
(2009) 04 RAJ CK 0014
In the Rajasthan High Court

Sundaram Finance Ltd.

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 82

Citation : (2009) 3 WLN 312

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—By way of this petition for writ, the petitioner seeks to question the assessment order and the consequential demand notice dt. 13.03.2006 (Annex. 10) as issued under the Motor Vehicles Taxation Act, 1951 (? the Act of 1951?).

2. On background facts, the petitioner has averred that as a finance company, it had extended hire purchase finance facility to the respondent No. 3 in relation to a vehicle bearing Registration No. RJ-30-P-0378; and, for the respondent No. 3 having defaulted in payment of installments, it had repossessed the vehicle on 23.02.2000 without receiving any documents i.e., the certificates of registration, insurance, fitness, permit, token etc. It is the case of the petitioner that under the communications dt. 19.02.2000 and 17.03.2000, the requisite information regarding re-possession was given to the Regional Transport Officer, Rajsamand. It is further alleged that the Regional Transport Officer was informed under the communication dt. 15.03.2000 (Annex.5) about the vehicle having been repossessed on 23.02.2000 and having been parked at Mumbai and vehicle having not been put on the road from the date of stoppage. It is further alleged that on 11.10.2000, the petitioner ultimately sold out the vehicle on "as is where is" basis to one Mr. S.I. Khuddus who took the delivery of the vehicle on 14.10.2000 from M/s Kamal Towing, Chembur, Mumbai.

3. It has further been averred that the respondent No. 2 District Transport Officer, Rajsamand (DTO), instead of appreciating the fact that the vehicle was put off the road, proceeded to issue a notice dt. 26.08.2003 (Annex. 8) to the petitioner alleging that the tax and special road tax had not been deposited for the period dt. 01.02.2000 to 31.08.2003 and asking the petitioner to show cause as to why the tax be not calculated and penalty be not imposed. It is the case of the petitioner that a reply to the said notice denying liability was sent to the said DTO on 09.10.2003 (Annex.7). The petitioner submits that for a long period of about 26 months, the respondent No. 2 did not take any proceedings but then, proceeded to issue a letter dt. 22.10.2005 (Annex. 8) stating the dues of tax on the basis of certain objections made by the Auditor General and thereafter, issued another communication dt. 10.01.2006 (Annex.9) alleging that the petitioner had not informed about the present status of the vehicle and as to what had been done with it; and then, under the impugned order dt. 13.03.2006 (Annex. 10) proceeded to assess the tax liability in the sum of Rs. 7,48,727/- and while imposing penalty in the sum of Rs. 7,98,361/-, created total demand in the sum of Rs. 15,47,088/-.

4. Assailing the said action on the part of the respondents, this writ petition was filed on 25.04.2006 and herein, notices were ordered to be issued to the respondents to show cause as to why the petition be not admitted on 29.05.2006. The petition remained pending for long awaiting service on all the respondents particularly in relation to the respondent No. 4, the alleged guarantor; and for want of compliance of the peremptory order dt. 28.08.2008, the petition has been dismissed against the said respondent No. 4.

5. The contesting respondents have submitted a reply to show cause notice and have, inter alia, contended that the petitioner is not entitled for any relief in the extra-ordinary writ jurisdiction for availability of the alternative remedy of appeal u/s 14 of the Act of 1951. It is also submitted that the petition involves serious disputed questions of fact that cannot be gone into in the writ jurisdiction. The respondents have denied having received the communication Annexure-5 and have also denied if the petitioner responded to the notice dt. 26.08.2003.

6. Learned Counsel Mr. B.L. Maheshwari arguing for the petitioner has submitted that the disputed demand remains entirely illegal and wholly without jurisdiction and deserves to be quashed or at least the matter deserves to be remanded to the concerned DTO for consideration and determination of the questions of fact that have not been determined at all. Learned Counsel submitted that the petitioner as a finance company cannot be subjected to taxation liability particularly when it had re-possessed the vehicle in accordance with law but is not answering to the description of 'operator' of the vehicle and has referred to the decision of the Hon'ble Supreme Court in the case of State of Maharashtra and Others Vs. Sundaram Finance and Others, Learned Counsel also submitted that such a tax is levied only upon using of the road and not on the vehicles which do not use the road, the reason for non-user being immaterial; and has

referred to the decision of the Hon^{ble} Supreme Court in the case of State of Gujarat and Others Vs. Kaushikbhai K. Patel and Another, Learned Counsel further pointed out that the tax liability in the present case has been computed merely with reference to the term of permit that had earlier been issued to the registered owner of the vehicle; and with reference to Section 82 of the Motor Vehicle Act, 1988 submitted that the petitioner could not have plied the vehicle on such permit and thus, the entire basis of imposition of liability is knocked out. Learned Counsel further submitted that merely on the objections of Auditor General, tax liability could not have been imposed without determination of the essential facts. Learned Counsel also referred to the decision of the Division Bench of this Court in the case of State of Rajasthan v. Prakash Chand Kabra 2005 R.A.R. 128 (Raj.) and submitted that the vehicle in question when having remained in Mumbai and having not been plied in the State of Rajasthan, the petitioner cannot be subjected to any liability by the respondent DTO travelling beyond his jurisdiction; and such extra territorial jurisdiction is not countenanced. The emphasis of the learned Counsel has been that the vehicle having not been put on the road and having not been operated by the petitioner, the notice remains fundamentally without jurisdiction and any proceedings taken thereunder deserve to be quashed.

