
(1996) 05 AHC CK 0039
In the Allahabad High Court
Case No : C.M.W.P. No's. 20 and 717 of 1983

Vir Pal

APPELLANT

Vs

Taxation Officer, M.V. Taxation Act

RESPONDENT

Date of Decision : 14-05-1996

Acts Referred:

United Provinces Motor Vehicles Taxation (Amendment) Act, 1976 — Section 7
United Provinces Motor Vehicles Taxation Act, 1935 — Section 15, 20, 4, 4(1), 5
United Provinces Motor Vehicles Taxation Rules, 1935 — Rule 33, 33(1), 35, 35(1), 43

Citation : (1996) AWC 662 Supp

Hon'ble Judges : D.S. Sinha, J; B.M. Lal, J

Bench : Division Bench

Advocate : L.P. Naithani, for the Appellant;

Final Decision : Dismissed

Judgement

B.M. Lal, J.—This decision rendered in leading case (Writ No. 20 of 1983) shall also govern disposal of Civil Misc. Writ Petition No. 717 of 1983 Ajay Kumar Gupta v. The Taxing Officer.

2. Before dealing with the point in issue in these petitions, it is necessary to narrate few facts of both the cases to the extent they are relevant for arriving at the proper conclusion.

3. Petitioner Vir Pal whose vehicle No. U.S.P. 4481 was registered with the Regional Transport Office at the relevant time, has challenged the recovery proceedings Initiated against him vide notice dated 31.12.1988 (Annexure 6 to the writ petition) issued by the Taxing Officer, whereby he is required to deposit Rs. 8,432.80 p. towards road tax and goods tax for a period commencing with effect from 1.10.1980 to 30.9.1982.

4. According to Petitioner, he did not use the vehicle in question on roads during the period for which tax is required to be deposited as during that period the

vehicle was confined to garages, as such he is not liable to pay any tax and consequently the impugned recovery proceeding is without any authority of law and is, therefore, liable to be quashed.

5. While filing the counter-affidavit, the Respondent has emerged with the plea that the vehicle in question was not confined to garages nor was lying in the workshop rather was plying on the roads and the Enforcement Officer apprehended the vehicle on road on 24.1.1981. On the basis of evidence and material on record, the Assessing Authority arrived at the conclusion that the Petitioner has made false statement of fact in his petition with regard to the use of the vehicle as during the period for which tax is required to be deposited, the vehicle in question was apprehended twice by the authorities as the vehicle was plying on the roads.

6. Petitioner Ajay Kumar Gupta, owner of vehicle No. U.T.G. 8364 has challenged the order dated 14/16.3.1983 (Annexure 1 to the writ petition) and notice dated 23.4.1983 (Annexure 3 to the writ petition) whereby proceedings for recovery of tax have been initiated against the Petitioner.

7. According to Petitioner, during the period for which tax is sought to be recovered from him, he did not use the vehicle on roads rather the vehicle was out of order and needed heavy repairs, therefore, it was not used on roads and the registration papers together with permit and other relevant documents were surrendered in the office of Taxing Officer on 24.12.1981 and as such he is not liable to pay any tax for that period, accordingly the recovery proceedings are without any authority of law and are liable to be quashed.

8. In this case although no counter-affidavit has been filed, yet from the averments made in the writ petition itself, it is clear that during the period for which tax is sought to be recovered, the Petitioner obtained temporary permit to carry goods with effect from 14/16.2.1983 to 15.3.1983 and again with effect from 16.3.1983 to 12.4.1983. However, according to Petitioner, he obtained the temporary permits in anticipation of availability of vehicle after repairs but as the vehicle could not be repaired, he did not use the temporary permits so obtained.

9. Sri L. P. Naithani, learned senior counsel for the Petitioners in both the petitions contended with all clarity at his command that there is no provision for tax unless the vehicle is used, therefore, the question of payment of tax does not arise at all.

10. In view of such argument advanced by learned senior counsel, this Court has to consider the whole scheme of the United Provinces Motor Vehicles Taxation Act, 1935 (for short the Act) and the Rules framed thereunder and then in the light of the same, has to examine the facts and circumstances of instant case.

11. Section 4 of the Act deals with the imposition of tax. Sub-section (1) of Section 4 postulates that save as otherwise provided by the Act or by any rule made thereunder or by any other law for the time being in force, no motor

vehicle shall be used in any public place in Uttar Pradesh unless the owner thereof has paid in respect of it a tax at the appropriate rate specified in the first schedule to the Act within the time allowed by Section 5 and, save as hereinafter specified, such tax shall thereafter be payable annually notwithstanding that the motor vehicle may from time to time cease to be used.

12. Section 5 of the Act deals with the payment of tax. Sub-section (1) of Section 5 provides that subject to the provisions of Section 6, 8 and 9 have been deleted), the tax payable u/s 4 shall be payable in advance on or before the fifteenth day of January in each year by the owner of a motor vehicle on a token to be taken out and paid for under the provisions of the Act.

