

Pavan Kumar Mishra Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Oct-26-2002

Reported in : AIR2003All237

Judge : S.P. Srivastava and ;G.K. Gupta, JJ.

Acts : Uttar Pradesh Motor Vehicles Taxation Act, 1997 - Sections 1; Uttar Pradesh Motor Vehicles Taxation Rules, 1998 - Rule 22

Appeal No. : W.P. No. 6459 of 2002

Appellant : Pavan Kumar Mishra

Respondent : State of U.P. and ors.

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : L.K. Gupta, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

1. Heard counsel for the petitioner as well as the learned standing counsel representing respondents Nos. 1 to 3.

2. Perused the record.

3. The petitioner is aggrieved by the demand raised by the Taxation Officer, Lucknow imposing a tax liability for an amount of Rs. 80136.00 on the petitioner under the provision of U.P. Motor Vehicles Act, 1997. It is not disputed that the Truck bearing Registration No. U.P.T.-3038 in respect whereof the aforesaid demand has been raised is registered in the name of the petitioner and he is registered owner thereof as contemplated under the U.P. Motor Vehicles Act. The contention of the petitioner is that the impugned demand which relates to a period elapsing between 1-4-1997 and 30-6-2002 covers a period during which the motor vehicle, in question, was not in use at all. Therefore, it is urged that no tax liability could be fastened upon the petitioner to the extent as indicated in the impugned demand notice. In this connection, it has been urged that the motor vehicle, in question, had been purchased by the petitioner under a hire purchase agreement with the Financier. The Financier had seized the vehicle on 14-4-1998 from which date the vehicle is not being run at all. In the aforesaid circumstances it is urged that no tax liability could be fastened upon the petitioner for a period elapsing between 14-4-98 to 30-6-2002.

4. Learned standing counsel however has urged that in the present case the required procedure prescribed under the U.P. Motor Vehicles Taxation Rules, 1998 in the case of non use of a vehicle had not been followed by the petitioner. The application referred to by the petitioner dated 15-4-1998 addressed to the Assistant Regional Transport Officer, Lucknow informing about seizure was, therefore, liable to be ignored. It cannot be lost sight of that when the statute requires a particular thing to be done in a specified manner it has to be done in that manner or not at all.

5. It may be noticed that the provisions contained in Rule 22 of the U. P. Motor Vehicles Taxation Rules 1998 framed under the U.P. Motor Vehicles Taxation Act, 1997 clearly stipulate that when the owner of a motor vehicle has occasion to withdraw his motor vehicle from use for a period of one month or more, the certificate of registration and the token, if any, issued in respect of the vehicle must be surrendered to the taxation Officer together with a declaration in Part I of Form F otherwise the motor vehicle shall be deemed to have been in use. On behalf of the petitioner it is not disputed that the procedure prescribed under Rule 22 of the

Rules indicated hereinabove was not followed at all. In the circumstances it is obvious that the concerned authority was fully justified in proceeding on the assumption that the motor vehicle, in question, had actually been in use. This follows from the statutory fiction contemplated under Rule 22 of the aforesaid Rules.

6. Taking into consideration the facts and circumstances as brought on record, no justifiable ground can be said to have been made out for any interference by this Court while exercising extra-ordinary jurisdiction envisaged under Article 226 of the Constitution of India.

7. The writ petition accordingly fails and is dismissed.

8. However, it is made clear that this order will not come in the way of the petitioner raising a claim for the refund of the amount as envisaged under Rule 23 of the aforesaid Rules which claim in case it is made will be decided in accordance with law.

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