(2008) 09 OHC CK 0116

In the Orissa High Court

Case No : Writ Petition (C) No. 636 of 2002

Sri. Sadananda Senapati APPELLANT

Vs

Regional Transport Officer, Rayagada and Others RESPONDENT

Date of Decision : 22-09-2008

Acts Referred:
Orissa Motor Vehicles Taxation Act, 1975 — Section 10, 10(3), 3

Citation : (2008) 09 OHC CK 0116

Hon'ble Judges : P.K. Tripathy, J;A.K. Parichha, J

Bench : Division Bench

Advocate : J.M. Mohanty, D. Samal, N.K. Das and K.C. Mishra, for the Appellant; P.K. Panda, Standing Counsel (Transport), for the Respondent

Final Decision : Dismissed

Judgement

1. Heard further argument, hearing is concluded and the judgment is as follows.

2. Petitioner prays to quash Annexures 4 and 5. Annexure-4 is the order dated 24.08.2001 in M.V. Appeal Case No. 1 of 2000 of the Court of the Collector and Chairman, R.T.A., Rayagada and Annexure-5 is the order passed in M.V.T. Revision No. 9 of 2001 by the revisional authority, i.e. Transport Commissioner, Orissa, Cuttack.

3. The facts noted in the impugned orders is not in dispute. It appears there from that Petitioner is the owner of the passenger transport vehicle (Trekker) bearing Registration No. OR-18-0223. On 29.07.1999 Petitioner applied for off-road permit of that vehicle for the period from 01.08.1999 to 31.03.2000, which was allowed. But, on expiry of the period of one year there from he did not ask for renewal of off-road permit. Consequently tax and penalty was demanded for the period from 01.04.2000 till date. Petitioner put forth his contention about breakdown condition of the said vehicle and accordingly claimed for exemption from arrear taxes and penalty. His claim was rejected in M.V. Appeal No. I of 2000 and then in M.V. Revision No. 9 of 2001. Hence this petition.

4. Learned Counsel for the Petitioner states that in view of the Explanation in Section 3 of the Orissa Motor Vehicles Taxation Act, 1975 (in short ''the Act'') when the vehicle had no Fitness Certificate for the period after the surrender, the vehicle could not have been presumed as kept for use, and once the vehicle remains off-road, it was not liable to tax. He submits that the provision in Section 10(3) of the Act does not supersede the Explanation together with the proviso in Section 3. In support of that contention reliance is placed on the decision in the case of Prafulla Kumar Patnaik v. R.T.A., Koraput OJ.C. No. 1687 of 1988 of this Court. On the other hand, Mr. Panda, learned Standing Counsel (Transport) relies on the case of Commissioner, Transport-cum-Chairman and Others Vs. Tapan Kumar Biswas, , in which the Hon''ble Apex Court has said that the provision in Section 10(3) of the Act is not controlled by the Explanation in Section 3, and if the provision in Section 10 is not properly complied with relating to off-road of the vehicle by securing extension from period to period, the owner of the vehicle becomes liable to pay arrear taxes for the period in accordance with law. That being the settled position of law, we do not find any merit in the claim of the Petitioner. Accordingly, the writ petition is dismissed.