(1994) 02 AHC CK 0045

In the Allahabad High Court

Case No : Writ Petition No. 167 of 1994

Vishnu Kumar Gupta APPELLANT

Vs

Taxation Officer (A.R.T.O.), Banda and others RESPONDENT

Date of Decision : 28-02-1994

Acts Referred:

Citation : (1994) 02 AHC CK 0045

Hon'ble Judges : B.M.Lal, J and M.Katju, J

Final Decision : Dismissed

Judgement

B. M. Lal, J.—This petition under Article 226 of the Constitution of India, is directed against a recovery certificate dated 16121993 issued by respondent no. 3 contained in Annexure4, whereby the petitioner is directed to pay an amount of Rs. 3165/ towards Road Tax and an amount of Rs. 4860/ towards Goods Tax.

2. In short, the case as set out by the petitioner is as under :

3. The petitioner is owner of vehicle number U. P. I.3452 (Public Carrier) which is registered in his name in the office of respondent no. 1.

4. The petitioner contends that the vehicle in question was not plied with effect from 111993 to 3091993 on account of a major defect in the engine, the vehicle had gone out of order and it was garaged at New Bundelkhand Motor Garage, 269, Badausa Road. Atarra, district Banda for repairing purposes.

5. It is also submitted that by means of Annexure2 dated 371993, the respondent no. 1 was informed that the vehicle has gone out of order and is under repair.

6 It is next submitted that in view of Rule 35 of the Motor Vehicle Taxation Rules (for short the Rules) which deals with writing off the tax, the petitioner has a right to move an application for writing off the tax. Under this provision, if the Taxation Officer is satisfied that the moor vehicle has not been used in U P. for a continuous period of not less than three months, he may exempt the owner of

such motor vehicle from pay?ment of arrears of tax and write off the amount of such arrears.

7. It is further contended that Rule 33 of the Rules are not in manda?tory form, and therefore there was nothing in the Rules which required payment of tax only because the registration certificate and Token issued has not been surrendered and declaration in Parti of Form ''F'' has also not been presented allowing the Taxation Officer to complete Part II of Form ''F'' so as to return it to the claimant and at the same time enter in the registration certificate the date of its surrender as a proof thereof that the vehicle was not used/plied.

8. While giving reference to Section 4 of the U. P. Motor Vehicle Taxation Act (for short ''the Act''), it is also contended that the liability to pay tax arises only when the vehicle is used and not otherwise.

9. On the aforesaid grounds, it is submitted that since the petitioner has already taken care of to inform the respondent no. 1 vide Annexurex dated 371993 which is purported to be an intimation under Rule 35 of the Rules, it was incumbent upon the respondent no. 1 to make necessary enquiry to his satisfaction as to whether the vehicle was used/plied or not, and if he is not satisfied, then only assessment of the tax may be made and the same could be recovered. But in the instant case, no enquiry as con?templated under Rule 35 of the Rule has been made, and therefore the alleged recovery is bad in law being contrary to the provisions of the Act and the Rules.

10. The total impact of Rule 33, 35 of the Rules and Section 4 of the Act, has been taken into consideration in the following cases ; Taxation Officer & others v. Hariraj Saran (1964 ALJ 863), Ashok Kumar Dixit v. Taxation Officer, Etawah (W. P. No. 786 of 1986) and Hari Babu v. Taxa?tion Officer (W. P. Nil of 1992, judgment dated 3011992), wherein inter?preting Rule 33 of the Rules, it has been ruled that it is not mandatory that owner of the vehicle must comply with this Rule in depositing the registration certificate & Token issued in respect of the vehicle and should surrender to the Taxation Officer together with a declaration in part I of Form ''F''. It is also ruled that in view of Section 4 of the Act the liability to pay tax arises only when the vehicle is used and not otherwise It is also ruled that Rule 35 of the Rules deals with exemption subject to satisfaction of the Taxation Officer that the motor Vehicle has not been used.

11. The proposition as laid down in the aforesaid cases has no two opinion, but how these cases help the petitioner in not complying with Annexure4 i. e. the recovery certificate has to be examined.

12. Dealing with this aspect, firstly it has to be seen that the case as set out by the petitioner is that he has not used/plied the vehicle with effect from 111993 to 3091993 on account of some major defect in the engine of the vehicle and for which purpose the vehicle was garaged. No doubt, if the vehicle was not used, then in view of Section 4 of the Act the liability to pay the tax does not arise and it is also not disputed that in view of R. 33 of the Rules, it is not incumbent upon

the owner of the vehicle to deposit the registration certificate & Token issued in respect of the vehi?cle and also give a declaration in Part I of form F''. Nonetheless in all the aforesaid cases owner of the vehicle has not been left free not to inform the authority concerned in time about nonuser of the vehicle for the reasons the vehicle was not used or garaged and claim remission/exemption under Rule 35 of the Rules.

13. Despite the fact that Rule 33 of the Rules is directory which only speaks of depositing the registration Certificate & Token as well as declara?tion in Part I of form ''F'', however, being it directory it cannot absolve liability of the owner to pay tax until and unless within a reasonable period the owner of the vehicle informs the taxing authority that the vehicle has gone out of order on account of which it is not being used/plied.

14. This intimation be well in time acknowledging the same by the Taxing Officer. By performing this part by the owner of the vehicle cer?tainly duty castes upon question of fact which depends upon the investiga?tion of facts and the same cannot be gone into & adjudicated upon by this Court while exercising discretionary jurisdiction under Article 226 of the Constitution of India.

15. Next question may arise as alleged that since the petitioner has already intimated the respondent no. 1 vide Annexure2 dated 3719939 therefore with effect from 371993 to 3091993 the tax cannot be recovered, on the other hand it ought to have been investigated. This plea, in our opinion, is also of no consequence to the petitioner in the instant case for the simple reason that there is no foundation laid by filing any documentary proof that the alleged intimation contained in Annexure2 has ever been acknowledged by respondent no. 1.

16. In the case of Taxation Officer (supra), there was a specific find?ing that the vehicle was not used at all during the year for which the tax was demanded. In that light the writ petition of H. R. Saran the respon?dent in that case, was allowed.

17. In Hari Babu v. Taxation Officer, Etah (supra) the Taxation Officer had refused to entertain the petitioner''s application and on this ground directions were issued to entertain the application.

18. In Ashok Kumar Dixit''s case (supra) no enquiry was made as contemplated under Rule 35 of the Rules and the application was rejected, and on these grounds the case was remanded.

19. In the instant case such is not the position therefore, none of the cases referred to above have any application rendering any help to the petitioner.

20. While invoking discretionary jurisdiction of this Court under Article 226 of the Constitution of India, it is incumbent upon the petitioner to approach this Court with clean hands disclosing all material facts laying down foundation upon which his claim is based. While filing the intima?tion dated 371993, it is also expected of the petitioner to make averments in the petition that the same was

acknowledged by respondent no. 1. Neither averments in respect of acknowledgement nor any receipt has been filed therefore, in our opinion, no case for interference is made out with the impugned recovery.

21. From the discussion aforesaid, the petitioner has failed to make out any case for interference by this Court under Article 226 of the Consti?tution of India. The petition fails and is accordingly dismissed.

{Petition dismissed.)

