Taxation Act, 1997 — Section 1(3), 14, 30

Citation : (2002) 3 AWC 2324

Hon'ble Judges : U.S. Tripathi, J;G.P. Mathur, J

Bench : Division Bench

Advocate : A.D. Saundera, for the Appellant;

Final Decision : Allowed

Judgement

G.P. Mathur, J.—This writ petition under Article 226 of the Constitution has been filed for quashing of the recovery certificates dated 5.5.2001 and 6.5.2001 sent from the office of Assistant Regional Transport Officer, Mathura.

2. The case set up in the writ petition is that the petitioner along with his brother Vipin Sharma purchased a dumper bearing registration No. U. P. 85C-9677, which was financed by and was hypothecated to Tata Finance Limited. After partition amongst the brothers, the vehicle came in the share of the petitioner. The vehicle was stolen and an F.I.R. was lodged at P. S. Pinahat on 28.12.1998. Subsequently, the vehicle was recovered in Morena (M.P.) and was brought to the concerned police station. The petitioner applied for release of the vehicle and ultimately by the order of Civil Judge, Ambi district Morena, the vehicle was released in his favour after he submitted guarantee bond. The vehicle was actually delivered to the petitioner on 30.6.1997. The petitioner could not pay the instalment and consequently, the Finance Company seized the vehicle on 14.8.1999 and it was no longer in his possession.

3. The Assistant Regional Transport Officer sent a recovery certificate dated 5.5.2001 to Collector, Mathura. to recover Rs. 24,322 from the petitioner as

goods tax under U. P. Motor Gadi (Mal-kar) Adhiniyam, 1964. Another recovery certificate was sent on 6.5.2001 to Collector, Mathura, to recover Rs. 18,543 from the petitioner towards arrears of tax u/s 14 of U. P. Motor Vehicles Taxation Act. 1935 for the period 1.7.1998 to 31.3.2001. The present writ petition under Article 226 of the Constitution has been filed for quashing of the aforesaid recovery certificates.

4. After hearing learned counsel for the petitioner, we are of the opinion that the writ petition is liable to be allowed on a purely legal ground and, therefore, we have not asked the State counsel to file a counter-affidavit. The impugned recovery certificates (copies filed as Annexures-3 and 4 to the writ petition) show that the same have been issued to recover arrears of goods tax for the period 1.7.1998 to 31.3.2001 under U. P. Motor Gadi (Mal-kar) Adhiniyam, 1964 and arrears of tax under U. P. Motor Vehicles Taxation Act, 1935 for the same period. The U. P. Legislature enacted U. P. Motor Vehicles Taxation Act, 1997, which came into force on 9.11.1998 by virtue of a notification issued u/s 1 (3) of the Act. By Section 30 of this Act, the U. P. Motor Vehicles Taxation Act, 1935 and U. P. Motor Gadi (Mal-kar) Adhiniyam, 1964, were repealed. Therefore, no tax under the U. P. Motor Vehicles Taxation Act, 1935 or under U. P. Motor Gadi (Mal-kar) Adhiniyam, 1964 can be levied on a motor vehicle with effect from 9.11.1998. The recovery certificates show that the aforesaid taxes have been levied for the period 1.7.1998 to 31,3.2001, which is clearly illegal. The authorities are empowered to impose tax under U. P. Motor Vehicles Taxation Act, 1997 after 9.11.1998. The impugned recovery certificates are, therefore, clearly illegal and cannot be sustained.

5. The writ petition is accordingly allowed and the impugned recovery certificates sent by Assistant Regional Transport Officer, Mathura to Collector, Mathura on 5.5.2001 and 6.5.2001 (copy filed as Annexures-3 and 4 to the writ petition) are quashed. It is made clear that it will be open to the authority to levy tax under U. P. Motor Vehicles Taxation Act, 1935 and U. P. Motor Gadi (Mal-kar) Adhiniyam, 1964 up to the period 8.11.1998 and thereafter under Motor Vehicles Taxation Act. 1997. It is further clarified that this Court has not adjudicated upon the petitioner''s plea that his vehicle was stolen on 28.12.1998 and its possession was given to him on 30.6.1999 or that the Finance Company seized and took away the vehicle on 14.8.1999. If such a plea is raised by the petitioner before the respondent No. 1, the same may be examined and decided in accordance with law.