7. The learned Additional Advocate General Mr. G.R. Punia, on the other hand, while emphasizing on the preliminary objection regarding availability of alternative remedy of appeal u/s 14 of the Act of 1951, has referred to the decisions of this Court in S.B. Civil Writ Petition No. 4575/2007: Mitha Lal Chouhan v. State of Rajasthan and Ors. decided on 03.08.2007 and S.B. Civil Writ Petition No. 409/2009: Naresh Kumar Dosi v. State of Rajasthan and Ors. decided on 09.03.2009 wherein challenge to the assessment orders under the Act of 1951 by way of writ petition has not been countenanced for availability of alternative remedy of appeal.

8. Though in the first place, while looking at the impugned assessment order dt. 13.03.2006, it appears as if the DTO concerned has not determined the relevant question if the vehicle was used or kept for use in the State that is sine qua non for imposition of the tax u/s 4 of the Act of 1951 but a close look at the pleadings of the parties and the material on record makes out that the petitioner did not respond to the notices issued by the DTO particularly the notices dt. 17.07.2003, 22.10.2005 and 10.01.2006. Though the petitioner has taken the averments of having served a "continuation of stoppage report" (Annex. 5) allegedly stating that the vehicle was put off the road but the respondents have denied having received the said communication. Any communication prior to it has not been placed on record. The respondents have also denied having received the alleged reply dt. 09.10.2003 (Annex. 7) while specifically asserting that the petitioner did not submit reply to the notice dt. 26.08.2003. In the given fact situation, this Court cannot proceed on the assumption that the petitioner had joined the issue that the vehicle was not used by it in the State of Rajasthan so as to be absolved of the liability under the Act of 1951. In this view of the

matter, the impugned notice and orders cannot be said to be wholly without jurisdiction as suggested by the learned Counsel for the petitioner.

9. The other submissions as made by the learned Counsel, in the opinion of this Court, do not make out a direct case free from any factual dispute for interference by this Court in the writ jurisdiction. All the submissions as attempted to be made before this Court have only been noticed but no final opinion is being expressed thereupon because this Court is of opinion that these and all other submissions could definitely have been taken up in appeal; and the matter could have been agitated before the Appellate Authority u/s 14 of the Act of 1951.

10. For availability of specific alternative remedy and then, for involvement of various disputed questions relating to fundamental facts particularly on the aspects as to whether the petitioner at all sent the alleged communications informing about repossession as well as about the vehicle having been parked at Mumbai; and so also on the core fact as to whether the vehicle was not put on the road, this Court does not find the present one to be a fit case for interference in the writ jurisdiction, of course, while leaving it open for the petitioner to take resort to appropriate remedies in accordance with law.

11. In view of the aforesaid, there appears no reason to admit this writ petition. While dismissing a similar nature writ petition No. 4575/2007, the co-ordinate Bench of this Court has said,-

...The contention of learned Counsel for the petitioner is that remedy of appeal is not available to the petitioner on the count that, (i) an appeal can be preferred only against an order of assessment and not of reassessment, and (ii) the limitation for filing appeal has already been expired and the orders of assessment and reassessment of tax were given to the petitioner even after expiry of limitation prescribed to prefer an appeal that is 30 days. I do not find any substance in the contentions so made. u/s 14 of the Act of 1951 any person aggrieved by an order relating to determination of recovery of tax may prefer an appeal within a period of 30 days from the date of such order. The orders of assessment and reassessment of tax relate to determination of recovery of tax, therefore, both are appealable as provided under the Act of 1951. So far as the question of limitation is concerned it is always open for the petitioner to move an application for condonation of delay in filing an appeal for good and sufficient reasons and the appellate authority is competent enough to condone delay on being satisfied with the reasons advanced by the party concerned.

In the instant matter I do not find any just reason to entertain this petition for writ ignoring the statutory remedy provided to the petitioner under the Act of 1951. Accordingly, this petition for writ is dismissed. The petitioner may prefer an appeal before the competent appellate authority at the earliest with an application for condonation of delay in filing the appeal.

12. The aforesaid observations, for all practical purposes, apply to the petitioner?

s case too and if the petitioner chooses to take up the remedy of appeal, it is always open for the petitioner move an appropriate application making out a case for entertaining the appeal beyond the period of limitation.

13. In view of the aforesaid, exercise of writ jurisdiction in this matter is refused; and this writ petition stands rejected subject, of course, to the observations foregoing.