

Allahabad High Court

Shiv Dayal Singh vs State Of U.P. And 2 Others on 17 December, 2020

Bench: Pankaj Bhatia

HIGH COURT OF JUDICATURE AT ALLAHABAD

RESERVED ON 23.11.2020

DELIVERED ON 17.12.2020

Court No. - 38

Case :- WRIT TAX No. - 764 of 2014

Petitioner :- Shiv Dayal Singh

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Sandeep Kumar, Rahul Kumar Tiwari

Counsel for Respondent :- C.S.C., Raghav Nayar, S.C.

Hon'ble Pankaj Bhatia, J.

Heard Sri Sandeep Kumar, learned counsel for the petitioner and Sri Avinash Chandra Tripathi, learned counsel for the State-respondents.

The present petition has been filed challenging the order dated 11.2.2014, passed by the respondent no. 3, whereby the petitioner was called upon to pay the amount of Rs. 1,59,620/- as motor vehicles tax for the period 1.12.2010 to 31.10.2012 and an amount of motor vehicles tax of Rs. 47,196/- for the period 01.11.2012 to 30.4.2013 as well as the appellate order dated 29.8.2014 whereby the appeal filed by the petitioner against the order dated 11.2.2014 was dismissed by the appellate authority.

The counsel for the petitioner argues that the petitioner was the owner of Bus Vehicle No. U.P.-75-8907 manufactured in the year 1992 and was plying the vehicle for commercial purposes. He further argues that as the vehicle was rendered unfit after plying for more than 15 years as no fitness certificate was granted to the petitioner after 13.4.2009 in respect of the vehicle in question.

He further argues that as the fitness certificate was not granted the petitioner surrendered all the documents i.e registration certificate and Permit Certificate of the said Vehicle No. U.P.-75-8907 after completing all the requisite formalities and the same was accepted by the concerned authority by an order dated 28.8.2010 (Annexure 2 to the writ petition).

The petitioner contends that on 23.10.2010 the petitioner sold the vehicle in question to the scrap dealer and necessary application alongwith sale letter was duly submitted before the authority concerned on 26.10.2010 for cancellation of the registration of the vehicle in question. The counsel for the petitioner further contends that despite the petitioner having moved an application for cancellation of the registration along with evidence of the vehicle being sold to the scrap dealer, the petitioner was served with a demand of Rs. 1,59,620/- towards tax dues for vehicle in question. As the representation of the petitioner did not find favour the petitioner approached this Court by filing Writ Tax No. 31 of 2014 which was disposed off by the following order:

"The petitioner has submitted that the Registration Certificate of his vehicle bearing number U.P. 75-8907 which was surrendered on 28 August 2010 was accepted by the concerned authority and hence, no demand on account of motor tax can be levied.

We permit the petitioner to file a representation before the second respondent together with a certified copy of this order within a period of two weeks from today. If such a representation is received, it shall be disposed of on or before 15 February 2014. Until 15 February 2014, no coercive steps shall be taken against the petitioner for enforcement of the demand after which it will be open to the authorities to abide by the final order which is to be passed on the representation.

The petition is, accordingly, disposed of. There shall be no order as to costs."

The petitioner claims that in pursuance of the liberty granted by this Court the petitioner filed a representation, however, the same was rejected vide order dated 11.2.2014 by the respondent no. 3 against which the petitioner preferred an Appeal No. 26 of 2014 before the appellate authority which too stood dismissed. As such the petitioner has approached this Court by challenging both the orders dated 11.2.2014 as well as the appellate order dated 29.8.2014.

The contention of learned counsel for the petitioner is that the orders passed for recovery of additional tax are wholly arbitrary and illegal and prays that the same are liable to be set aside.

The first contention of counsel for the petitioner is that in terms of provision of Section 59 of Motor Vehicles Act, 1988, the life of vehicle (in the present case 20 years) is a relevant factor for determining the liability of payment of tax or additional tax, on the basis of the records, he submits that the date of manufacture of the vehicle is 1992 and as such the period of 20 years comes to an ends in the year 2012 as such no tax/additional tax could have been imposed after 2012, even if the entire facts are admitted for the sake of arguments.

