

(2004) 07 RAJ CK 0067
In the Rajasthan High Court
Case No : Civil Special Appeal No. 548 of 2002

State	Vs	APPELLANT
Prakash Chand Kabra and Others		RESPONDENT

Date of Decision : 13-07-2004

Acts Referred:

Rajasthan Motor Vehicles Taxation Act, 1951 — Section 14(2)

Citation : (2005) 1 RLW 662 : (2004) 4 WLC 153

Hon'ble Judges : Y.R. Meena, J;P.C. Tatia, J

Bench : Division Bench

Advocate : B.L. Tiwari and B.L. Bhati, for the Appellant; B.L. Maheshwari and R.K. Rathi, for the Respondent

Final Decision : Dismissed

Judgement

Y.R. Meena, J.—These appeals are directed against the similar orders of learned Single Judge dated 24th July, 2002. As in all these appeals common issue is involved for the consideration of this Bench, we have heard all these appeals and decide them by this common order.

2. The short controversy involved in these appeals is whether the Commissioner has exercised his revisional power, under the proviso to Sub-section (2) of the Section 14 of the Rajasthan Motor Vehicles Taxation Act, 1951 (hereinafter referred to as "the Act of 1951"), in accordance with law?

3. The common facts in these appeals are that the petitioners are holding All India Permits of tourist buses. The permits for these buses have been granted by the Regional Transport Authority, Udaipur. The District Transport cum Taxation Officer, Rajsamand determined the road tax and special road tax in respect of motor vehicles of the petitioners. While determination of tax was in the process by the Taxation Officer, it was considered by him that concerned motor vehicles when travelled out of State of Rajasthan for sometime, for such period when the vehicles are out of State of Rajasthan, these petitioners are not liable to pay the

tax for that period and the petitioner claimed exemption for tax for that period. Having been satisfied with the claim of the petitioner, the Taxation Officer u/s 3 of the Act of 1951 granted exemption from payment of special road tax for the period for which the motor vehicle was out of State and did not ply on the roads of State of Rajasthan.

4. The first set of orders, and second set of orders in these cases have been passed on 22.12.1993 & 18.05.1994. The petitioners had paid the tax as per the orders passed by the Taxation Officer. The Taxation Officer has also granted the refund of tax for the period during which the vehicles plied out of State. After grant of such relief and passing of the order to this effect, the same authority after seven years, submitted a suo motu revision petition before the Commissioner, which has been considered by the Addl. Transport Commissioner, Rajasthan. The Addl. Commissioner vide order dated 31.12.2001 has set aside the orders of Taxation Officer passed in the years 1993 & 1994 and remanded the matter back to the Taxation Officer with a direction to consider the notification dated 24.7.1990 and order dated 31.8.1990 and re-determine the tax in the light of aforesaid notification and order.

5. These petitioners preferred a writ petition against the order of the Commissioner before this Court and this Court found that it is not a case of suo motu revision, as Commissioner has not applied his own mind in invoking proviso to Sub-section (2) of the Section 14 of the Act, 1951, before issue of notice. Learned Single Judge has also found that the order of the Taxation Officer has been revised after seven years i.e. beyond a reasonable time. For that reason also the order of the Commissioner is bad in law.

6. Heard learned counsel for the parties. Counsel for the State submits that when there is no limit for suo motu revision of the order passed by the Taxation Officer, the order can be revised suo motu at any time. The Commissioner has power under the proviso to Sub-section (2) of the Section 14 of the Act, 1951. The Commissioner has simply remanded the matter back to the Taxation Officer to re-determine tax. The party can approach and can make his submission on merits before him, if they are entitled for any relief, that will be granted by the Taxation Officer.

7. Mr. B.L. Maheshwari, Counsel for these private parties- respondents submits that proviso to Sub-section (2) of the Section 14 of the Act, 1951 speaks about the revision of the any order. Revision of order can be on petition of aggrieved person or on his own motion of Commissioner. He further submits that in case of suo motu revision, first he should examine record himself and not on a petition by the Taxation Officer, if without application of mind a notice has been issued, that cannot be a suo motu revision under the proviso to Sub-section (2) of the Section 14 of the Act of 1951. He further submits that even otherwise the power of suo motu revision can be exercised only within 90 days from the date of order and here the petition for revision of the orders of the Taxation Officer has been made after seven years from the date of original orders passed by the Taxation

Officer. On that count also there was no justification to interfere by the Commissioner in the orders passed by Taxation Officer in the years 1993 & 1994 i.e. after seven years. No explanation has been given for such inordinate delay.

8. The proviso to Sub-section (2) of the Section 14 of the Act of 1951 reads as under:-

"Provided that the Commissioner may on his own motion or on the application of a person aggrieved made in the prescribed manner and filed within a period of 90 days, call for and examine the record of any proceeding under this Act and revise any such order and may reverse or vary the same."

9. The admitted facts are that the Taxation Officer has passed the orders determining the tax on 22.12.1993 & 18.05.1994 and the revision petition has been filed by the Taxation Officer before the Commissioner on 13.11.2000 i.e. after seven years and the limit provided for revision of the order of Taxation Officer is 90 days only. No justification has been shown for this inordinate delay.

10. Not only that but the power of the revision can be exercised by the Commissioner on his own motion or on an application of a person aggrieved.