13. Thus, aforesaid provisions of Sections 4 and 5, if read together, postulate that under the scheme of the Act, owner of motor vehicle shall have to deposit the tax in advance every year notwithstanding that the motor vehicle may from time to time cease to be used. The liability to pay tax precedes to the right to use the vehicle on public roads or in other words, payment of tax in advance is a condition precedent for the right to use the vehicle on roads. Sub-section (1) of Section 4 makes it abundantly clear that the motor vehicle may from time to time cease to be used, despite that the owner thereof has to pay tax and Sub-section (1) of Section 5 makes it crystal clear that the said tax is to be paid in advance. Therefore, it is not that first the vehicle is to be used and then the tax: is to be paid rather under the Act, first tax is to be paid (in advance) and then the vehicle is to be used. Thus, on the face of aforesaid statutory provisions of Sections 4 and 5 of the Act, the contention of the learned senior counsel for the Petitioner that no tax can be required to be deposited unless the vehicle is used, cannot be accepted. On the other hand, under the scheme of the Act, the tax is always required to be deposited in advance despite the fact that the vehicle may not be used from time to time.

14. However, that is not all and that does not mean that although the owner of the motor vehicle does not use the vehicle for a continuous period of more than one month, yet he will have to pay the tax therefor. Under Sections 4 and 5, the owner shall have to deposit the tax in advance but if he does not use the vehicle for a continuous period of not less than one month, he shall be entitled in a refund u/s 7 of the Act.

15. Section 7 of the Act deals with refund of tax and provides that when any person, who has paid the tax or instalment of tax, proves to the satisfaction of the taxation officer that the motor vehicle, in respect of which such tax or instalment has been paid, has not been used for a continuous period of not less than one month since the tax or instalment was last paid, shall be entitled to a refund of an amount equal to one/twelfth of the annual rate of tax payable in respect of such vehicle for each complete month of such period for which such tax or instalment has been paid.

16. By Section 7(ii) of U.P. Act No. 15 of 1976, a proviso to Section 7 has been

added which provides that no such refund shall be admissible unless such person had deposited the registration certificate, the token issued in respect of the vehicle and the permit, if any, with the Taxation Officer during the period for which such refund is claimed.

17. Besides this, Rule 33 of the United Provinces Motor Vehicles Taxation Rules, 1935 (for short the Rules) framed in exercise of the powers conferred by Section 20 of the Act, deals with the procedure in the case of non-use of a vehicle. Sub-rule (1) of Rule 33 provides that when the owner of a motor vehicle has occasion to withdraw his motor vehicle from use for a period exceeding three months, the registration certificate and the token issued in respect of the vehicle should be surrendered to the Taxation Officer together with a declaration in Part I of Form F. The Taxation Officer will complete Part II of Form F and return it to the claimant, and will at the same time enter in the registration certificate the date of its surrender. Other parts of Rule 33 are not relevant for the purposes of present case.

18. Rule 35 of Rules deals with write-off of tax. Only Sub-rule (1) of Rule 35 is relevant for the purpose of this case and it speaks that where the Taxation Officer is, on an application of the owner of motor vehicle or otherwise, satisfied after such enquiries as may be prescribed by the Transport Commissioner that a motor vehicle has not been used in Uttar Pradesh for a continuous period of not less than three months since the tax or the instalment of tax was last paid, he may exempt the owner of motor vehicles from payment of arrears of tax and write-off the amount of such arrears upto a maximum of Rs. 3,000 under intimation to the Transport Commissioner and where the amount of arrears of tax exceeds rupees three thousand, refer the matter to the Transport Commissioner or the Deputy Transport Commissioner (Administration) for orders.

19. Thus, in view of the scheme of the Act, as stated above, under Sections 4 and 5 of the Act, the Petitioners, i.e., owners of the motor vehicle are liable to deposit the tax in advance despite the fact that they might not have used the vehicle from time to time. Thereafter the question of use or non-use of vehicle arises. In case they have not used the vehicle for a continuous period of not less than one month, then the next course open for them under the Act is to claim refund u/s 7 of the Act and for that they are required to prove to the satisfaction of the Taxation Officer that they have not used the vehicle.

20. In the instant case, the factual position in respect of use of the vehicles is disputed. The vehicle of one of the Petitioners was apprehended twice while plying on the roads during the period for which the tax is sought to be recovered and the other Petitioner admittedly obtained temporary permits twice during the period for which tax is required to be deposited and under the scheme of Act and Rules, permit is also required to be surrendered along with other relevant papers in the event of non-use of the vehicle. Under the Act, the owner of the motor vehicle is required to prove the fact of non-user of vehicle before the Taxation Officer and to the satisfaction of Taxation Officer. Therefore, this disputed

question of fact cannot be gone into by this Court under writ Jurisdiction which is discretionary one. Further, it is well-settled that if the Statute provides for a thing to be done in a particular manner, then it must be done in that very manner. This Court should not substitute the findings of Taxation Officer by the findings of its own particularly on the face of the statutory provisions of Section 7 of the Act which speaks about the satisfaction of the Taxation Officer.