The second contention of learned counsel for the petitioner is that in terms of Section 56 of the Motor Vehicle Act, there is a deeming provision to the effect that a transport vehicle shall not be

deemed to be validly registered unless it carries a certificate of fitness and admittedly the certificate of fitness was not granted with effect from 13.4.2009 as such in terms of Mandate of Section 56, there has to be deemed non-registration of the vehicle.

The third submission of learned counsel for the petitioner is that even otherwise in terms of the provisions of Section 20(2) of Uttar Pradesh Motor vehicles Taxation Act, 1977 the recovery, if any, should be made against the vehicles first prior to issuance of recovery certificate against owner or the operator.

The next submission of learned counsel for the petitioner is that in terms of Section 20(3) of the Motor Vehicles Taxation Act, 1997, it is incumbent that the demand be raised in the prescribed form i.e. Form-E(1) whereas no such Form has been issued, thus, he argues that the recovery is bad in law.

The next submission of counsel for the petitioner is that in terms of the provisions of Rule 22-A of Uttar Pradesh Motor Vehicles Taxation Rules, 1998, it is specifically provided that the Taxation Officer on being satisfied and after adopting such enquiry may write off the payment of arrears of tax or additional tax, he argues that it was specifically pleaded in the memo on appeal, however, it has been wrongly rejected by the appellate order.

Responding to the submissions made by learned counsel for the petitioner, Sri Avinash Chandra Tripathi, learned Advocate, in his usual eloquence argues on behalf of the State that the provisions of registration of vehicle under the Motor Vehicles Act, 1988 do not have any bearing as the demand of tax and additional tax is governed by the provisions of U.P. Motor Vehicles Taxation Act and the Rules framed therein and thus contends that the first submission of counsel for the petitioner merits rejection on that ground alone. He further argues that on the same argument the submission of counsel for the petitioner in respect of Section 56 of the Motor Vehicles Act, 1988 also merits rejection. Sri Avinash Chandra Tripathi further argues that the cancellation of the registration of a vehicle is governed under the provisions of 55 of the Motor Vehicles Act, 1988 and it casts a burden on the owner of the vehicle to inform within the period of 14 days or as soon as may be about the fact of the vehicle being destroyed or being rendered permanently incapable of use.

The counsel for the State further relies upon the provisions of Rule 22 especially Rule 22(4) to argue that is procedure prescribed on non-use of the vehicle as laid down in the Rule 22 must be resorted to by the owner of the vehicle, in view of the stand taken in the counter affidavit, he argues that although the steps prescribed as under Rule 22(1) were taken by the petitioner, as no decision was taken thereupon, in terms of Rule 22(4) it will be deemed that the request for surrender stood revoked and the owner would be liable to pay the tax and the additional tax as the case may be.

Replying to the next argument, Sri Tripathi submits that the argument of counsel for the petitioner is that the recovery should be first resorted against the vehicle is fallacious in view of a plain reading of Section 20 of the Motor Vehicles Taxation Act, 1997 which empowers recovery as arrears of land revenue and sub-section 2 of Section 20 only prescribes for creation of a first charge over the vehicle in question and Section 20 sub-section 3 makes it clear that the demand can be raised from the

owner or the operator without resorting to the same against the vehicle in question first as is being argued by counsel for the petitioner.

With regard to the contention that the certificate under Form E-1 has not been issued, the counsel for the respondents submits that these minor infractions cannot wipe the liability.

Opposing the arguments pertaining to Rule 22-A Sri Avinash Chandra Tripathi submits that the appellate authority has rightly rejected the appeal. Sri Tripathi, however, is not in a position to defend the fact that the period of 20 years will come to an end after 20 years with effect from 1992.

In view of the rival contentions made, the questions to be considered whether the petitioner is liable to pay the tax as demanded from him and as confirmed by the Appellate Authority and whether the denial of benefit of Rule 22-A of Uttar Pradesh Motor Vehicles Taxation Rules, 1998 was a valid exercise of power.

The U.P. Motor Vehicles Taxation Act (hereinafter known as 'the Taxation Act') empowers the State of Uttar Pradesh to impose tax and the additional tax (for some kind of vehicles).

