(2010) 11 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : CWP No. 2987 of 2010

Shyam Lal Jaswal APPELLANT

Vs

State of H.P. and Others RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Himachal Pradesh Motor Vehicles Taxation Act, 1972 — Section 15, 15(A)

Citation : (2010) 11 SHI CK 0009

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—The main issue in this writ petition is whether the appeal of the present Petitioner could have been heard without ordering deposit of any portion of the amount found due and payable by the assessing officer.

2. The undisputed facts of the case are that the Petitioner is plying buses in the State of Himachal Pradesh. Demands were raised in relation to the amount of tax payable under the H.P Motor Vehicle Taxation Act, 1972 (hereinafter referred to as the ''Act''). Aggrieved by these demands, the Petitioner filed an appeal which was dismissed. Thereafter, the Appellant filed a Revision Petition before the Commissioner Transport which was dismissed by a non speaking order. The Petitioner challenged this order in CWP No. 1873 of 2007 which was disposed of with a direction that the Commissioner, Transport should hear the petition afresh and after affording proper opportunity in consonance to the principles of natural justice should decide the matter.

3. On the matter being so remanded the Commissioner, Transport passed an order on 1.10.2008, relevant portion of which reads as follows:

After perusing the orders passed by the Appellate Authority i.e., Secretary, State Transport Authority on 4.6.2007, it transpired that the provisions of Section 15 of Motor Vehicle Act, 1972 have not been kept in mind as there is no mention of it in the impugned order. Thus, the procedure laid down for hearing appeals has not been adhered to properly by the Appellate Authority.

Therefore, on this ground alone, the matter is sent back to the Additional Commissioner Transport with the direction to decide matter afresh after observing procedure laid down u/s 15 of Act ibid besides other relevant sections and also after giving due opportunity to the applicant.

4. To understand the impart of this order, it would be necessary to refer to Section 15 of the Motor Vehicle Taxation Act, 1972 which reads as follows:

15. Appeals.- (1) an appeal shall lie to the appellate authority appointed by the State Government in this behalf, against any original order passed under this Act, within 30 days of the passing of such order or within such further period as the appellate authority may, for sufficient cause allow:

Provided that no appeal shall be entertained by such authority unless he is satisfied that the amount of tax assessed and penalty imposed has been paid:

Provided further that such authority, if satisfied that an owner is unable to make such payment, may, for reasons to be recorded in writing, entertain an appeal without such payment having been made.

(2) Save as provided in Section 15A, an order passed by the appellate authority shall be final.

5. This Section clearly provides that an appeal shall only be entertained in case the amount assessed has been deposited. However, the Appellate Authority can, if it is satisfied, that the owner is unable to make such payment, and for reasons to be recorded in writing entertain such an appeal without such payment being made.

6. It would also be pertinent to mention here that the order which was passed on 1.10.2008 was never challenged by the Petitioner in this Court and he appeared before the Appellate Authority. On 5.11.2008, the Appellate Authority directed that the Appellant should deposit some amount and the learned Counsel for the Appellant stated that he would deposit Rs. 5 lacs by 15.12.2008. This request was allowed but the amount was not deposited. An application was filed that the appeal be heard on merits without insisting on the deposit of the amount. This application was rejected vide order dated 24.4.2010. Thereafter, another application for extension of time was filed and time to deposit Rs. 5 lacs was extended upto 11.6.2010. Against this order, the Appellant has come up with appeal.

7. At the stage of arguments, it has been urged that the Commissioner Transport should have decided the revision on merits and should not have remanded it to the Appellate Authority. I am of the view that the order of the Commissioner which was passed on 1.10.2008 cannot be challenged at this stage that too when the Petitioner himself appeared before the Appellate Authority without demur and asked for time to deposit the amount. It is urged by Sh.S.D. Sharma, learned

Counsel for the Petitioner that the Petitioner is in financial difficulties and is unable to deposit this amount. He submits that the Petitioner can only deposit an amount of Rs. 2.5 lacs that too by 28.2.2011. Normally this Court would not interfere in such a matter especially when the counsel for the Petitioner himself had made a statement before the Appellate Authority that he was willing to deposit Rs. 5 lacs. However, since it has been submitted that for a number of months, the buses of the Petitioner were not being plied, treating this as an exceptional case, it is directed that in case the Petitioner deposits a sum of Rs. 2.5 lacs towards the arrears payable in terms of the order under appeal then the Appellate Authority shall hear the matter on 8.3.2010. In case this amount is not deposited, the appeal of the Petitioner shall be deemed to be dismissed. It is made clear that the amounts deposited by the Petitioner towards current taxes for the buses shall not be taken into consideration against the amount of arrears. It is also clarified that after the appeal is decided, the Revision Petition shall only be entertained if the amount found payable by the Appellate Authority. Needless to say, in case the Appellate Authority comes to the conclusion that excess amount has been deposited by the Petitioner, the same shall be adjusted against the other dues of the Petitioner in accordance with law.

8. The writ petition is disposed of in the aforesaid terms. No order as to costs.