21. Further, the procedure provided under Sub-rule (1) of Rule 33 also does not appear to have been complied with by the present Petitioners as none of the Petitioners have produced before this Court the copies of declaration in Part I of Form F and other documents referred under Rule 33 so as to convince this Court that the Petitioners have complied with their part provided under Rule 33. Under Rule 33 of the Rules and the proviso to Section 7 of the Act, the owner of the motor vehicle has to deposit the registration certificate, the token issued in respect of the vehicle, the permit if any together with a declaration in Part I of Form F with the Taxation Officer, in case he has occasion to withdraw his vehicle from use.

22. If the Petitioners seek exemption from tax under Rule 35 of the Rules, in that event too, the satisfaction of Taxation Officer is there. For substantiating their entitlement to exemption under Rule 35, the Petitioners are required to satisfy the Taxation Officer that the vehicle has not been used for a continuous period of not less than three months in the limits of Uttar Pradesh and the Taxation Officer may make such enquiries as may be prescribed by the Transport Commissioner and thereafter the Taxation Officer may exempt the owner of motor vehicle from payment of tax and write-off the amount of such arrears upto a maximum of Rs. 3,000 under intimation to the Transport Commissioner and if the amount arrears of tax exceeds rupees three thousand, he may refer the matter to the Transport Commissioner or the Deputy Transport Commissioner (Administration) for orders.

23. Further if they are not satisfied with the order of Taxation Officer, they can file appeal against the same u/s 15 of the Act and Rule 43 of the Rules. None of the Petitioners before us have invoked the statutory provisions of Section 15 of the Act and Rule 43 of the Rules. Instead of challenging the Impugned orders before the statutory authorities, they have chosen to challenge the same before this Court which for the reasons stated above is not amenable to writ Jurisdiction.

24. In *H. B. Gandhi v. Gopi Nath and Sons*, their lordships of Apex Court have ruled that where hierarchy of appeal is provided by the Statute, the statutory remedy must first be exhausted. Thus, no case for interference by this Court is made out.

25. Placing strong reliance on *Taxation Officer v. H.R. Saran* 1964 ALJ 463, learned Counsel for the Petitioners vehemently contended that the provisions of Rule 33 of the Rules are not mandatory, therefore, the only requirement of law is that no tax can be realised unless the vehicle is actually used on roads.

26. Before considering the applicability of the ratio laid down by the Division

Bench of this Court in Taxation Officer's case (supra) to the facts of present case, it has to be mentioned that after the said pronouncements, the provisions of the Act itself have undergone drastic changes and by U.P. Act No. 15 of 1976 specific proviso to Section 7 of the Act has been added as discussed above. No doubt, in the aforesaid case, the provisions of Rule 33 have not been treated to be mandatory but the facts and circumstances of that case are quite distinguishable, inasmuch as in that case the vehicle ceased to be used as a consequence of some orders passed by the competent authorities and by the agency of the Government itself whereas in the instant cases before this Court, case of both the Petitioners is that since the vehicles were out of order, hence they were not used. It is not the case of the Petitioners that the Government agency itself stopped them from using the vehicle. Further, in the case relied upon by the Petitioners, the owner of the vehicle made several representations to the competent authorities but got no redress, then he filed appeal before the Deputy Transport Commissioner which was dismissed. Whereas none of the Petitioners before us filed any appeal before the appellate authority. Therefore, the case relied upon by the Petitioners is of no avail to them under the facts and circumstances of present cases.

27. Learned Counsel for the Petitioner further relied on Ravindra Pal Singh v. Passenger Tax Officer 1986 UPTC 839, wherein writ petition has been dismissed by a Division Bench of this Court clarifying the legal position that Petitioner has an alternative remedy for making an application before the Passenger Tax Officer for setting aside ex parte order.

28. This case is also of no avail to the present Petitioners inasmuch as this was not a case of non-user of vehicle rather it was a case where it was impossible for the Petitioner to be physically present on the date fixed before the Passenger Tax Officer and under these circumstances, ex parte order was passed against the Petitioner. It is not the case of present Petitioners that any ex parte order has been passed against them as it was not possible for them to appear before the Passenger Tax Officer.

29. In view of the premises aforesaid, we are of the considered opinion that no case for exercise of discretionary writ Jurisdiction is made out. However, under the facts and circumstances of present cases, it may be observed that in case the Petitioners approach within a fortnight from today to Taxation Officer by means of suitable application or to the appellate authority by means of appeal, as the case may be, the same shall be decided on merits strictly in accordance with law within three months thereafter.

30. Subject to these observations writ petitions are dismissed. There shall be no order as to costs.