Section 4 of the said Act is the charging Section, and in the present case, we are concerned with Section 4(2-A) which provides for charging of the tax on public service vehicles other than those refer to Section 1-A and sub-section 2 of the Section 4 of the Act. Section 4(2A) is reproduced here-in-below:

"Section 4.....

2-A Save as otherwise provided by or under this Act no public service vehicle other than those referred in sub-section (1-A) and sub-section (2) shall be used in any public place in Uttar Pradesh unless a monthly tax at such rate as may be notified by the State Government is paid in respect thereof:

Provided that in respect a motor vehicle under this sub-section instead of monthly tax, a quarterly or an yearly tax at such rate as may be notified by the State Government may be payable."

Section 5 of the said Act empowers the State to levy additional tax in addition to the tax payable under Section 4. The time for payment of the tax is provided under Section 9 of the said Act wherein it is indicated, that the tax leviable under the Act, shall be paid on the dates so specified under Section 9 of the said Act. Section 12 of the said Act provides for the contingency in the event of non-use of vehicle and the refund of tax, if paid, pertaining to the said non-use of vehicle. Section 12(2) is as under:

"Section 12(2) - Where the operator or, as the case may be, the owner of a motor vehicle, does not intend to use his vehicle for a period of one month or more he shall, before the date the tax or additional tax, as the case may be, is due, surrender the certificate of registration, the token, if any, issued in respect of the motor vehicle and the permit, if any, to the Taxation Officer of the region

where the tax or additional tax was last paid and on such surrender, no tax or additional tax under this Act shall be payable in respect of such vehicle for each complete calendar month of the period during which the vehicle remains withdrawn from use and the aforesaid documents remain surrendered with the Taxation Officer :

Provided that in case such vehicle is found plying during the period when its documents as mentioned in this sub-section remain surrendered with the Taxation officer, such owner or operator, as the case may be, shall be liable to [the tax and the additional tax as if the documents were not surrendered and shall also be liable to the penalty equivalent to five times of the tax and additional tax].

Section 28 of the said Act empowers the State Government to make the Rules were carrying out the purpose of the Act through issuance of a Notification. In terms of the said power conferred under Section 28, the State of Uttar Pradesh has framed the Rules known as 'the Uttar Pradesh Motor Vehicles Taxation Rules, 1998' notified with effect from 10.11.1998. In the present case, we are concerned with the Rule 22 of the said Rules which have been heavily relied upon by the counsel for the State of Uttar Pradesh. Rule 22(1) to Rule 22(5) of U.P. Motor Vehicles Taxation Rules, 1998 are as under:

"22. Procedure in the case of non-use of a vehicle.- (1) When the owner of a motor vehicle has occasion to withdraw his motor vehicle from use for a period of one month or more, in the case of motor vehicle other than transport vehicle the certificate of registration and in case of transport vehicle the certificate of registration, tax certificate, additional tax certificate, if any, fitness certificate and permit, if any, must be surrendered to the Taxation Officer in Form 'F', otherwise the motor vehicle shall be deemed to have been in use. The vehicle shall not be kept outside in the territorial limit of the Taxation Officer during the period of surrender except with the prior permission of the Taxation Officer an exception circumstances.

(2) The intimation of non-use shall be accompanied by a cash receipt of [Rupees One Hundred] to be deposited in the office of the Taxation Officer and shall be presented by the owner or his duly authorised agent to the Taxation Officer.

(3) When the Taxation Officer, after satisfying himself that Form 'F' presented before him is complete, the documents as mentioned in sub-section (1) are attached and the fee prescribed in sub-rule (2) has been deposited, shall accept the surrender of the documents of the vehicle. The Taxation Officer shall complete Part II of Form 'F' and return it to the claimant after entering the date of surrender in the documents produced with Form 'F'.

(4) The Tax Officer shall not accept the intimation of non-use of any vehicle for more than three calendar months, within a calendar year, however, the period, beyond three calendar months may be accepted by the Regional Transport Officer of the region concerned, on the recommendation of the Taxation Officer, if the owner makes an application along with a fee of Rs.10 to the Taxation Officer. If any such vehicle remains surrendered for more than three calendar months during a year without the extension of acceptance of surrender it shall be deemed to be revoked and the owner

shall be liable to pay tax and additional tax as the case may be.

