(2009) 04 AHC CK 0824

In the Allahabad High Court

Case No : Writ Petition No. 11582 (MB) of 2008

U.P. State Road Transport Corporation — APPELLANT

Vs

Commissioner of Central Excise and Service Tax — RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Finance Act, 1994 — Section 2(3), 65

Citation : (2011) 30 STT 398

Hon'ble Judges : V.D. Chaturvedi, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Shri N.K. Agrawal, learned Counsel for the Petitioner and Shri Rajesh Singh Chauhan, learned Counsel for the Respondents.

2. The order dated 4-3-2009 is recalled. Writ Petition is restored to its original number.

3. U.P. State Road Transport Corporation has filed the present writ petition against the impugned order by which the Respondents had requested for supply of list of all contractual assignment entered into between the private parties who have offered their buses on rent basis.

4. The submission of the learned Counsel for the Petitioner is that by the impugned order, a copy of which has been annexed as Annexure-1 to the writ petition, the Respondents had imposed service tax on the buses plied by UPSRTC.

5. However, learned Counsel for the Respondent relying upon the averments contained in the counter affidavit as well as on the basis of instruction received submits that no service tax has been imposed by the Respondents on the buses owned and possessed by the UPSRTC. However, in view of the provision contained in Section 65 of the Finance Act, 1994, service tax is payable by bus owner for carrying passenger whose buses are given on contract basis

individually to the UPSRTC. Respondent''s counsel submits that service tax is required to be collected from the rent-a-cab operator in view of provision contained in Section 65 of the Finance Act, 1994. Rent-a-cab operator has been defined u/s 65 of the Finance Act, 1994 which means "any person engaged in the business of renting of cabs and the taxable service as per provision of Section 65 is any service provided or to be provided to any person by a rent-a-cab scheme operator in relation to renting a cab". The submission of the learned Counsel for the Respondents is that Respondents are not charging any service tax from the buses owned and possessed by the UPSRTC. Accordingly, the present writ petition is not maintainable on behalf of UPSRTC. In case a private bus operator has got any grievance, it is for them to raise grievance at appropriate forum.

6. However, learned Counsel for the Petitioner has relied upon the Full Bench judgment of Andhra Pradesh High Court in V. Govindarajulu and Vs. The Regional Transport Officer, Anantapur and Others, In the case of V. Govindarajulu (supra) the Andhra Pradesh High Court while defining the contract carriage had proceeded, observed as under:

To sum up our conclusions --

(1) The definition of ''contract carriage'' u/s 2(3) of the Act is plain and the language is not so elastic and wide so as to bring within its sweep a situation never intended by the Legislature.

(2) The dominant factor under the definition that determines whether a transport vehicle is used as a contract carriage or as a stage carriage is whether the vehicle is hired as a whole for a fixed or agreed sum under a prior contract express or implied, by a single person or party with the owner of the vehicle.

(3) If once a single contract is entered into expressly or impliedly for the use of the vehicle as a whole, from the mere fact that the leader of the contracting party or one of the persons in the party collected fares from the passengers, which is very often in vogue, the vehicle cannot be said to have been used as a stage carriage.

(4) If there was no single contract with the owner in respect of the vehicle and if no person or leader of the party could exercise full control over the vehicle and several passengers had separately contracted for the use of the vehicle and paid individual fares, use of the vehicle and paid individual fares, the transport vehicle used in such manner falls within the definition of ''stage carriage'' and not ''contract carriage''.

(5) Tax is levied on the basis of the use of the transport vehicle and not on the nature of the permit held by the owner in respect of the vehicle and the power contained in Section 3 read with Section 4 of the Taxation Act is sufficient to enable the State Government to levy the tax from time to time when the nature of the use of the vehicle is changed and the class of the motor vehicle is thereby altered, and

(6) There is no prohibition in the Act for the levy and collection of tax as authorised u/s 3(1) of the Taxation Act in cases where action is taken for the breach of any of the conditions of the permit against the holder of the permit u/s 60 of the Act. The two actions are quite different - one for the user of the vehicle and the other for the breach of the conditions of the permit.

7. A plain reading of conclusion arrived by the Full Bench of Andhra Pradesh High Court indicates that only those stage carriage shall not be treated as contract carriage where it is not a single contract with the owner in respect of the vehicle.

8. In the present case, it has been submitted by the Respondent''s counsel that the service tax is being imposed on the basis of individual contract entered into between the bus owner and the UPSRTC. It has been submitted that the individual contracts squarely falls within the definition of ''Rent-a-cab operator services'' provided u/s 65 of the Finance Act, 1994.

9. The submission made by the Respondent''s counsel seems to have got force. Even Full Bench judgment of Andhra Pradesh High Court provides that where transport corporation enters into individual contract with the bus owner with plying of their vehicle then such contract shall not fall within the definition of stage carriage but it shall deem to be carriage. The condition No. 4 given in para 22 of the judgment (supra) clears the position. Moreover, Full Bench judgment seems to be earlier case decided prior to promulgation of the Finance Act, 1994.

10. In the present case, Respondent had to take a decision on the basis of definition provided by Section 65 of the Finance Act, 1994 of the word ''rent-a-cab operator''. Accordingly, we are of the view that the service tax is payable by a private bus operator whose buses are attached with the UPSRTC, through individual agreements. UPSRTC does not seem to be aggrieved party, coming into the way of Respondent to collect service tax from the private bus operator, whose buses are said to attach with the UPSRTC and falls within the category of ''Rent-a-cab operator''.

11. In view of above, no case for interference under Article 226 of the Constitution of India is made out. Accordingly, writ petition is dismissed. No order as to costs.