11. Under the Scheme of the proviso, a person aggrieved means the owner of the vehicle and not the State. Therefore, any order passed by the Taxation Officer only person aggrieved i.e. owner of the vehicle can file an application before the Commissioner against the order of the Taxation Officer or even against the order in appeal by the appellate authority. The Commissioner has also suo motu power to revise the order of the Taxation Officer as well as order passed by the appellate authority. In case of exercising power of suo motu revision, the Commissioner should call for the record and examine the same, if in his opinion, the order passed by the Taxation Officer or the appellate authority is erroneous. He can issue show cause notice to the party in whose favour order has been passed. After hearing the parties he can reverse that order or can vary the same.

12. Learned Single Judge has reproduced the first order-sheet when the proceedings were initiated, which reads as under:-

^^lwokseksVks vk/kkj ij izkIr fjohtu ntZ jftLVj dj fnukad 25-11-2000 dh lquokbZ frfFk ds fy, ftyk ifjogu vf/kdkjh] jktleUn ,oa okgu Lokesh dks uksfVI tkjh fd;s tkos A i=koyh fnukad 25-11-2000 dks is" k gks A**

13. A perusal of the aforesaid first order-sheet, which has been drawn after the receipt of the petition from Taxation Officer leaves no doubt that on receipt of the petition from the Taxation Officer, the Commissioner has straightway issued the notice to the D.T.O., Rajsamand as well as to the owner of the vehicle.

14. There is no material on record to show that he has applied his mind before issuing the notice. The Commissioner has not called for the record nor he has examined the record before forming his opinion for revision of the order passed

by the Taxation Officer or that order of Taxation Officer is erroneous and it requires revision. Therefore, in this case, it cannot be said that revision proceedings have been initiated by the Commissioner on his own to revise the orders of refund of tax, which were passed by the Taxation Officer in the years 1993 & 1994.

15. The counsel for the State has also argued that Taxation Officer has submitted a report to the Commissioner, therefore, on such report the Commissioner can issue notice. Not accepting but assuming that Taxation Officer after seven years has submitted a report regarding mistake committed by the Taxation Officer in the years 1993 & 1994. Even then the Commissioner cannot issue straightway notice to the owners of the vehicle and the D.T.O. concerned, On that report, he should call for the record first and examine it and thereafter he should make up his mind that the order passed by the Taxation Officer in the years 1993 & 1994 are erroneous and only thereafter he could issue notice and initiate the revision proceedings. That has not been done, therefore, in our view it cannot be treated as revision by the Commissioner on his own motion.

16. The Taxation Officer has submitted a revision petition before Commissioner in the year 2001. Can it be treated as revision by the aggrieved person? As learned Single Judge has rightly held that when the order of earlier Taxation Officer was to be revised, the successor Taxation Officer cannot be said as aggrieved party because after all the orders passed in the years 1993 & 1994 were of a Taxation Officer. The Taxation Officer cannot be said to be an aggrieved party of the order passed by Another Taxation Officer. He may not be the same person, who passed the orders in 1993 & 1994, but authority is same i.e. Taxation Officer.

17. Under the Scheme of the Act, the vehicle owner can only be an aggrieved party. If the vehicle owner has any grievance against the orders passed by the Taxation Officer, he can file application for revision of order, if he is not satisfied with the order of the Taxation Officer or the order of the appellate authority, as the case may be.

18. In the case in hand, thus, when refund was granted by the Taxation Officer after satisfying himself that refund is due to the respondents and that orders were passed in the years 1993 & 1994, successor Taxation Officer cannot submit a revision petition against those orders as there is no such provision in the Act, which authorizes the successor Taxation Officer to file revision petition against the orders of Taxation Officer passed in the years 1993 & 1994. In the case in hand, admittedly, the Commissioner, on receipt of the revision petition from the Taxation Officer issued notices and initiated the revision proceedings without application of mind and without examination of the relevant record. Therefore, the initiation of the revision proceedings is without jurisdiction. Thus, we agree with the learned Single Judge on this count.

19. The learned Single Judge has also set aside the order of the Commissioner on limitation ground firstly Taxation Officer has not been permitted under the Act

to file revision petition against the order of another Taxation Officer. Otherwise also, the petition is highly belated. The period of limitation for filing application for the revision of order or the Commissioner wants to revise the order on his own motion is 90 days. Here, admittedly, the Taxation Officer has passed the refund orders in the years 1993 & 1994. They are first time challenged in the year 2001 before the Commissioner by the successor Taxation Officer. Seven years delay cannot be said to be a reasonable delay for filing the revision petition, that too, no reasonable cause has been shown for such delay, therefore, we again agree with the learned Single Judge that the initiation of proceeding for revision of order of Taxation Officer after inordinate delay of seven years is not justified.

20. In the result, we uphold the order of learned Single judge that the Commissioner has not revised the order on his own motion as provided in proviso to Sub-section (2) of the Section 14 of the Act of 1951 nor the counsel for the appellant has established any reasonable cause for such inordinate delay in initiating the proceedings after seven years. Therefore, on both the grounds, learned Single Judge has rightly allowed the petitions. We see no reason to interfere in the judgment of the learned Single Judge.

21. Consequently, all these special appeals stand dismissed.