(5) The Taxation Officer shall make entry and sign on each entry in the register maintained in Form 'F-2' in the order of acceptance of surrender of documents for non-use of the vehicle under sub-rule

(3). The Taxation Officer or any other officer authorized by him in this behalf, shall sign whenever any entry is made in the register. The Taxation Officer shall check such register on the last day of every calendar month and shall sign below the last entry therein.

The counsel for the petitioner has placed heavy reliance upon Rule 22(A) of the said Rules which is quoted here-in-below:

"22-A. Procedure for write-off the tax or the additional tax regarding the non-existing vehicles - When the owner of any vehicle informs the taxation Officer that his vehicle has been lost, destroyed, rendered permanently incapable of use or transferred permanently out of the state or the Taxation Officer is otherwise satisfied that any vehicle is not in existence, he may after such enquiry and adopting such procedure as may be laid down in the order issued from time to time by the Transport Commissioner, exempt or write-off the owner from payment of arrear of tax or additional tax or penalty which is found on records since the vehicle was lost, destroyed or rendered permanently incapable of use or transferred permanently out of the state:

Provided that if such vehicle is respect of which the tax or additional tax has been written off, is found in existence, the arrears of tax, additional tax and penalty as the case may be, which would have been recoverable in absence of exemption or writing off under sub-rule (1), may be recoverable from said owner of the vehicle."

Before reverting the interpretation of the Act and the Rules, it is essential to record Section 2(o) of the U.P. Motor Vehicles Taxation Act which is as under:

"words and expressions used but not defined in this Act and defined in the Motor Vehicles Act, 1988, shall have the respective meaning assigned to them in that Act;

Thus, a plain reading of the Taxation Act and the Rules makes it clear that incidence of tax is use of the vehicle and the time for payment of the tax is specified under Section 9 of Motor Vehicles Taxation Act, 1997. Thus, for imposition of tax, it is essential to establish that the vehicle is "in use". Interestingly, under section 12 of the Taxation Act, specific provisions have been provided for the contingency where the operator and the owner of the motor vehicle does not intend to use his vehicle for a period of one month or more, in fact, a perusal of Section 12(2) provides for the procedure also wherein the owner or the operator is only to surrender the certificate of registration and token, if any, to the Taxation Officer and in fact, a bar is imposed from imposition of the tax or additional tax in respect of such vehicle for the period during which the vehicle remains withdrawn from use and the aforesaid documents remains surrendered with the Taxation Officer. Proviso to the said Section 12(2) confers a power on the Taxation Officer to impose the tax or the additional tax, in the event, the vehicle is found to be plying during the period when the documents as mentioned in Section 20(2) of the Act remains surrendered. Thus, a plain reading of Section 12 shows that a

complete Code is prescribed .A conjoint reading of Section 12 (2) and Rule 22(4), relied upon by the counsel for the respondents make it clear that an additional action is to be performed by the owner if non-use of the vehicle is for more than three calendar months. Although the Rule has been framed in terms of Powers conferred by virtue of Secyion 28 for enforcement of the provisions of the Act,in fact the said Rule 22(4), has the effect of being a charging Section which prima facie is beyond the mandate of section 28, however, as there is no challenge to the validity of the said Rule 22(4), I am not going into the said validity in the present case.

In any event, Rule 22(A) clearly is the relevant rule made for carrying out the purpose of Section 12(2) and is important for the present case.

In view of the pleadings, it is clear that the date of manufacture of the vehicle is 1992 and the validity of the registration is 20 years and the fact that the fitness certificate of the vehicle has never been extended after 13.4.2009 and no fitness certificate has been granted thereafter, in terms of the mandate of the Motor Vehicle Act, the vehicle itself could not have been used as the same would have been in violation of the express mandate of Sections 55 and 56 of the Motor Vehicles Act.

I am inclined to reject the argument of Sri Avinash Chandra Tripathi that the provisions of Motor Vehicles Act are not applicable to the facts of the present case for the reason that Section 2(o) of the Act specifically provides for interpretation of the words and expressions used under the Motor Vehicles Act and the State has itself in para 8 of the counter affidavit taken a defence that under section 53(1) of the Motor Vehicles Act, the petitioner was bound to inform within 14 days or "as soon as may be" that the vehicle has been destroyed or rendered permanently incapable of use.

A perusal of the order shows that the stand of State is that although specific information was given by the petitioner for cancellation of registration, however, the State has taken a plea that as the petitioner failed to move an application after the expiry of three months for extension of surrender of registration in terms of Rule 22(4), the petitioner was liable to pay the demand on account of tax and additional tax from the period 01.12.2010 to 31.10.2012 and for a subsequent period from 01.11.2012 to 30.4.2013.

A perusal of the said order dated 11.2.2014 makes it clear that the applicability or the benefit of Rule 22-A to the facts of the case were never considered by the Taxation Officer.

It is further clear that in an appeal filed by the petitioner under Section 18 of Uttar Pradesh Motor Vehicles Taxation Act specific ground with regard to benefit of Rule 22-A was taken, however, while deciding the appeal, although the Appellate Authority recorded the said submission in the appellate order, however, arbitrarily did not consider the same only on the ground that no information was available prior to 16.1.2014 with regard to the fact that the vehicle in question was sold to a scrap dealer or was destroyed. The said finding of the Appellate Authority is clearly erroneous as on the plain reading of Rule 22-A, it is clear that on an information received to the effect that the vehicle is destroyed the taxation officer is empowered to record a satisfaction in respect of such information and further after proper enquiry can exempt or write off the arrear of tax. In the present case, the Appellate Authority does not even consider the grant of benefit under Rule 22-A solely on the

ground that no information was available on record prior to 16.1.2014, thus, the Appellate Authority has erred on that count as Rule 22A does not even refer to the timing of information to be given in respect of the vehicle in question.

Surprisingly, a show cause notice was issued to the petitioner on 14.2.2016 (SA-2 to the supplementary affidavit) wherein the petitioner was called upon to inform if the vehicle had been destroyed, or was unfit for use for deciding on the question of benefits under Rule 22-A of the rules. Once the said show cause notice was issued, it is clear that the benefit under Rule 22-A ought to have been considered by the Taxation Officer as well as Appellate Authority which has not been done.

In view of the facts recorded above, it is clear that once the operator/owner of the vehicle informs regarding surrender of registration certificate, a burden is cast upon the Taxation Officer to charge the tax and the additional tax only on being convinced that the vehicle is found plying as no tax can be levied in terms of Section 12(2) of the Motor Vehicles Taxation Act. Even if the argument of Sri S.C. Tripathi is accepted that in terms of Rule 22(4), the expiry of the registration comes to an end within three months unless it is extended by the Regional Transport Officer, is accepted, there cannot be any denial of the fact that the petitioner was entitled for consideration of his case under Rule 22-A in view of the pleading by him before the Taxation Officer as well as the Appellate Authority to the effect that the vehicle had become non-existent which exercise has not been done in the present case.

Even otherwise admittedly the registration comes to an end after the expiry of 20 years, as admittedly, the vehicle was manufactured in the year 1992, the period of 20 years would expire in the year 2012 and thus no tax could have been imposed after the expiry of the said 20 years. As such the order of the Taxation Officer imposing tax for the period 01.11.2012 to 30.4.2013 amounting to Rs. 47,196/- is liable to be set aside to the extent of charging tax for the period 1.1.2013 to 30.4.2013. As regards the demand of tax amounting to Rs. 1,59,620/- for the period 01.12.2010 to 31.10.2012, the matter is remanded to the Taxation Officer to consider the grant of benefit under Rule 22-A of the Taxation Rules after making such enquiry as he may deem fit in terms of mandate of Rule 22-A. To avoid any further delays it is directed that the petitioner shall appear before the Taxation Officer along with the relevant documents in support of his contention of the vehicle having become non-existent on 06.01.2021 at 12.00 (Noon) and the Taxation Officer after conducting such enquiry as he may deem fit, shall pass fresh orders taking into account the benefit to which the petitioner is entitled under Rule 22-A of the Motor Vehicles Taxation Rules, as expeditiously as possible.

The writ petition is partly allowed in terms of the order so passed above.

Order Date :- 17.12.2020 Puspendra